

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: April 19, 2018

+ **MAC.APP. 691/2015 & CM 17937/2015**
+ **MAC.APP. 692/2015 & CM 17947/2015**
+ **MAC.APP. 693/2015 & CM 43170/2015**
+ **MAC.APP. 694/2015 & CM 17964/2015**
+ **MAC.APP. 695/2015 & CM 17967/2015**

SHRI RAM GENERAL INS CO LTD Appellant
Through: Mr. Sameer Nandwani, Advocate

Versus

RAVI & ORS
MUKESH & ORS
CHAMPA & ORS
UMESH & ORS
SANJAY @ SANJAY KUMAR & ORS

.....Respondents
Through: Ms. Guremeet Kaur Chawla,
Advocate for Ms. Babita Tyagi, Advocate for
respondents-Claimants

+ **MAC.APP. 70/2017**

CHAMPA & ORSAppellants
Through: Ms. Guremeet Kaur Chawla,
Advocate for Ms. Babita Tyagi, Advocate

Versus

SHRI RAM GENERAL INSURANCE CO LTD Respondent
Through: Mr. Sameer Nandwani, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above-captioned six appeals are directed against consolidated Award of 30th May, 2015 vide which *the Motor Accident Claims Tribunal-02 (Central), Delhi (hereinafter referred to as 'the Tribunal')* has granted compensation of ₹18,27,952/- with interest @ 9% *per annum* to *Champa and Ors.*, who are the legal heirs of deceased-*Kundan*, whereas the Tribunal has granted compensation of ₹14,861/- each to *Mukesh, Ravi, Umesh and Sanjay*, who were injured in a vehicular accident on 6th June, 2014.
2. Since the above-captioned six appeals arise out of a vehicular accident, therefore, with consent of learned counsel for the parties, these appeals have been heard together and are being decided by this common judgment.
3. Cross-objections have been filed by father and wife of deceased-*Kundan* to seek enhancement of compensation, which have been registered as a separate appeal i.e. MAC.APP. 70/2017, which has been also heard alongwith above-captioned other appeals.
4. The factual background, as noticed in impugned Award, is as under: -

“The case of the petitioners in Petition No. 402/13 is that on 06.06.2013 at about 12:05 hours (midnight), the deceased in the first petition who was working as labourer on the offending vehicle i.e. Garbage Carrying Vehicle bearing registration no. DL-1M-4505 (Mini-Truck) and was travelling on the said offending vehicle with other 4

labourers (who are petitioners in the other petitions) and were sitting on garbage laden on backside and the said offending vehicle was being driven by its driver i.e. the respondent no. 1 in utmost high speed, rashly, negligently, carelessly, in utter disregarded manner of traffic rules and regulations, lacking complete lookouts of the road. When the said offending vehicle i.e. Garbage Carrying Vehicle bearing registration no. DL-1M-4505 (Mini-Truck) reached at Majnu Ka Tilla, Near Harphool Singh Akhara on Outer Ring Road, the offending vehicle on reaching at the central verge struck against a standing tree. Consequently, the offending vehicle turned-over and the from the said offending vehicle deceased Kundan came under the said offending vehicle and sustained fatal injuries whereas, other petitioners in other petitions sustained superficial abrasions, stitches on the left knee and left shoulder abrasion and stitches and other bodily injuries as per MLC. In total, the petitioners in the first petition have claimed Rs. 20 Lac on account of the compensation for fatal injury sustained by the deceased whereas the petitioners in other petitions have claimed Rs. 2 Lac each on account of injuries sustained by them in the vehicular accident.”

5. The Tribunal has relied upon the evidence of wife of deceased, four labourers, who were injured in this vehicular accident, and an officer of appellant-Company to render the impugned Award. Suffice to note that deceased and four injured persons were working as labourers on the garbage carrying vehicle i.e. Mini Truck and they were sitting on the garbage laden on the backside of the said vehicle. Kundan was aged 22 years on the day of the accident and his income has been assessed by the

Tribunal at ₹7,722/-, i.e. the Minimum Wages for unskilled persons. Addition of 50% towards '*future prospects*' has been made and after deducting 1/3rd towards '*personal expenses*', '*loss of dependency*' in case of deceased-Kundan has been assessed by applying the multiplier of 18 to be ₹16,67,952/-. Under non-pecuniary heads, compensation of ₹1 lac has been awarded for the '*loss of consortium*' and ₹25,000/- towards '*loss of love and affection*', and ₹25,000/- towards '*funeral expenses*' and ₹10,000/- towards '*loss of estate*'. To Claimants/Injured-Ravi, Mukesh, Umesh and Sanjay, compensation of ₹14,861/- each has been granted by the Tribunal and the Awarded amount is to carry interest @ 9% *per annum*.

6. Impugned Award is assailed by learned counsel for Insurer on the ground that deceased and injured persons were gratuitous passengers in the garbage carrying vehicle i.e. Mini Truck in question, and that deceased and injured persons were labourers, who were sitting on the garbage laden vehicle on the backside. To submit so, attention of this Court is drawn to paragraph No.50 of impugned Award. Thus, it is submitted that no compensation is payable to Claimants-Injured persons. It is submitted by learned counsel for Insurer that no compensation under the head of '*pain and suffering*' can be granted in view of Supreme Court's Constitution Bench decision in *National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.* 2017 SCC OnLine SC 1270 and compensation granted under the non-pecuniary heads is on higher side and needs to be reduced to bring it in tune with the compensation granted in *Pranay Sethi (supra)*. So, it is submitted that impugned Award deserves to be suitably modified.

7. On the other hand, learned counsel for Claimants submits the compensation granted to legal heirs of deceased is inadequate and it needs to be suitably enhanced. Regarding compensation granted to injured persons, it is submitted that adequate compensation has been granted to them and so, the appeals of Insurer ought to be dismissed but compensation granted to legal heirs of deceased is required to be enhanced.

8. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that in a case like the instant one, the vehicle in question being a garbage vehicle is required to carry the helpers to facilitate the disposal of garbage. It will not be fair to label the deceased and injured persons as gratuitous passengers, as they were not travelling in the vehicle in question for a ride or for any other personal work. Infact, they were in the vehicle in question to help in clearing of garbage and so, deceased and injured persons cannot be labelled as gratuitous passengers. Infact, they were helpers on duty.

9. During the course of hearing, learned counsel for Insurer had drawn attention of this Court to paragraph No.48 of impugned Award wherein it is noted that as per Insurance Policy, driver, owner and cleaner only are covered. It may be so. Since more than one cleaner were required to clear the garbage from the truck, therefore, Insurer cannot be absolved from liability to pay compensation in respect of deceased atleast as he was helper on duty. As regards injured persons, Insurer is required to pay the compensation to them in the first instance and then to recover it from the owner of the vehicle in question. I find no justification to reduce the compensation granted to Claimants/Injured persons on account of

injuries sustained by them. As such, compensation granted to Claimants/Injured persons is maintained.

10. As regard compensation granted to legal heirs of deceased, I find that income of deceased has been rightly assessed on minimum wages for unskilled persons. The multiplier of 18 adopted by the Tribunal is appropriate. No case for enhancement of compensation granted in case of deceased-*Kundan* is made out. So far as compensation granted under the non-pecuniary heads is concerned, it needs to be brought in tune with compensation granted by Supreme Court in *Pranay Sethi (supra)*. Accordingly, compensation of ₹1 lac granted by the Tribunal to the legal heirs of deceased under the head of '*loss of consortium*' is reduced to ₹40,000/- and compensation of ₹25,000/- towards '*loss of love and affection*' is disallowed. The '*funeral expenses*' are reduced from ₹25,000/- to ₹15,000/- and compensation ₹10,000/- granted under the head of '*loss of estate*' is increased to ₹15,000/-.

11. In view of aforesaid, compensation granted to legal heirs of deceased is reassessed as under: -

Loss of dependency	:	₹ 16,67,952/-
Loss of Consortium	:	₹ 40,000/-
Loss of Estate	:	₹15,000/-
Funeral Expenses	:	₹15,000/-
Total	:	₹17,37,952/-

12. In light of the aforesaid, the quantum of compensation granted to the legal heirs of deceased is reduced from ₹18,27,952/- to ₹17,37,952/-, which shall carry interest @ 9% *per annum*. The excess amount deposited by Insurer be refunded and the compensation in terms of this judgment be

disbursed to the legal heirs of deceased and Claimants/Injured persons, in the manner and ratio as indicated in impugned Award and thereafter, the statutory deposit be refunded to Insurer. Liberty is granted to Insurer to recover the compensation paid to four Claimants/ Injured persons from the owner of the vehicle in question.

13. These appeals and the pending applications are disposed of in the aforesaid terms.

(SUNIL GAUR)
JUDGE

APRIL 19, 2018

s

