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

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Decided on: 23rd May, 2017

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MAC.APP. 378/2017 & CM No.14657/2017

THE NATIONAL INSURANCE CO LTD.

..... Appellant

Through: Mr. S.P. Jain and Mr.Himanshu
Gambhir, Advocates.

Versus

SAVITRI DEVI & ORS.

..... Respondents

Through: Mr. Sunil Kumar Verma, Advocate
for Respondents.
Pavitra Mohan Sharma and Mr. Arun
Kumar Sharma, Advocates for
Respondents No. 5 and 6.

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MAC.APP. 379/2017 & CM No.14659/2017

THE NATIONAL INSURANCE CO LTD.

..... Appellant

Through: Mr. S.P. Jain and Mr.Himanshu
Gambhir, Advocates.

Versus

JAVITRI DEVI & ORS.

..... Respondents

Through: Mr. Sunil Kumar Verma, Advocate
for Respondents.
Pavitra Mohan Sharma and Mr. Arun
Kumar Sharma, Advocates for
Respondents No. 5 and 6.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. These appeals under Section 173 of the Motor Vehicles Act, 1988 impugn the common Award dated 19.01.2017 passed in MACP No. 32/12 and MACP No. 33/12, whereby the Tribunal awarded compensation of Rs.31,94,272/- and Rs.18,98,656/- respectively alongwith interest at the rate of 10% per annum to the beneficiaries in each claim petition. The offending vehicle was insured with the appellant; accordingly, liability has been fixed on it.

2. The facts of the case are that at 4.30 AM on 04.01.2012, one Mr. Satyapal Singh and one Mr. Kaushal Pal Paurus lost their lives whilst travelling in a Xylo Car bearing No. DL-1VB-6307. In the claim petitions it was averred that on 04.01.2012, four persons, including the two deceased, were going from Delhi to Mathura in the aforesaid Xylo Car; when they reached near "Suchcha Hotal" on N.H. - 2, P.S. Chhata, Mathura, UP, a truck hit the said car resulting in the instantaneous death of two of the occupants, namely, Satyapal Singh and Kushal pal Paurus the other two persons sustained injuries and were taken to Mangla Hospital. The evidence of one Mr. Puran Singh (PW3) was led on behalf of the claimants, who was a passenger in the said car. His statement is as under:-

"On 04/01/2012, at about 4.30 AM I was travelling as one of the passenger in the Xylo car bearing no. DL-lVB-6307 when our car was reached near Akbar Pur ahead Chatta within the jurisdiction of Distt. Mathura then the truck had taken the turn all of sudden without giving any indication and blowing horn as there was a cut on the road near the place of accident and dashed against the car in which I was travelling. The accident did take place due to rash and negligent driving of the offending vehicle i.e. truck. The police official had reached the

spot after the accident in my presence. FIR bearing no. 2/2002 was registered u/s 279/338/304A IPG in the police station Chatta on my statement. Sh. Kushal Pal Singh and Satpal Singh were travelling in the same car died at the spot after the accident. Photocopy of voter I card of mine is Ex.PW3/1 (OSR).

xxxxxxx by Sh. Shyam Singh counsel for the insurance company.

I am an agriculturist. I have 10 Acres land in the revenue state of village Chatta. The police station Chatta is situated at the distance of 10 Km from my house. My house is situated near the NH-2. Sh. Kushal Pal, deceased was my sister's husband. Javitri is my sister and' Savitri is the friend of my sister. I knew Satpal Singh for a n quite long time. My brother-in-law (Jija) was going with me at Mathura to see niece. It is wrong to suggest that we all were going to my residence at Chatta. I had lodged the complaint in writing to the police station Chatta. Time is correctly mentioned in FIR. It is wrong to suggest that I was waiting on NH-2 near the Chatta on the date of accident. It is wrong to suggest that I was not travelling in the car along with the deceased. It is wrong to suggest that I did not see the accident. It is wrong to suggest that I have deposed falsely with regard to the involvement of the Xylo car. I used to visit the police station after the accident. My brother is Sarpanch. The site plan has to be prepared by the 10 not by me. Police had made inquiry with regard to the accident from me. It is wrong to suggest that I have deposed falsely being relative of the deceased."

3. The learned counsel for the appellant challenges the fastening of the liability to pay the compensation awarded upon the appellants, on the ground that neither in the claim petition nor in the evidence of the eyewitness Mr. Puran Singh (PW-3) did the claimant make out a case of negligence on part of the driver of the Xylo Car. He further submits that if

such negligence is not proven then the insurer would not be liable to pay the entire compensation and at best it would be a case of hit-and-run. Therefore, the case will be covered under Section 161 of the Motor Vehicles Act, 1988 because the truck which is mentioned in the claim petition was never identified and a closure report was filed in that regard by the police.

4. On the other hand, the learned counsel for the respondents/claimants relies upon the dicta of the Supreme Court in ***Kamlesh & Ors. Vs. Attar Singh & Ors. (2015) 15 SCC 364*** to contend that in case of composite negligence, the claimants can file a case to recover the entire compensation either against both or any one of the joint tort-feasors and the liability of the tort-feasors is both joint and several. The Court finds that in the present case, the liability of the present appellant/insurer having been fixed, the respondents/claimants are entitled to recover the said monies from the insurer. In the circumstances, the entire amount shall be paid by the appellant.

5. The other ground of challenge, in both the appeals, is that in MAC. APP. No.378/2017 instead of granting 50% addition towards loss of future prospects, it should be 30% as per the dicta of ***Sarla Verma (Smt.) and Others Vs. DTC & Ors. (2009) 6 SCC 121***, which held that where the deceased had a permanent job and was between the ages of 40 and 50 years, the addition towards future prospects should not be more than 30%.

6. In MAC. APP. No.379/2017, the learned counsel submits that the claimants neither proved the income of the deceased nor the nature of his employment and whether it was permanent, therefore, the Tribunal computed the loss of dependency on the basis of the minimum wages, but the addition of 50% towards future prospects is erroneous.

7. The Court finds reason in the said contention as the deceased in the former case (MAC. APP. No.378/2017) was an employee of MCD i.e. in a permanent job and in the age group of 40-50 years. Therefore, the addition towards future prospects is reduced from 50% to 30%. However, since in the latter case the claimants have neither proved the income nor the nature of the employment of the deceased, applying the aforesaid dicta of *Sarla Verma (supra)*, the claimants are not entitled to the addition of 50% towards loss of future prospects. It is so ordered.

8. The other challenge is that interest at the rate of 10% instead of the usual 9% has been granted. In *Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy AIR 2012 SC 100*, the Supreme Court had granted interest @ 9% p.a. This Court has followed the same principle in a number of cases.

9. Therefore, the Award is modified to the extent that interest at the rate of 9% per annum shall be payable on the compensation awarded in both the appeals.

10. In the circumstances, the amount payable towards non-pecuniary loss i.e. loss of dependency is re-calculated in these appeals as under:

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The re-computed loss of dependency would be Rs.24,86,702.4 [Rs.17,079/- (monthly salary) + Rs.5123.7 (30% future prospects) X 12 i.e. Rs.2,66,432.4 (annual salary) – Rs.88810.8 (one-third personal expenses) X 14 (multiplier)], which is rounded off to Rs.24,86,710/-. To this a sum of Rs.3,25,000/- is to be added apropos compensation awarded for non-pecuniary damages. Hence, the total awarded amount comes to Rs.28,11,710/-.

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The re-computed loss of dependency would be Rs.9,49,104/- [Rs.8112/- (minimum wages) X 12 - Rs.24,336 (one-fourth personal expenses) X 13 (multiplier)], which is rounded off to Rs.9,49,110/-. To this a sum of Rs.4,75,000/- is to be added apropos compensation awarded for non-pecuniary damages. Hence, the total awarded amount comes to Rs.14,24,110/-.

11. The aforesaid amount awarded shall be payable alongwith interest at the rate of 9% per annum from the date of the filing of the petition i.e. 03.02.2012 till realization. The Awards stands modified accordingly. After satisfying the Award in the aforesaid terms, the excess amount, if any, shall be released to the appellant with proportionate interest. The statutory deposits too shall be released to the appellant in both appeals. The awarded amount shall be released, if not done already, to the beneficiaries in terms specified in the Award.

12. The appeals are partly allowed. The pending application stands disposed off.

MAY 18, 2017

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NAJMI WAZIRI, J.