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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 20.11.2023*+ **MAC.APP. 501/2023****THE ORIENTAL INSURANCE CO. LTD**

..... Appellant

Through: Mr.JPN Shahi, Adv.

versus

VIKRAM SINGH AND ORS

..... Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)****CM APPL. 58375/2023 (Exemption)**

1. Allowed, subject to all just exceptions.

MAC.APP. 501/2023 & CM APPL. 58374/2023

2. This appeal has been filed challenging the Award dated 11.08.2023 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal-01, West District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case No. 521/2017, titled ***Vikram Singh & Ors. v. Amit Kumar & Ors..***

3. The above Claim Petition has been filed by the respondent nos.1 to 3 herein contending that on 03.12.2016, the respondent nos.1 to 3 along with the deceased-Smt. Kavita were



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travelling to their village in a Taxi Car bearing registration No. UK14TA0142 (hereinafter referred to as the 'Swift Car') to attend a marriage ceremony. When they reached Raiwala, near Satya Narayan Mandir, Dehradun, Uttarakhand, the Offending Vehicle, that is, a truck bearing registration no. UK08CA6078, came at a very high speed and in a rash and negligent manner and hit the Swift Car in which the claimants were travelling. Due to the accident, the deceased and the respondents nos.1 to 3 sustained injuries. The deceased was shifted to the Jolly Grant Himalayan Hospital, from where she was shifted to the Jaipur Golden Hospital, Rohini, Delhi. She was later shifted to the Sehgal Hospital, Mira Bagh, Delhi, and from where to the DDU Hospital. During the treatment at the DDU Hospital, she expired on 09.01.2017.

4. The learned Tribunal by way of the Impugned Award, has held that in the present case, there was a head-on collision between the two vehicles and, therefore, it was a case of composite negligence of the driver of the Offending Vehicle, that is, the respondent no.4 herein, and the driver of the Swift Car are responsible in the ratio of 50% each. The learned Tribunal thereafter quantified the compensation payable in favour of the respondent nos.1 to 3, as Rs.28,67,986/-. On the question of apportionment of liability, the learned Tribunal has held as under:-

"13.1 As has been observed earlier, the driver of offending vehicle bearing registration number UK08CA6078 has at least composite



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negligence of 50% in the present incident. It was submitted during final arguments by Ld. Counsel for the respondent no.03 Insurance Company that whole of the liability could not be fastened upon them in case this Tribunal comes to the conclusion that the present respondent no.01 is not solely responsible for the incident. This Tribunal sees no force in the said contention of Ld. Counsel for the respondent no.03 Insurance Company. It is not imperative upon petitioner(s)/claimant(s) to implead all the joint tort-feasers and petition can certainly be maintained against one of the tort-feaser. Reliance can be placed upon the decisions of **Hon'ble Supreme Court of India** in matters of "**Khenyei v. New India Assurance Company & Others**" (2015) 9 SCC 273 and "**Kamlesh & Ors. v. Attar Singh & Ors.**" (2015) 15 SCC 364 upon said issue. Hence, the petitioner(s)/claimant(s) could not have been forced to implead the driver, owner and insurer of car bearing registration number UK14TA0142 as respondents. The respondent no.03 Insurance Company may pursue legal remedies available to it as per law for recovery of half amount of the award from the driver, owner and insurer of vehicle bearing registration number UK14TA0142, if it so advised.

13.2 As the offending vehicle bearing registration number UK08CA6078 was admittedly insured with the respondent no.03/Insurance company, respondent no.03/insurance company is hereby directed to deposit the whole of award amount in favour of the petitioner(s) with **State Bank of India, Tis Hazari Courts, Delhi in MACT Account of this Tribunal having Account No.40711767202, CIF No.90891362578, IFSC Code - SBIN0000726 Tis Hazari Courts, Delhi** within a period of 30 days from the date of passing of this award together with the interest as stated herein above under intimation to this Tribunal and under



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intimation to the petitioner(s)/claimant(s)/applicant(s). In case of any delay, it shall be liable to pay interest at the rate of 9% per annum for the period of delay.”

5. The appellant is aggrieved of the entire liability to pay the compensation to the respondent nos.1 to 3 being fastened on the appellant.

6. The learned counsel for the appellant submits that once the learned Tribunal has assessed the composite negligence of the driver of the Offending Vehicle, that is, the respondent no.4, at only 50%, the proper course for the learned Tribunal should have been to implead the driver, owner, and the insurance company, if any, of the Swift Car in which the deceased along with the respondent nos.1 to 3 were travelling. He further submits that, in any case, the appellant could not have been made liable to pay more than 50% of the compensation determined by the learned Tribunal.

7. I find no merit in the above contention of the appellant. This court in its judgment in ***Oriental Insurance Co. Ltd. v. Smt. Mamta and Ors.***, Neutral Citation no. 2023:DHJ:7224, has rejected similar contentions, holding as under:-

“16. From the above, it is apparent that in case of composite negligence, it is the option of the Claimant to sue both or any one of the joint tortfeasors and to recover the entire compensation as the liability of joint tortfeasors is joint and several. Therefore, it is not incumbent upon the Claimants to implead the driver, owner, or the insurance company of the other vehicle and the Claimants may file



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their claim against the driver, owner and the insurance company of only one of the vehicles involved in the accident. Neither can impleadment of the driver, owner or the insurance company of the other vehicle be a condition precedent for the maintainability of the Claim Petition, nor can it be necessarily directed by the learned Tribunal.

17. *It is only where all the joint tortfeasors have been impleaded and evidence is sufficient, that it is open to the learned Tribunal to determine inter se extent of composite negligence of the drivers of the two vehicles. Such determination is also only for the purpose of the inter se liability so that one may recover the same from the other after making the whole of the payment to the Claimants. In fact, it would not be appropriate for the learned Tribunal to determine the extent of composite negligence of the drivers of the two vehicles in the absence of impleadment of the other joint tortfeasor. Where the other joint tortfeasor is not a party to the Claim Petition, the impleaded joint tortfeasor should be left, in case it so desires, to sue the other joint tortfeasor in independent proceedings after the passing of the Award.*

18. *In the present case, the Claimants chose not to implead the driver or the insurance Company of the Mahindra Car in the Claim Petition. They were within their rights not to do so, nor could they be compelled to do so. In the absence of the driver and the insurance company of the Mahindra Car, in fact, the learned Tribunal has erred in assessing the extent of composite negligence of the driver of the Mahindra Car; the same could not have been done by the learned Tribunal. The learned Tribunal should have stopped at its determination that there was contributory negligence of the driver of the Mahindra Car, without quantifying such contributory negligence.*

19. *Even otherwise, in the absence of the driver and the insurance Company of the*



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Mahindra Car, the learned Tribunal has rightly directed the appellant to pay the compensation amount to the Claimants and, if so advised, recover the portion of the same, in separate proceedings, from the driver/insurance company of the Mahindra Car.

20. *Reliance of the learned counsel for the appellant on the judgment of the Supreme Court in **Savita Garg** (Supra), also cannot be accepted. Apart from the direct precedent on the issue in **Khenyei** (supra), in **Savita Garg** (Supra) also, it was held that:*

“9. ...So far as the law with regard to the non-joinder of necessary party under the Code of Civil Procedure, Order 1 Rule 9 and Order 1 Rule 10 of the CPC there also even no suit shall fail because of misjoinder or non-joinder of parties. It can proceed against the persons who are parties before the court. Even the court has the power under Order 1 Rule 10(4) to give direction to implead a person who is a necessary party. Therefore, even if after the direction given by the Commission the doctor concerned and the nursing staff who were looking after the deceased A.K. Garg have not been impleaded as opposite parties it cannot result in dismissal of the original petition as a whole.”

8. The above judgment squarely applies to the facts of the present case. It was neither necessary for the respondent no. 1 to 3 to have impleaded the driver, or the owner, or the insurance company, if any, of the Swift Car, nor the appellant can claim that it is entitled to pay only 50% of the compensation that has



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been awarded by the learned Tribunal, only because the learned Tribunal has attributed composite negligence of 50% on the driver of the Swift Car in causing the accident.

9. In view of the above, I find no merit in the present appeal. Accordingly, the appeal along with the pending application is dismissed.

10. The appellant shall stand exempted from depositing the statutory amount.

11. The appellant shall deposit the awarded amount with the learned Tribunal, along with interest accrued thereon, within a period of four weeks from today.

NAVIN CHAWLA, J

NOVEMBER 20, 2023/rv/AS