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

+ **MAC.APP. 405/2015**

**SAHEED KHAN & ANR**

.....Appellants

Through: Mr. Anshuman Bal, Advocate.

versus

**UNITED INDIA INSURANCE CO LTD & ORS**

.....Respondents

Through: Mr. Pradeep Gaur, Advocate for R-1  
through VC.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**ORDER**

**18.10.2024**

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1. The present Appeal under Section 173 of the Motor Vehicles Act, 1988 (*hereinafter referred to as "MV Act, 1988"*) has been filed on behalf of the appellants against the impugned Judgment/Award dated 12.11.2014 thereby seeking to amend/modify the compensation of Rs. 20,00,000/- along with interest @ 18% per annum under Section 163-A of MV Act, 1988 from the date of filing of the Claim Petition till its realisation.
2. Learned counsel for the respondent No. 1-Insurance Company submits that the claim has been awarded under Section 163-A of MV Act, 1988 and there is no basis given for enhancement of compensation of Rs. 20,00,000/-.
3. It is asserted that the present Appeal is without merit and is liable to be dismissed.
4. Learned counsel for the appellants has confined his relief to the



ground (b) of Appeal, wherein it has been contended that though it was held to be a case of composite negligence involving two vehicles, the learned Tribunal has erred in apportionment of 50% liability to each of the vehicles.

5. It is asserted that one of the vehicles was not insured and 50% liability has been apportioned to the second vehicle.

6. Learned counsel for the appellants has placed reliance on the decisions in Khenyei vs. New India Assurance Company & Others, (2015) 9 SCC 273 and Kamlesh & Ors. vs. Attar Singh & Ors., (2015) 15 SCC 364, wherein the Apex Court has held that when it is a case of composite negligence, the Claimants can recover compensation amount from either party or both the parties and that the respondents *inter se* being entitled to adjust/recover the amount by way of apportionment.

7. Learned counsel for the appellants has also placed reliance on the decisions of the Co-ordinate Bench of this Court in The Oriental Insurance Co. Ltd vs. Vikram Singh and Ors, decided vide MAC.APP. 501/2023 on 20.11.2023 and Oriental Insurance Co. Ltd. v. Smt. Mamta and Ors., 2023:DHC:7224.

8. Learned counsel for the respondent No. 1-Insurance Company has taken the only objection that there is nothing to show that no amount has been recovered from the owner of the second vehicle. Therefore, the impugned Judgment/Award dated 12.11.2014 does not need any modification.

9. **Submissions heard.**

10. As has been held in Smt. Mamta, (supra) 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. 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 their claim against the driver, owner and the Insurance Company of only one of the vehicles involved in the accident.

11. In view of the aforesaid judgments, it is evident that in the case of composite negligence, the liability of both the vehicles is joint and several with a liberty on the Claimant to recover the compensation amount in apportionment from each of the erring parties or to recover the entire claim from one party.

12. Accordingly, the impugned Judgment/Award dated 12.11.2014 is modified to the extent that the Appellants-Claimants are at liberty to claim the compensation amount from either party, for which they are at liberty to file the Execution Petition.

13. Needless to state that the Insurance Company would have a right to recover 50% of the amount from the owner of the second vehicle.

14. The present Appeal is disposed of in the above terms.

**NEENA BANSAL KRISHNA, J**

**OCTOBER 18, 2024**  
**S.Sharma**