Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.24 OF 2017

National Insurance Co. Ltd.
Through its Authorised Officer,
Souza Towers, Office No.S/4-5,
Domingos Souza Road,
Near Municipal Garden,
Panaji-Goa. ...Appellant

Versus

1. Smt. Swati Sakharam Tilve,
widow of Sakharam Narayan Tilve,
37 years of age, Household, widow,
Daughter of late Shri Jagannath Vasudev
Matonkar.

2. Miss Bhagashree Sakharam Tilve,
Daughter of late Shri Sakharam Narayan
Tilve, 15 years of age, student.

3. Miss Sailee Sakharam Tilve,
Daughter of late Shri Sakharam Narayan
Tilve, 13 years of age, student.

4. Mast. Narayan Sakharam Tilve,
Son of late Shri Sakharam Narayan Tilve,
12 years of age, student.
(Claimants no.2,3 and 4 represented by
their mother/natural guardian Smt. Swati
Sakharam Tilve – the Claimant no.1)

5. Kashibai Narayan Tilve,
Widow of Narayna Tilve, 70 years of age,
widow, All Indian Nationals, Residents of
H.No.201, Deulwada, Playe, Penem-Goa.

6. Mrs. Sheetal Shivaji Dabholkar,
Wife of Shri Shivbaji Dabholkar,
Indian National, Resident of 96,
Santismo Waddo, Taleigao, Tiswadi,
North – Goa, 403003.
(Owner of the Scooter bearing
registration No.GA-07-F-1095).

7. Mr. Chavata Jiri,
Having passport no.39763222,
Czech Republic National,
Residing at Yoga Gypsy Ashvem,
Mandrem, Pernem-Goa.
Rider of Honda Activa Scooter
bearing Reg. No.GA-07-F-1095. …Respondents

Mr. U.R. Timble, Advocate *for the Appellant*.
Mr. A.D. Bhobe, Advocate *for Respondent Nos.1 to 5.*
Mr. S. Sayed holding for Mr. J. Supekar, Advocate *for the Respondent No.6.*

CORAM: M. S. SONAK, J.

DATED: 7th APRIL 2022

ORAL JUDGMENT :

1. Heard Mr. U.R. Timble, learned Counsel for the appellant, Mr. A.D. Bhobe, learned Counsel for respondent nos.1 to 5 and Mr. S. Sayed, learned Counsel for respondent no.6.

2. Admittedly, in this case, no leave was obtained under Section 170 of the MV Act. Therefore, the appeal questioning the quantum of compensation awarded in the impugned award will not be maintainable having regard to the law laid down by the Division Bench of this Court in ***I.C.I.C.I. Lombard General Insurance Co. Ltd., Amravati V/s. Surekha w/o. Prakash Ghurde and ors.***[1].

3. Mr. Timble, however, submitted that the driver of the offending vehicle did not possess a valid driving license on the date of the accident and this would amount to breach of the terms of the insurance policy. He submitted that such a point can always be pressed by the Insurance Company by instituting an appeal.

4. If the pleadings on record on behalf of the Insurance Company are perused, no such defence appears to have been raised. In any case, there is no evidence in support of such defence. The onus of raising and making good such defence would be on the Insurance Company. In the absence of all this, the impugned award need not be interfered with at the behest of the Insurance Company.

5. Accordingly, this appeal is hereby dismissed. However, the dismissal of this appeal will not preclude the appellant-Insurance

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Company from instituting any other proceedings, if maintainable in law.

6. The Insurance Company has deposited the awarded amount in this Court. Accordingly, the respondents-claimants will be entitled to withdraw the said amount **after six weeks** from today by furnishing proper identification and bank details. The amounts will have to be transferred to the bank accounts of the claimants directly together with interest, if any, that might have accrued thereon, unless of course, the appellant-Insurance Company, in the meanwhile, secures restraint orders for such withdrawal.

7. This appeal is disposed of in the aforesaid terms.

M. S. SONAK, J.

NITI K HALDANKAR
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Date: 2022.04.08 11:03:23 +05'30'