

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.88/2018
WITH
MISC. CIVIL APPLICATION NO.106/2022 (F)

National Insurance Co. Ltd., Through its
Divisional Manager, Having Office at
“Subraya Chambers, F.L. Gomes Road,
Vasco-da-Gama, Goa-403802.

... APPELLANT

Versus

1. Shri.Balkrishna Chandru Gaonkar, Age
about 53 years, Son of late Chandru
Gaonkar, Agriculturist, Married

2. Smt. Ranaji Balkrishna Gaonkar,
Age about 47 years,
wife of Shri. Balksshna C.Gaonkar,
Housewife, Married,
both resident of H. No. 277,
Kirlapal, Dabal, Dharbandora, Goa
403705.

3. Shri. Manuel A. Mascarenhas, Major of
age, Driver, Resident of Ganganaga,
Karai, Shiroda, Ponda-Goa

4. Niclau D'Souza,
son of Mr. D'Cruz, major of age, business,
owner, Resident of H.No.592,
Shenaviwada,
Shiroda, Ponda, Goa.

...RESPONDENTS

Mr. U.R. Timble with Ms. Yadika Mandrekar, Advocates for the
Appellant.

Mr. Ashwin D. Bhohe, Advocate for Respondents No.1 and 2.

CORAM: M. S. SONAK J.
DATED: 10th March 2022

ORAL JUDGMENT :-

1. Heard learned Counsel for the parties.
2. In this case, the Insurance Company has instituted this appeal, questioning the quantum of compensation. There is no leave granted under Section 170(b) of the Motor Vehicles Act, 1988 by the Motor Accident Claims Tribunal. Therefore, by following the law laid down by the Division Bench of this Court in *I.C.I.C.I. Lombard General Insurance Co. Ltd., Amravati vs. Surekha wd/o. Prakash Ghurde and ors.* (2020) 2 Bom CR 465, this appeal will have to be dismissed as not maintainable.
3. In *I.C.I.C.I. Lombard General Insurance Co. Ltd. case* (supra), the Division Bench of this Court, after considering several decisions, including the decision in *National Insurance Company Limited vs. Nicolletta Rohtagi*, (2002) 7 SCC 456; *United India Assurance Company Ltd. vs. Bhushan Sachdev*, (2002) 2 SCC 265, *United India Assurance Company Ltd. vs. Shila Datta*, (2011) 10 SCC 509 and *Josephine James vs. United India Insurance Company Limited* (2013) 16 SCC 711 has held that notwithstanding the reference made, the decisions

in *Nicoletta Rohtagi* (supra) and *Josephine James (supra)* hold good and based upon the same, the appeal filed by the Insurance Company questioning the quantum of compensation, would not be maintainable in the absence of permission under Section 170(b) of the Motor Vehicles Act.

4. Accordingly, this appeal is dismissed. However, dismissal of this appeal will not come in the way of the appellant-Insurance Company from instituting any other proceedings, if maintainable in law.

5. The appellant has deposited the awarded amount in this Court. Accordingly, leave is grant to the Claimants to withdraw the said amount, together with interest that might have accrued thereon after 4 weeks from today. The claimants will have to submit necessary identification and bank details, so that the Registry can make direct payments into the bank account.

6. The Appeal is disposed of in the aforesaid terms.

7. Misc. Civil Applications, if any, do not survive and the same are disposed of.

M. S. SONAK, J.

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Date: 2022.03.10 18:23:18 +05'30'