Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.93 OF 2018
AND
CIVIL APPLICATION NO.6 OF 2020

Iffco-Tokio General Insurance Company Limited, A/2 Reliance House, Isidorio Baptista Road, Pajifond, Margao, Goa 403 601. ...Appellant/ Applicant

Versus

1. Smt. Rina Dinesh Kumar Gond, w/o late Shri Dinesh Kumar Gond, aged about 44 years, housewife, resident of H.No. D/30, Nr. Kristal factory, Chaddewaddo, Davorlim, Salcete, Goa and permanent resident of Vishnupura, Bakhra Khas, Bhatpar Rani Deoria, Uttar Pradesh, 274202. (since dec. through legal heir Respondent No.2).

2. Master Vishal alias Roshan Kumar Dinesh Kumar Gond alias Roshankumar Gaud, s/o late Shri Dinesh kumar Gond, aged about 15 years student and resident of H.No. D/30 , Nr. Kristal factory, Chaddewaddo, Davorlim, Salcete, Goa and permanent resident of Vishnupura, Bakhra Khas, Bhatpar Rani Deoria, Uttar Pradesh, 274202.

3. Smt. Shahin Shaikh w/o Shri Aslam Shaikh, aged about 28 years, and resident of H. No. 139 Mandop, Navelim, Salcete-Goa.

(driver/ owner of vehicle no.
GA-08-S-8647) ...Respondents

Mr. Amey Kakodkar with Mr. Pankaj M. Shirodkar, Advocate *for the Appellant.*
Mr. C.A. Coutinho, Advocate *for the Respondent Nos.1 & 2.*

CORAM: M. S. SONAK, J.

DATED: 17th MARCH 2022

ORAL JUDGMENT :

1. Heard Mr. Amey Kakodkar, learned Counsel for the appellant and Mr. C.A. Coutinho, learned Counsel for respondent nos.1 & 2.

2. Mr. C.A. Coutinho, learned Counsel for respondent nos.1 & 2 now points out that respondent no.1, the widow of late Dinesh Kumar Gond, who died in the accident, has also expired. He points out that she has left behind respondent no.2 Master Vishal alias Roshan Kumar Dinesh Kumar Gond alias Roshankumar Gaud, who at the time of institution of the First Appeal was a minor. Mr. Coutinho submits that now Vishal is the only surviving legal representative and has now attained majority.

3. Accordingly, the appellant is granted liberty to amend the cause title and indicate the respondent no.1 as having expired.

Mr. Kakodkar states that the amendment will be carried out forthwith.

4. This appeal has been filed by the appellant/Insurance Company challenging the award made under Section 166 of the Motor Vehicle Act, 1988 (said Act).

5. There is no dispute in this case that no leave was obtained under Section 170 of the said Act by the appellant/Insurance Company before the Motor Accident Claims Tribunal.

6. 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 w/o. Prakash Ghurde and Ors.***[1], this appeal will have to be dismissed as not maintainable.

7. Mr. Lopes, learned Counsel for the appellant/Insurance Company, however, pointed out that in ***Oriental Insurance Ltd. V/s. Sangita Devi and Ors.***[2]***,*** the Delhi High Court, relying upon the decision of the Hon'ble Supreme Court in ***United India Insurance Co. V/s. Sudha Rani***[3]***,*** has held that once the Insurance Company is voluntarily impleaded as a party to the

1 (2020) 2 Bom CR 465

2 2016 SCC Online Del. 1221

3 Civil Appeal No.8654/2013 decided on 24.09.2013 claim petition by the claimants, it can raise all defences, including the defences concerning the quantum of compensation. He submitted that despite best efforts he was not in a position to obtain the copy of the decision of the Hon'ble Supreme Court in ***Sudha Rani*** *(supra).*

8. He also referred to the decision of the Hon'ble Supreme Court in ***Bajaj Alianz General Insurance Co. Ltd. V/s. Kamala Sen***[4]***,*** which, according to him, holds that where the insurance company is impleaded as a party respondent, it can raise all contentions that are available to resist the claim. He pointed out that this is what was held by the Hon'ble Supreme Court in the case of ***United India Insurance Company Ltd. V/s. Shila Datta***[5].

9. Although the Division Bench of this Court in ***I.C.I.C.I. Lombard General Insurance Co. Ltd.*** *case (supra)*, may have not referred to the decision of the learned Single Judge of the Delhi High Court in ***Sangita Devi*** *(supra)* or the decision of the Hon'ble Supreme Court that was referred to therein, the Division Bench, has considered the decisions of the Hon'ble Supreme Court in ***National Insurance Company Limited V/s.***

4 2014 ACJ 2396

5 (2011) 10 SCC 509

Nicolletta Rohtagi*[6], *United India Assurance Company Ltd. V/s. Bhushan Sachdev*[7], *Shila Datta (supra) and Josephine James V/s. United India Insurance Company Limited*[8]** and held that notwithstanding the reference made, the decisions in **Nicolletta 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 said Act.

10. 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.

11. The appellant-Insurance Company has deposited the awarded amount in this appeal. Accordingly, the claimant is permitted to withdraw the amount deposited in this Court together with interest, if any, that may have accrued thereon, **after** four weeks from today, unless of course the appellant-

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6 (2002) 7 SCC 456

7 2002) 2 SCC 265

8 (2013) 16 SCC 711

Insurance Company, in the meanwhile, secures restraint orders for such withdrawal.

12. The claimant will have to submit proper identification and bank details so that the Registry can directly transfer the amount into the bank account of the claimant.

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

14. Civil Application, if any, will not survive the disposal of this appeal. It is disposed of.

M. S. SONAK, J.

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2022.03.21 15:47:41 +05'30'