

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.118 OF 2017

1. ICICI Lombard General Insurance
Company Limited,
Local office address Kamat Towers,
Opposite KTC Bus Stand, Patto Plaza,
Panaji Goa.
Regional office address Ground and
Fourth floor, Interface-11, New Link Road,
Malad, West Mumbai, 400 064,
through its Manager,
(Insurer of Mahindra Thar Jeep No. GA-
03-P-6008)

...APPELLANT

Versus

1. Smt Assencia Fernandes, W/o late
Gabriel Peter Fernandes,
Age 40 years old, Housewife, and her
children,
2. Kum Ana Maria Fernandes, D/o late
Gabriel Peter Fernandes, Age 19 years old,
Student,
3. Kum Patrina Fernandes, D/o late
Gabriel Peter Fernandes, Age 19 years old,
Student,
4. Kum Alishka Fernandes,
D/o late Gabriel Peter Fernandes,
Age 13 years old, Student,
All residence of H. No. 5/38-A,
Maddawaddo, Calangute, Bardez Goa,
Applicant no.4 since minor,
Through her mother and natural Guardian

Smt Assencia Fernandes, Resident of H.
No.5/38-A, Maddawaddo, Calangute,
Bardez Goa.

5. Mr William Simon Cardozo
S/o Mr Anthony Cardozo, Age 49 years
driver, R/o Marnawadi. Siolim | Bardez
Goa. (Driver of Mahindra Thar Jeep
No. GA-03-P-6008),

6. Mr. Washington Pereira,
S/o Altinho Pereira, Major of age,
businessman, Resident of H. No.109/2,
Mae-de-Deus, Sangolda, Bardez, Goa.
(Registered owner of Mahindra Thar Jeep
No. GA-03-P-6008)

...RESPONDENTS

Mr. Clayton Fonseca, Advocate for the Appellant.
Mr. V. Kurtikar, Advocate for the Respondents No.1 to 4.

CORAM: M. S. SONAK, J.
DATED: 1st APRIL 2022

ORAL JUDGMENT:

1. Heard learned counsel for the parties.
2. Learned counsel for the appellant does not dispute that no leave was obtained under Section 170 of the Motor Vehicles Act, 1988 before 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. (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-insurance company has deposited the awarded amount in this Court out of which the claimants have withdrawn 50%. Leave is now granted to the claimants to withdraw the balance 50% together with interest if any that may have accrued on the said amount after six weeks from today.

6. The claimants will have to furnish proper identification and bank details so that the Registry can transfer this amount directly into the bank account of the claimants. This is no doubt subject to any other orders restraining withdrawal of such deposit, in the meanwhile.

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

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

M. S. SONAK, J.