

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.44 OF 2019

SHRIRAM GENERAL INSURANCE
CO. LTD., Regional office address-
Off. No. 327, 3rd floor, Jai Ganesh Vision,
A Wing, Akurdi Chowk, Near Khandoba
Mala, Akurdi Pune Maharastra 411035,
Through the legal manager,
Mr. Tushar Bendale

...APPELLANT

Versus

1. ALBINO FERNANDES (since
deceased) represented by following L.H.

1a) Mrs. Luciana Fernandes alias Luciana
Barreto e Fernandes, W/o late Albino
Fernandes, Major in age

1b) Mr. Celso Fernandes
S/o late Albino Fernandes, 27 years

1c) Mr. Dyfan Chezvik Fernandes
S/o late Albino Fernandes, 15 years
All resident of H.no 33, Ratwaddo
Navelim, Salcete Goa.

Respondent no.1(c) is represented by Legal
and Natural Guardian his mother
Respondent no.1 (a)

2. SHRI VIPUL PRADIP JAIN,
W/O Pradip Jain, major of age,
R/o Near Urdu School,
Post Bahadurshaikhna, Tal. Chiplun
Dist. Ratnagiri, Maharashtra.

3. MR. LOURENCO ANTONIO DIAS, (dropped as per Order dated 4/04/2019 passed in FA 44/2019)
Son of Mr. Domingos Dias,
aged 44 years, R/o H. No.111,
Odoguem, Nuvem, Salcete Goa.

4. MRS. JOVITA LIZIA FERNANDES, (dropped as per Order dated 4/4/2019 passed in FA 44/2019)
C/o P.P. Fernandes, Major in age,
H. No. 311, Santwaddo,
Banda, Assolna, Salcete Goa.

5. THE NATIONAL INSURANCE CO. (dropped as per Order dated 4/4/2019 passed in FA 44/2019)
LTD. Branch office, 2nd floor, Marchon
building above Bank of Baroda, V.V. road,
Opp. Lohia Maidan, Margao Goa.

...RESPONDENTS

Mr. James Lopes, Advocate for the Appellant.

Mr. J. J. Mulgaonkar, Advocate for Respondent Nos.1 (a, b & c).

CORAM: M. S. SONAK, J.

DATED: 1st APRIL 2022

JUDGMENT:

1. Heard learned counsel for the parties.
2. Mr. James Lopes, learned counsel for the appellant does not dispute that in this case no leave was obtained under Section 170 of the Motor Vehicles Act. 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. The appellant-insurance company has deposited the awarded amount in this Court. Now that this appeal has been dismissed, the respondent nos.1(a), 1(b) and 1(c) - claimants will be entitled to withdraw this deposited amount together with the interest that may have accrued thereon. Leave is granted to the

claimants to withdraw the said amount after six weeks from today.

5. 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 order restraining the withdrawal of such deposit in the meanwhile.

6. Since the appellant-insurance company has deposited the entire awarded amount, liberty is granted to the appellant-insurance company to withdraw the amount of ₹25,000/- deposited by it as statutorily required, at the time of institution of this appeal.

7. The appeal is disposed of in the aforesaid terms. There shall be no order for costs.

8. Miscellaneous civil applications if any do not survive and the same are also disposed of.

M. S. SONAK, J.