

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.33/2018

1. The United India Insurance Company
Limited, having its Branch office at
Tisk, Ponda, Goa through its
Divisional Manager

...APPELLANT

Versus

1. Gopiki Ramdas Gaude @ Gawade
w/o of Late Ramdas Gaude @Gawade,
Age 35 years

2. Mast. Kashinath Ramdas Gaude @
Gawade, Minor, represented by
his mother and natural guardian
Mrs. Gopiki Ramdas Gaude @ Gawade
Both Indian Nationals and resident of
H.No.382, Bayem, Surla,
Bicholim, Goa.

3. Mr. Mawalal Maurya
S/o Mr. Ramprasad Maurya,
Major in age, Indian National
R/o Kulan, Savoiverem, Ponda, Goa.

4. Shri. Baburao Ganesh Gaude
S/o Mr. Gansh Gaude,
Major in age, Indian National,
R/o H.No.50, Kulan, Savoiverem,
Ponda, Goa.

...RESPONDENTS

Mr. Pavithran A. V., Advocate for the Appellant.

Mr. Milton Marshal, Advocate for Respondents No.1 & 2.

CORAM: M. S. SONAK, J.
DATED: 11th March 2022

ORAL JUDGMENT:

1. Heard Mr. Pavithran for the appellant and Mr. Milton Marshall for respondents no.1 and 2.

2. In this case, it is not disputed by the learned Counsel for the appellant 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 w/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. Nicoletta 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. Respondents no.1 and 2 - claimants are granted liberty to withdraw the amount deposited in this Court together with interest if any that may have accrued thereon after four weeks from today by furnishing proper identification and bank details. The amounts will have to be transferred into the bank accounts of the claimants directly. This is, no doubt, subject to any other orders restraining the withdrawal of such amounts in the meanwhile.

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

M. S. SONAK, J.