

Niti

IN THE HIGH COURT OF BOMBAY AT GOA
STAMP NUMBER MAIN NO.1470 OF 2019 (F)
WITH
STAMP NUMBER (APPLN.) NO.1471 OF 2019 (F)
AND
MISC. CIVIL APPLICATION NO.177 OF 2020

The National Insurance Company Ltd.,
Having office at Marchon Bldg,
2nd Floor, Varde Vaulikar Road,
above Bank of Baroda, Margao-Goa,
through its authorized Signatory
Mrs. Kshama G. Sawant

... Appellant

Versus

1. Shri. Santosh Uttam Madgaonkar,
s/o late Uttam Madgaonkar, 57 years of
age, widower, tailor, Indian National.

2. Mr. Shubham Santosh Madgaonkar,
s/o Santosh Uttam Madgaonkar,
23 years, student, Indian National,
unmarried.

3. Mr. Sayog Santosh Madgaonkar,
s/o Santosh Madgaonkar, 19 years,
student, unmarried, Indian National.

All resident of H. No. E/6/F, Gannar
Waddo, Paliem, Ucassaim, Bardez-
Goa.

4. Mr. Arthur D'Silva,
Major in age, married, business, Indian
National, r/o H.No.1334, behind St.
Anne's School, Agalli Fatorda Goa,

403602.

5. Mr. Basu Karenavar
s/o Yalappa Karenavar, 30 years,
r/o, c/o Mr. Arthur D'Silva,
H. No. 1334, Behind St. Anne's School,
Agalli Fatorda-Goa, 403602.

6. Bajaj Allianz General Insurance
Company Ltd., Through its Manager,
Having office at Shop no.26,27,28
Garden Centre Phase II, Opp. Police
Station, Next to I.C.I.C.I. Bank,
Mapusa, Bardez – Goa.

... Respondents

Mr Amey Kakodkar, Advocate for the Applicant.
Mr Ganesh Naik, Advocate for Respondent Nos.1 to 3.
Mr James Lopes, Advocate for Respondent No.6.

CORAM: M. S. SONAK, J.

DATE : 15th October 2022

ORAL JUDGMENT :

1. In this appeal instituted by the Insurance Company, there is no dispute that no leave was obtained under Section 170 of the MV Act.

2. Therefore, following the law laid down by the Division Bench in *I.C.I.C.I. Lombard General Insurance Co. Ltd., Amravati V/s. Surekha w/o. Prakash Ghurde and Ors.*¹, this

¹ (2020) 2 Bom.CR 465

appeal will have to be dismissed as not maintainable. The appeal is accordingly dismissed.

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 V/s. Nicolletta Rohtagi*², *United India Assurance Company Ltd. Vs. Bhushan Sachdev*³, *United India Assurance Company Ltd. V/s. Shila Datta and Josephine James V/s. United India Insurance Company Limited*⁴ 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 the compensation would not be maintainable in the absence of permission under Section 170(b) of the said Act.

4. Accordingly, this appeal is dismissed. However, dismissal of this appeal will not prevent the Appellant – Insurance Company from instituting any other proceedings, if maintainable in law.

2 (2002) 7 SCC 456

3 (2002) 2 SCC 265

4 (2013) 16 SCC 711

5. The appellant/Insurance Company has deposited the awarded amount in this appeal. Accordingly, the claimants are permitted to withdraw the amount deposited in this Court with interest, if any, that may have accrued after six weeks from today unless, of course, the appellant/Insurance Company, in the meanwhile, secures restraint orders for such withdrawal.

6. The claimants will have to furnish the necessary identification and bank details so that the Registry can directly deposit the amounts into the respective bank accounts of the claimants. The claimants will also be entitled to the interest that may have accrued on the deposited amounts after adjusting the amounts already withdrawn by the claimants.

7. The Registry ensures that necessary intimation is sent to the claimants; further, the amount is directly deposited into the claimants' bank accounts.

8. This appeal is disposed of in the terms above. Misc. Civil Applications, if any, will not survive the disposal of the appeal and the same are disposed of.

NITI K
HALDANKAR

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M. S. SONAK, J.