Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 10 OF 2022

NATIONAL INSURANCE CO. LTD.,
THR. ITS MANAGER ….APPELLANT.

Versus.

MURALI PUNDALIK TALKAR AND
5 ORS ….RESPONDENTS.

Mr. Amey J. Sinai Kakodkar with Mr. Pankaj M. Shirodkar, Advocates *for the Appellant.*

Ms. Gautami Kamat, Advocate under Legal Aid Scheme *for Respondent No.1.*

Mr. Shailesh Phadte, Advocate *for Respondent No.3.*

Mr. James Lopes, Advocate *for Respondent No.6.*

FIRST APPEAL NO. 11 OF 2022

NATIONAL INSURANCE

CO. LTD., THR. ITS MANAGER …. APPELLANT.

Versus

PREKHSHAMA BHIMA KUBAL

AND 5 ORS …. RESPONDENTS.

Mr. Amey J. Sinai Kakodkar with Mr. Pankaj M. Shirodkar, Advocates *for the Appellant.*

Mr. Akhil Govekar, holding for Mr. Deepak Gaonkar, Advocate *for Respondent No.1.*

Mr. Shailesh Phadte, Advocate *for Respondent No.3.*

Mr. James Lopes, Advocate *for Respondent No.6.*

CORAM : M. S. SONAK, J.

DATE : 29th September 2022

ORAL ORDER : -

1. Both these appeals have been instituted by the Insurance Company. To the query whether any leave was obtained under Section 170 of the Motor Vehicles Act, Mr. Kakodkar, on instructions, states that no such leave was applied for or obtained from the Tribunal.

2. Therefore, considering the grounds that are now proposed to be urged and 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], these appeal will have to be dismissed as not maintainable.

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1. (2020) 2 Bom. CR 465

3. However, Mr. Kakodkar, learned Counsel for the Appellant - Insurance Company, 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 claim petition by the claimants, it can raise all defenses, including the defenses concerning the quantum of compensation. He submitted that despite best efforts, he was not in a position to obtain a copy of the decision of the Hon'ble Supreme Court in *Sudha Rani (supra).*

4. Mr. Kakodkar also referred to the decision of the Hon'ble Supreme Court in ***Bajaj Allianz 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. In addition, he pointed out that the Hon'ble Supreme Court held this in the case of ***United India Insurance Company Ltd. V/s. Shila Datta***[5].

2 2016 SCC Online Del. 1221

3 Civil Appeal No.8654/2013 decided on 24.09.2013

4 2014 ACJ 2396

5 (2011) 10 SCC 509

5. Although the Division Bench of this Court in *I.C.I.C.I. Lombard General Insurance Co. Ltd.* case *(supra)* may not have 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. Nicoletta Rohtagi***[6]***, United India Assurance Company Ltd. Vs. 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 ***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.

6. Accordingly, these appeals are dismissed. However, dismissal of these appeal will not prevent the Appellant - Insurance Company from instituting any other proceedings, if maintainable in law.

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6 (2002) 7 SCC 456

7 (2002) 2 SCC 265

8 (2013) 16 SCC 711

7. In First Appeal No.11/2022, the Appellant-Insurance Company has deposited the awarded amount. Accordingly, the Claimants in the said Appeal are permitted to withdraw the said amount **after 6 (six) weeks** from today, unless, of course, the Appellant-Insurance Company in the meanwhile, secures restraint orders for such withdrawal.

8. Incidently, against the Judgment and Award impugned in both these appeals, the Appellant-Insurance Company had preferred First Appeal No.123/2019, which was also disposed of by an order dated 14th July, 2022 mainly for want of leave under Section 170 of the MV Act.

9. Both the Appeals are disposed of in the above terms. There shall be no order for costs

M. S. SONAK, J.

SANTOSH S MHAMAL

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Date: 2022.09.30 10:53:22 +05'30'