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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO.31 OF 2021
IN
FIRST APPEAL NO.17 OF 2021

BAJAJ ALLIANZ GENERAL
INSURANCE CO. LTD. ... Applicant.

Versus

ALEIXO DIAS AND 3 ORS. ... Respondents.

Mr. Amey Jagdish Sinai Kakodkar, Advocate *for the Applicant*.

Mr. Ryan Menezes, Advocate *for Respondent Nos.1 and 2*.

CORAM: M.S. SONAK &
R.N. LADDHA, JJ.

DATED: 12th April 2022

ORAL ORDER: (Per M.S. Sonak, J.)

1. This is an appeal by the Insurance Company questioning, inter alia, the quantum of compensation awarded by the Motor Accident Claims Tribunal by its impugned Judgement and Order dated 20.02.2020.

2. This matter was adjourned to enable the Appellant to find out whether any leave was obtained under Section 170(b) of the Motor Vehicle Act, 1988 before the Tribunal. Mr. Kakodkar now reports that no such leave was obtained from the Tribunal.

3. Therefore, by following the law laid down by a co-ordinate bench of this Court in ICICI Lombard General Insurance Co. Ltd., Amravati vs.

Surekha w/o. Prakash Ghurde and Ors.[1], this appeal will have to be dismissed as not maintainable.

4. Mr. Kakodkar, learned Counsel for the appellant/Insurance Company, however, 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 defences, including the defences concerning the quantum of compensation. He submitted that despite best efforts he was not in a position to obtain the copy of the decision of the Hon'ble Supreme Court in ***Sudha Rani*** *(supra)*.

5. He also referred to the decision of the Hon'ble Supreme Court in ***Bajaj Alianz 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. He pointed out that this is what was held by the Hon'ble Supreme Court in the case of ***United India Insurance Company Ltd. V/s. Shila Datta***[5].

6. Although the Division Bench of this Court in ***I.C.I.C.I. Lombard General Insurance Co. Ltd.*** *case (supra)*, may have not referred to the decision of the learned Single Judge of the Delhi High Court in ***Sangita***

1 (2020) 2 Bom CR 465
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

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. Nicolletta Rohtagi***[6], ***United India Assurance Company Ltd. V/s. 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 ***Nicolletta 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 said Act.

7. For all the aforesaid reasons, we dismiss this appeal as not maintainable by following the law laid down in ***I.C.I.C.I. Lombard General Insurance Co. Ltd.*** *(supra)*.

8. At the request of Mr. Kakodkar, however, we do not permit the Respondent-Claimant to withdraw the compensation amount deposited by the Appellant-Insurance Company in this Court for a period of six weeks from today. If, however, during this period of six weeks there is no restraint order, then, Respondent Nos.1 and 2 (Claimants) will be entitled to withdraw the deposited amount together with interest, if any, that shall have accrued of this amount. For this purpose, the Claimants must submit

6 (2002) 7 SCC 456
7 (2002) 2 SCC 265
8 (2013) 16 SCC 711

appropriate identification documents and bank details so that the Registry can directly remit these amounts into their bank accounts.

9. The Appeal and Civil Application are disposed of in the aforesaid terms. There shall be no order for costs.

R.N. LADDHA, J. **M.S. SONAK, J.**

JOSE FRANCISCO DSOUZA Digitally signed by JOSE FRANCISCO DSOUZA Date: 2022.04.13 11:04:44 +05'30'