Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.54 OF 2015

Bajaj Allianz General Insurance Co. Ltd.,
3C-D, Sesa Ghor, Patto Plaza,
Panaji-Goa, through its Authorized
Signatory Mr. Pravin Prabhakar Prabhu. ...APPELLANT

Versus

1. Shri Munna Ram
son of late Dullar Ram,
Agriculturist, age 67 years old,

2. Smt. Dhanvati Ram,
wife of Munna Ram,
housewife, aged 64 years,
resident of Talkhuduya, P.O. Gondaur,
District-Ghazipur, State-Uttar Pradesh,
(Both represented through their
Power of attorney Shri Rajesh
Kumar Ram, major in age,
resident of Talkhuduya, P.O. Gondaur,
District-Ghazipur, State-Uttar Pradesh.

3. Mr. Samir Claudino Soccoro,
son of Damiao Silva, major in age,
R/o H.No.1119/A, Madel-Curtorim,
Salcete-Goa.

4. Blue Ocean Beverages Pvt.Ltd.,
1st Jarein Mansion, Aquem, Margao-Goa. ...RESPONDENTS

Mr. Amey Kakodkar with Mr. P. Shirodkar, Advocates *for the Appellant.*
Mr. Vishwadh Sardessai h/f Mr. D. Vernekar, *Advocate for Respondents No.1 and 2.*

WITH

MISC. CIVIL APPLICATION NO.2453/2021 (F)

1. Shri Munna Ram,
son of late Dullar Ram,
Agriculturist, 73 years of age,

2. Shri Santosh Kumar Ram
S/o Bahadur Ram,
Service, 29 years of age. … APPLICANTS

Versus

1. Bajaj Allianz General Insurance Co. Ltd.,
3C-D, Sesa Ghor, Patto Plaza,
Panaji-Goa, through its Authorized
Signatory Mr. Pravin Prabhakar Prabhu.

2. Mr. Samir Claudino Soccoro,
son of Damiao Silva, major in age,
R/o H.No.1119/A, Madel-Curtorim,
Salcete-Goa.

3. Blue Ocean Beverages Pvt.Ltd.,
1st Jarein Mansion, Aquem,
Margao-Goa, through its Manager. … RESPONDENTS

Mr. Vishwadh Sardessai h/f Mr. Dharmanand Vernekar, *Advocate for the Applicants*.

Mr. Amey Kakodkar with Mr. P. Shirodkar, Advocates *for the Insurance Company*.

CORAM: M. S. SONAK, J.

DATED: 17th MARCH 2022

ORAL JUDGMENT :

1. Heard Mr. Kakodkar for the appellant and Mr. Vishwadh Sardessai holding for Mr. Dharmanand Vernekar for respondents no.1 and 2.

2. This appeal has been filed by the appellant-insurance company challenging the award made under Section 166 of the Motor Vehicle Act, 1988 (said Act).

3. There is no dispute in this case that no leave was obtained under Section 170 of the said Act by the appellant-insurance company before the Motor Accident Claims Tribunal.

4. 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.

5. Mr. Kakodkar, learned counsel for the appellant-insurance company however pointed out that in ***Oriental Insurance Ltd. vs. Sangita Devi and others – 2016 SCC Online Del. 1221,*** the Delhi High Court, relying upon the decision of the Hon'ble

Supreme Court in ***United India Insurance Co. vs. Sudha Rani – Civil Appeal No.8654/2013 decided on 24.09.2013*** 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 the copy of the decision of the Hon'ble Supreme Court in *Sudha Rani (supra).*

6. He also referred to the decision of the Hon'ble Supreme Court in ***Bajaj Allianz General Insurance Co. Ltd. vs. Kamla Sen – 2014 ACJ 2396*** 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. vs. Shila Datta – (2011) 10 SCC 509***.

7. 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 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 vs. Nicolletta Rohtagi, (2002) 7 SCC 456; United India Assurance Company Ltd. vs. Bhushan Sachdev,(2002) 2 SCC 265, Shila Datta (supra) and Josephine James vs. United India Insurance Company Limited (2013) 16 SCC 711*** 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 compensation, would not be maintainable in the absence of permission under Section 170(b) of the said Act.

8. 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.

9. 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 together with interest if any that may have accrued thereon **after** four weeks from today unless of course the appellant-insurance company, in the meanwhile, secures restraint orders for such withdrawal.

10. 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.

11. This appeal is disposed of in the aforesaid terms.

12. The miscellaneous civil application does not survive and even the same is disposed of.

M. S. SONAK, J.

SUCHITRA NANDAN SINGBAL Digitally signed by SUCHITRA NANDAN SINGBAL Date: 2022.03.19 13:27:24 +05'30'