Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.139 OF 2018

National Insurance Company Ltd.,
Bicholim Branch, first floor, Town Centre,
Bicholim – Goa – 403504,
through its Manager P.S. Anvekar ...Appellant

Versus

1. Shri Anant Suryakant Wadkar,
aged 39 years, r/o. H.No.119, Ghoteli
No.1, Keri Sattari, Goa.

2. Shri Mulkkanna Shivaji Pujari
House No.not known at Post Top,
Rajiv Gandhi Nagar, Taluka Hatkanagle,
District Kolhapur, Maharashtra.

3. Shri Laxman Vithu Majik
H.No.not known, Majikwadda,
Poriem, Sattari – Goa.
(since deceased through LR's)

(a) Mrs. Laxmi Laxman Majik,
Wife, major of age.

(b) Mr. Anil Laaxman Majik,
Son, major of age.

(c) Mr. Prashant Laxman Majik,
Son, major in age, All Indian Nationals.

All resident of H.No.141, Majikwada,
Poriem, Sattari Goa.

4. Shri Dilip Dnyaneshwar Chawan,

H.No. Not known, at post Top,
Taluka Hatkanagle, District Kolhapur,
Maharashtra. ....Respondents

Mr. Amey Kakodkar and Mr. Pankaj Shirodkar, Advocate *for the Appellant.*
Mr. Deepak Gaonkar, Advocate *for the Respondent No.1.*

CORAM: M. S. SONAK, J.

DATED: 17th MARCH 2022

ORAL JUDGMENT :

1. Heard Mr. Kakodkar, learned Counsel for the appellant and Mr. Deepak Gaonkar, learned Counsel appearing for respondent no.1.

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

5. Mr. Kakodkar, learned Counsel for the appellant/Iinsurance 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).*

6. 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

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

case of ***United India Insurance Company Ltd. V/s. Shila Datta***[5].

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 V/s. Nicolletta 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 compensation, would not be maintainable in the absence of permission under Section 170(b) of the said Act.

---

5 (2011) 10 SCC 509

6 (2002) 7 SCC 456

7 (2002) 2 SCC 265

8 (2013) 16 SCC 711

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.

10. Mr. Deepak Gaonkar, learned Counsel for respondent no.1 states that from out of the amount deposited by the appellant/Insurance Company, the claimants have withdrawn ₹10,00,000/-.

11. 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.

12. 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.

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

M. S. SONAK, J.

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2022.03.21 10:03:36 +05'30'