Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.113 OF 2019

Reliance General Insurance Co. Ltd.,
4th Floor, Chintamani Avenue,
Off Western Express Highway,
Near Virwani Industrial Estate,
Goregaon (East), Mumbai - 400 063.
Through Legal Officer
Mr. Vivek Karne ...Appellant

Versus

1. Smt. Maria Tereza Cota Coelho Do Amaral Alias Maria Tereza Cota Alias MariaTereza Tonito Amaral
Widow of late Tonito Alberto Coelho do Amaral, Age 46 yrs,

2. Ms Rachel Analise Coelho do Amaral, D/o late Tonito Alberto Coelho do Amaral, Age 26 yrs,

3. Mr. Aloysius Cipriano Coelho do Amaral, S/o late Tonito Alberto Coelho do Amaral, Age 22 yrs,
All R/o H.No 831, Curtorim,
Salcete, Goa 403709.

4. Sri Sushil Kumar Dhumal,
S/o Shri Baburao Dhumal,
Age 39 years, Driver,
R/o A/P-Zirapawadi, Tal Phaltan,
Dist. Satara-415523, Maharashtra State,
(Driver and owner of the vehicle) ....Respondents

Mr. James Lopes, Advocate *for the Appellant.*

CORAM: M. S. SONAK, J.

DATED: 17th MARCH 2022

ORAL JUDGMENT :

1. Heard Mr. James Lopes, learned Counsel for the appellant. None for the respondents, though served.

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.***[1], this appeal will have to be dismissed as not maintainable.

5. Mr. Lopes, learned Counsel for the appellant/Insurance Company, however, pointed out that in ***Oriental Insurance Ltd.***

1 (2020) 2 Bom CR 465

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 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

---

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

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. 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.

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.

6 (2002) 7 SCC 456

7 2002) 2 SCC 265

8 (2013) 16 SCC 711

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. Further, upon deposit of the entire awarded amount, the claimants will be entitled to withdraw the same. Registry to ensure that necessary intimation is sent to the claimants. The claimants will have to submit proper identification and bank details so that the Registry can directly transfer the amounts into the respective bank accounts of the claimants.

11. 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 10:01:32 +05'30'