Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.81/2017
WITH
MISC. CIVIL APPLICATION NO.2326/2018 (F)

HDFC ERGO General Insurance Co.Ltd.,
First Floor,Magnum Center,
M.G. Raod, Panaji, Goa, through its
Authorized Signatory, Deepak Fadnavis. ... APPELLANT

Versus

1. .Shri Arakshita Maharana, Alias Arakshita Moharana, Son of Arjuna Maharana, Age 55 years, Married, resident of Gokarnpur,P.O.Gokaranpur, P.S.Digapahandi,Ganjam District, Orrisa.

2. Smt.Nilendri Mahararana, Alias Nilendri Moharana, Wife of Arakshita Maharana, Age 49 years, Housewife, resident of Gokarnpur,P.O.Gokaranpur, P.S.Digapahandi,Ganjam District, Orrisa.

3. Miss Mamata Maharana, Alias Mamata Moharana, Daughter of Arakshita Maharana, Age 24 years,resident of Gokarnpur, P.O.Gokaranpur,P.S.Digapahandi, Ganjam District, Orrisa.

4. Mr.Santosh Maharana, Alias Santosh Moharana, Son of Arakshita Maharana, . Age 23 years,resident of Gokarnpur, P.O.Gokaranpur,P.S.Digapahandi, Ganjam District, Orrisa,

5. Mr.Ashish A.Joglekar,
Major in age, A-G-1, Raikar Hospital
Road, Tonca,Miramar-Goa.

6. Mr.Vipin S,
Major in age, Carmo Lobo Resort, |
Sequeira Vaddo,Candolim-Goa ...RESPONDENTS

Mr. Vaman Ganesh Kurtikar, Advocate *for the Appellant*.

CORAM: M. S. SONAK J.
DATED: 10th March 2022

ORAL JUDGMENT :-

1. Mr Kurtikar appears for the appellant.

2. In this case, it is not disputed by the learned Counsel for the appellant that no leave was obtained under Section 170 of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal. 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 wd/o. Prakash Ghurde and ors.*** (2020) 2 Bom CR 465, this appeal will have to be dismissed as not maintainable.

3. In ***I.C.I.C.I. Lombard General Insurance Co. Ltd. case*** (supra), the Division Bench of this Court, after considering several decisions, including the decision in ***National Insurance***

Company Limited vs. Nicolletta Rohtagi, (2002) 7 SCC 456; ***United India Assurance Company Ltd. vs. Bhushan Sachdev,*** (2002) 2 SCC 265, ***United India Assurance Company Ltd. vs. Shila Datta,*** (2011) 10 SCC 509 and ***Josephine James vs. United India Insurance Company Limited*** (2013) 16 SCC 711 has 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 Motor Vehicles Act.

4. 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.

5. There is no clarity in this matter as to whether the entire awarded amount was deposited before this Court or before the Motor Accident Claims Tribunal. However, if the amount has been been deposited, then, the Respondents-Claimants will be entitled to withdraw the same from the appropriate Court by furnishing proper identification and furnishing the bank details. The amounts will have to be transferred into the bank account of the claimants directly together with interest, if any that might have accrued thereon. This is, no doubt, subject to any other orders restraining the withdrawal of such deposit, in the meanwhile.

6. The Appeal is disposed of in the aforesaid terms.

7. Misc. Civil Applications, if any, do not survive and the same are disposed of.

M. S. SONAK, J.

SANTOSH S MHAMAL

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