Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.48 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. Mr. Narendra Prasad Singh
son of late Ramakant Singh, age-57 years
old, household,

2. Mrs. Vidya Devi,
wife of Mr. Narendra Prasad Singh,
age-53 years old, housewife,

3. Mr. Kumar Satyam,
Son of Narendra Prsad Singh,
Age-32 years old, service,
All residents of Mohalla Gandhinagar,
Road No.3, P.O. Kolhua,
Paigamberpur, P.S. Ahiyapur,
District-Muzaffarpur,
State of Bihar,

4. Mr. Azeem Shaikh,
Son of Mr. Shaikh Abdul Shakoor,
Aged 29 years old, diver/owner,
Resident of House No.368,
Bunglow No.8, Dream House,
Ahmed Manzil, Chandrawado,
Fatorda, Margao-Goa. ...RESPONDENTS

WITH
FIRST APPEAL NO.55 OF 2018

Bajaj Allianz General
Insurance Co. Ltd.,
3C-D, 3rd floor, Sesa Ghor,
EDC Complex, Patto,
Panaji-Goa-403001, through its
Authorized Signatory
Mr. Nilesh Subhashchandra Gandhi,
having office at 3 C D, Sesa Ghor,
Patto Plaza, Panaji, Goa. ...APPELLANT

Versus

1. Mr. Narendra Prasad Singh
son of late Mr. Ramakant Singh,
age 54 years, household,
and his wife,

2. Mrs. Vidya Devi,
wife of Mr. Narendra Prasad Singh,
age 53 years, housewife,

3. Mr. Kumar Satyam,
Son of Mr. Narendra Prsad Singh,
Age 32 years, service,
respondent no.1 to 3 are residents of
Mohalla Gandhinagar,
Road No.3, P.O. Kolhua,
Paigamberpur, P.S. Ahiyapur,
District Muzaffarpur,
State of Bihar,

4. Mr. Azeem Shaikh,
Son of Mr. Shaikh Abdul Shakoor,
Aged 29 years, diver/owner,
Resident of House No.368,
Bunglow No.8, Dream House,

Ahmed Manzil, Chandrwado,
Fatorda, Margao-Goa. ...RESPONDENTS

Mr. Amey Kakodkar with Mr. P. Shirodkar, Advocates *for the Appellant.*
Mr. Milton Marshal, *Advocate for Respondents No.1 to 3.*

CORAM: M. S. SONAK, J.

DATED: 17th MARCH 2022

ORAL JUDGMENT :

1. Heard Mr. Kakodkar for the appellant and Mr. Milton Marshall for respondents no.1 to 3.

2. Both these appeals have been filed by the appellant-insurance company challenging the awards made under Sections 140 and 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***, these appeals 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 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. vs. Kamala 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, both these appeals are dismissed. However, dismissal of these appeals 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 both these appeals. Mr. Milton Marshal, learned counsel for the claimants who had relied on ***Punam devi vs. Divisional Manager, New India Insurance Co. - 2004 (2) TAC 313 (SC)*** on the issue of maintainability of the appeal now points out that an amount of ₹15 lakhs or thereabouts has already been withdrawn by the claimants. Accordingly, the claimants are permitted to withdraw the balance 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. Both these appeals are disposed of in the aforesaid terms.

12. Misc. civil applications, if any, do not survive and even the same are disposed of.

M. S. SONAK, J.

SUCHITRA NANDAN SINGBAL