

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.148 OF 2019

IFFCO Tokio General Insurance Company
Limited, B-S/3, 2nd floor,
Campal Trade Centre,
Behind Military Hospital,
Panaji, Goa.

Represented by Chief Manager
Mr. Amol Aunrao Bidwai

...Appellant

Versus

1. Joao Joaquim Felipe Afonso,
Son of late Mr. Leao Luis Caetano Afonso,
Aged 77 years and his wife,

2. Mrs. Maria Lourenca Juliana Crasto,
Wife of Mr. Joao Joaquim Felipe Afonso,
Aged 67 years,
Both residents of House no. 223,
Fatorda, Margoa, Goa.

3. Mr. Tolu Velip,
Son of Nanu Velip,
Resident of House no. 109,
Barcem, Padi, Quepem, South Goa.

4. Mr. Dholu Kondo Yamkar,
Son of Kondo Yamkar,
Resident of House no. 48, Padi,
Barcem, Quepem, South Goa, Goa .

....Respondents

Mr. C.A. Fonseca, Advocate for the Appellant.

Mr. Shailesh Redkar, Advocate for the Respondent No.4.

CORAM: M. S. SONAK, J.

DATED: 17th MARCH 2022

ORAL JUDGMENT :

1. Heard Mr. C.A. Fonseca, learned Counsel for the appellant and Mr. Shailesh Redkar, learned Counsel for respondent no.4.
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. Fonseca, 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. Nicoletta 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.

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. 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. The Registry to ensure that necessary intimation is sent to the claimants and further the amount is directly deposited into the bank accounts of the claimants.

12. The appeal is disposed of in the aforesaid terms.

M. S. SONAK, J.