

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.108 OF 2018**

Bajaj Allianz General Insurance Co. Ltd.,
a company incorporated under the
Companies Act, 1956, having its office at
112 & 113,
1st floor, Guru Sai Plaza, Nr. Adarsh School,
Pajifond, Margao
Through its authorized signatory
Mr. Sarvesh Bandekar ...Appellant

Versus

1. Annapurna Gawas,
w/o late Ratnakar Gawas,
aged 61 years, retired, r/o H.No.421,
Calconda, Margao, Goa. 403 601.
2. Yogendra Raikar,
S/o Krishan Raikar,
Aged 44 years, r/o H.No.83/B,
Near Hindu Smashan, Margao,
Salcete Goa 403 601.
3. Swapnil G. Naik
s/o Gokuldas Naik, aged 33 years,
Parijat Apts., Ground Floor, Comba,
Margao Goa 403 601. ...Respondents

Mr. Amey Kakodkar, Advocate for the Appellant.

Mr. Shailesh Redkar, Advocate for Respondent No.1.

CORAM: M. S. SONAK, J

DATE : 24th June 2022

ORAL JUDGMENT

1. Heard the learned counsel for the parties.
2. In this case, it is not disputed 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 w/o Prakash Ghurde and others*¹, this appeal will have to be dismissed as not maintainable.
3. However, Mr. Kakodkar, learned counsel for the appellant relies on *Oriental Insurance Ltd. Vs. Sangita Devi and others*² to submit that where the insurance company is voluntarily impleaded as party respondent to the claim petition, no further restrictions can be imposed on the right of the insurance company to appeal the award made.
4. He also referred to the decision of the Hon'ble Supreme Court in *Bajaj Allianz General Insurance Co. Ltd. vs. Kamala Sen*³ 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

1 (2020) 2 Bom CR 465

2 2016 SCC Online Del. 1221

3 2014 ACJ 2396

by the Hon'ble Supreme Court in the case of ***United India Insurance Company Ltd. vs. Shila Datta***⁴.

5. 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***⁵, ***United India Assurance Company Ltd. vs. Bhushan Sachdev***⁶, ***Shila Datta (supra)*** and ***Josephine James vs. United India Insurance Company Limited***⁷ 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.

6. A similar contention was raised but not accepted in the order dated 17.03.2022 in First Appeal No.48 of 2015 (***Bajaj Allianz General Insurance Co. Ltd., Vs Mr. Narendra Prasad Singh & Ors.***).

4 (2011) 10 SCC 509.

5 (2002) 7 SCC 456

6 (2002) 2 SCC 265

7 (2013) 16 SCC 711

7. For the above reasons, this appeal is dismissed. However, the dismissal of this appeal will not come in the way of the appellant – insurance company from instituting any other proceedings, if maintainable in law.

8. The appellant – insurance company has deposited the awarded amount. After six weeks from today, the respondents – claimants shall be entitled to withdraw the same, unless of course the appellant-insurance company, in the meanwhile, secures restraint orders for such withdrawal.

9. The respondents – claimants will have to submit necessary identification papers and bank details so that the registry can transfer the amounts into their bank accounts. The respondents-claimants will also be entitled to the interest that may have accrued on the deposited amount after adjusting the amount already withdrawn by the claimants, if any.

10. The appeal is disposed of. There shall be no order for costs.

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

M. S. SONAK, J