

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.129/2015

National Insurance Co. Ltd.,
Panaji Divisional Office II,
2nd Floor, Souza Towers,
Near Municipal Garden,
S/4-5, Dr. Domingos Souza Road,
Panaji, Goa.

... Appellant

Versus

1. Master Frewin Seby De Melo,
Son of late Snatana da Melo,
aged 10 years, r/o. G3,
Mevilton Enclave, Colmorod,
Navelim Road, Margao Goa,
represented by Guardian
Shri Armando Mascarenhas,
aged 68 years, retired,
R/o. E-193, near T.B. Hospital,
St. Inez, P.O. Caranzalem, Goa.

2. Shri Franco Augustinho Rodrigues,
r/o. H.No.A1, Dongorim,
Navelim, Salcete, Goa.

3. Smt. Fatima de Mello,
r/o. G3, Mevilton Enclave,
Colmorod, Navelim Road,
Margao Goa.

... Respondents

Mr. A.R.S. Netravalkar, Advocate for the Appellant.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Vinita V. Palyekar, Advocates for Respondent No.1.

Mr. Shailesh Redkar, Advocate for Respondent No.2.

CORAM : M. S. SONAK, J.

DATE : 1st JULY 2022

ORAL JUDGMENT :

1. Heard Mr. A.R.S. Netravalkar for the Appellant, Mr. Sudin Usgaonkar, learned Senior Advocate with Ms. Vinita Palyekar, learned Advocate for respondent no.1, and Mr. Shailesh Redkar learned Advocate for respondent no.2.

2. The challenge in this appeal is to the judgment and award dated 03.01.2015 as corrected by the order dated 03.03.2015 made by the Motor Accident Claims Tribunal in Claim Petition No.158/2011. Accordingly, the Insurance Company institutes this appeal, and the challenge is entirely on the quantum of compensation.

3. On 29.04.2022, Mr. Netravalkar pointed out that the Insurance Company applied Section 170 of the Motor Vehicle Act at Exhibit 64. However, the Tribunal did not dispose of such an application before making the impugned award.

4. Therefore, by order dated 29.04.2022 made in this appeal, the matter was remanded to the Tribunal for the limited purpose

of deciding the application at Exhibit 64 and remitting the findings to this Court.

5. Accordingly, the Tribunal, by order dated 13.06.2022, has considered and dismissed the application at Exhibit 64.

6. Mr. Netravalkar was heard on the legality and merits of the order dated 13.06.2022, even without any formal amendment. He submitted that the Tribunal has only focused on the aspect of collusion, but failed to appreciate that in this case, the owner and driver failed to contest the proceedings. He submitted that mere filing of the written statement or appearing on some occasions does not amount to contesting the proceedings. He submitted that in such circumstances, the Tribunal should have allowed the application under Section 170 of the MV Act.

7. Mr. Netravalkar, without prejudice to the above, relied on *United Insurance Co. Ltd. V/s. Shila Datta & Ors.*¹ and *United India Insurance Co. Ltd. V/s. Bhushan Sachdeva & Ors.*² to submit that even in the absence of leave under Section 170 of the MV Act, the Insurance Companies can maintain the appeal on the issue of quantum of compensation.

1 2011 ACJ 2729

2 2002 ACJ 333

8. Mr. Usgaonkar, learned Senior Advocate for respondent no.1, relied on the decision of 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 & Ors.*³ to submit that no appeal at the behest of the Insurance Company would be maintainable on the quantum of compensation in the absence of leave under Section 170 of the MV Act. He pointed out that the Division Bench considered the decisions now relied upon by Mr. Netravalkar, and it was held that the appeal by the Insurance Company questioning the quantum of the compensation would not be maintainable in the absence of permission under Section 170(b) of the MV Act.

9. On considering Mr. Netravalkar's first contention about the error in the Tribunal's order dated 13.06.2022, I find that there is no merit in the same. The Tribunal has given detailed reasons why leave was not required to be granted because there was no evidence of any collision between the claimant and the driver/owner of the insured vehicle in the first place. Secondly, this was not a case of failure to contest.

10. The Tribunal has noted that there was not a shred of evidence on the aspect of collusion. The Tribunal has also

3 (2020) 2 Bom.C.R. 465

considered the participation of the owner and the driver in the proceedings. There is no material to suggest any abandonment after filing the written statement alleged by Mr. Netravalkar.

11. The Tribunal has also correctly noted that the Insurance Company applied Section 170 at a highly belated stage. This application was filed when the claimant had examined witnesses and closed its evidence. The Insurance Company had also made an endorsement about closing its evidence. Only after that, such an application was filed.

12. From the circumstance noted by the Tribunal in paragraph 7, it appears that the Insurance Company did not even press its application under Section 170 before the Tribunal. However, this appeal raised the point when the issue of maintainability arose, and the remand was secured.

13. Considering the above aspects, there is no case to interfere with the Tribunal's order dated 13.06.2022 on the grounds urged by Mr. Netravalkar. Even the additional ground in paragraph 7 of the Tribunal's order dated 13.06.2022 must be endorsed.

14. The Division Bench in *I.C.I.C.I. Lombard General Insurance Co. Ltd., Amravati* (supra), after considering the

decisions now relied upon by Mr. Netravalkar, has held that notwithstanding the reference made, the decision in *National Insurance Co. Ltd. Chandigarh V/s. Nicolletta Rohatgi and Ors.*⁴ holds good, and based upon the same, the appeal filed by the Insurance Company questioning the quantum of the compensation would not be maintainable in the absence of permission under Section 170 of the MV Act. The Division Bench also relied on the decision in *Josephine James V/s. United India Insurance Company Limited*⁵ in support of such proposition.

15. Mr. Netravalkar also relied on the *Bajaj Allianz General Insurance Co. Ltd. V/s. Kamla Sen & Ors.*⁶. This decision, in turn, relies upon *Shila Datta* (supra). As noted earlier, after considering *Shila Datta* (supra), the Division Bench decided the matter in *I.C.I.C.I. Lombard General Insurance Co. Ltd., Amravati* (supra).

16. The decision of the Division Bench in *I.C.I.C.I. Lombard General Insurance Co. Ltd., Amravati* (supra) was followed in another First Appeal No.108/2018, incidentally instituted by Bajaj Allianz General Insurance Co. Ltd. A similar view was taken

⁴ (2002) 7 SCC 456

⁵ (2013) 16 SCC 711

⁶ 2014 ACJ 2396

in First Appeal No.48/2015, again instituted by Bajaj Allianz General Insurance Co. Ltd.

17. For all the above reasons, this appeal is liable to be dismissed as not maintainable and is hereby dismissed. However, the dismissal of this appeal will not prevent the Appellant - the Insurance Company from instituting any other proceedings if maintainable in law.

18. The Appellant has deposited an amount of ₹60,00,000/- when the awarded amount was ₹1,89,45,000/-. Out of this, the claimants have withdrawn an amount of ₹10,00,000/-. Accordingly, the claimants will now be entitled to withdraw the balance amount and the interest that shall have accrued on such amount. However, such withdrawal shall be only after six weeks from today unless, in the meanwhile, the appellant Insurance Company secures restraint orders for such withdrawal.

19. The claimants will have to execute the balance amount. Still, such execution shall also be pressed after six weeks from today unless, in the meanwhile, the Insurance Company secures restraint on execution.

20. The claimants must submit necessary identification papers and bank details so that the Registry can transfer the amount directly into their bank accounts.

21. This appeal is disposed of in the above terms.

22. There shall be no orders for costs.

M. S. SONAK, J.