

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.120 OF 2018

IFFCO TOKIO GENERAL
INSURANCE COMPANY LTD.

7A, 1st floor, Shreeji Arcade,
Near Nitin Casting Co.,
Almeida road, Pakhadi,
Thane, Maharashtra-400602.

...APPELLANT

Versus

1. Fr. Levis Gomes, since deceased
through LR's:

1a. The Society of Jesus,
Jesuit House, PB 112, 14/A,
Panaji Goa.

1b. The Goa Xavier Company Private
Limited, Jesuit House, 2nd floor, 14/A,
Travessa de Revolucao, Panaji Goa.

2. Mr. Anil BaluBandivadekar
Aged 49 years, Driver,
r/o Pawanadevi Society, Nardas Nagar,
Near Shivdarshan, T.P. road,
Bhandup, (W), Mumbai-400078,

3. Mr. Anil BaluBandivadekar,
Aged 49 years,
r/o Talere, kankavli,
Sindhudurg, Maharastra,
(deleted as per Order dated
19/08/2015)

...RESPONDENTS

Mr. Clayton Fonseca, Advocate for the Appellant.

Ms. Christabel Afonso, Advocate for Respondent No.1.

CORAM: M. S. SONAK, J.

DATED: 1st APRIL 2022

JUDGMENT:

1. Heard Mr. Clayton Fonseca for the appellant and Ms. Christabel Afonso for the respondent no.1-claimant.

2. Learned counsel for the parties pointed out that respondent no.1-claimant has since expired on 24.01.2022. The death certificate confirming this position is placed on record. The same is marked as 'X' for identification.

3. Ms. Afonso points out that the claimant was a priest i.e. a professed father of the Jesuit Society. She points out that the claimant, therefore, leaves behind as his legal representative, the "Society of Jesus". She submits that this is in accord with the ruling of the Hon'ble Supreme Court in the case of ***Montford Brothers of St. Gabriel & Anr. vs. United Insurance and another Etc. – AIR 2014 SC 1550.***

4. In *Montford Brothers (supra)*, the Montford Brothers of St. Gabriel, a charitable society registered under the Societies

Registration Act, 1996 had applied for the award of compensation on account of the death of one of its members known as '*Brother*'. It was pointed out that such a '*Brother*' severs all his relations with the natural family and is bound by the constitution of the society which includes Article 60 that provides that whatever the '*Brother*' receives by way of salary, subsidies, gifts, pension or from insurance or other such benefits belongs to the community as by right and goes into the common purse.

5. The Hon'ble Supreme Court upheld the contention of the society and the discussion on this aspect is to be found at paragraphs 16 to 19 which read as follows:-

16. On coming to know about the High Court judgment the appellants filed a review petition in which they gave all the relevant facts including the constitution of the society appellant no.1 in support of their claim that a 'Brother' of the Society renounced his relations with the natural family and all his earnings and belongings including insurance claims belonged to the society. These facts could not have been ignored by the High Court but even after noticing such facts the review petition was rejected.

17. A perusal of the judgment and order of the Tribunal discloses that although issue no.1 was not pressed and hence decided in favour of the claimants/appellants, while considering the quantum of compensation for the claimants the Tribunal adopted a very cautious approach and framed a question for itself as to what should be the criterion for assessing compensation in such case where the

deceased was a Roman Catholic and joined the church services after denouncing his family, and as such having no actual dependants or earning? For answering this issue the Tribunal relied not only upon judgments of American and English Courts but also upon Indian judgments for coming to the conclusion that even a religious order or organization may suffer considerable loss due to death of a voluntary worker. The Tribunal also went on to decide who should be entitled for compensation as legal representative of the deceased and for that purpose it relied upon the Full Bench judgment of Patna High Court reported in AIR 1987 Pat. 239, which held that the term 'legal representative' is wide enough to include even "intermeddlers" with the estate of a deceased. The Tribunal also referred to some Indian judgments in which it was held that successors to the trusteeship and trust property are legal representatives within the meaning of Section 2(11) of the Code of Civil Procedure.

18. In the light of the aforesaid discussions, we have no hesitation in holding that the High Court erred in law in setting aside the judgment of the learned Tribunal by ignoring the fact that the respondent-Insurance Company had not pressed issue no.1 nor it had pleaded and led evidence in respect to the said issue. The Court explained that the appellants were the legal representatives of the deceased. Such an issue of facts could not be decided by the High Court for the first time in a writ petition which could only be entertained under Article 227 of the Constitution for limited purpose.

19. Accordingly, orders of the High Court dated August 20, 2002 and December 10, 2003 are set aside and the judgment and order of the Tribunal dated July 14, 1994, is restored. The dues of compensation including interest, as per judgment of the Tribunal, shall be deposited by the

respondent-Insurance Company with the Tribunal within eight weeks from the date of this order. The Tribunal shall permit the claimants to withdraw the same in the light of its order.”

6. Ms. Afonso submits that respondent no.1-claimant in this case was also an approved scholastic and professed member of the Society of Jesus. She submits that by virtue of his final vows, he has abdicated all his inheritance/legacies acquired by him to the Society of Jesus, to be used according to the institute of the same Society. Ms. Afonso also points out that the financial affairs of the Society of Jesus (Goa Province) are conducted under the name of Goa Xavier Company Pvt. Ltd. having its address at Jesuit House, Panaji, Goa.

7. Ms. Afonso has placed on record a certificate issued by the Goa Xavier Company Pvt. Ltd. and the same is taken on record and marked as ‘Y’ for identification. For the convenience of reference, the contents of this certificate are transcribed hereunder:-

“Ref No. 2021/22

Date: 24th March 2022

TO WHOMSOEVER IT MAY CONCERN

Fr. Levis Gomes (DOB 24-03-1964), was a Bonafide professed member of the Society of Jesus. He has been affiliated to the Goa Province of the Society of Jesus since

10-06-1985. He has taken his Final Vows on 03-05-2011. As a professed member all his assets and liabilities rest with the Goa Province whose finances are looked after by the Goa Xavier Company Private Limited with registered office “Jesuit House, 2[™] Floor, 14/A, Travesa de Revolucao, Near Municipal Garden Panaji, North Goa, 403 001.

PAN No.: AAAC6291R

Name of the Bank : State Bank of India,

Branch Name & Address: Panaji Branch, Opp Hotel Mandovi,

Name of the Bank Account : Goa Xavier Company (Pvt) Ltd (Medicare)

Bank A/c No.: 31783294044

IFSC Code :SBIN0000509

MICR ; 403002005

Fr. Levis Gomes passed away on 24 January 2022.

sd/-

Thomas Jerone Dsouza

Director / Secretary

DIRECTOR

GOA XAVIER CO. (PVT) LTD.”

- 8.** Ms. Afonso has also placed on record the relevant article from the constitution of the Society of Jesus bearing no.NC171, 2° which reads as follows:-

“2° Ours are not to dispose of hereditary possessions that might come to them after final vows; rather, they should

simply abdicate them. (By this practical rule, however, the Society does not intend to set forth any theoretical conclusions on the legitimacy of such a disposition in civil law.) And whatever goods come to Ours under title of gift or bequest after final vows are acquired for the Society.”

9. Mr. Fonseca appearing for the appellant-insurance company does not dispute the aforesaid position. Therefore, having regard to the aforesaid material as well as the decision of the Hon’ble Supreme Court in *Montford Brothers (supra)*, the Society of Jesus and Goa Xavier Company Pvt. Ltd. is brought on record in place of deceased respondent no.1-claimant. The appellant shall forthwith carry out the amendment to indicate these two parties as respondents no.1A and 1B. The appellant shall also indicate the term “*deceased*” as against the original respondent no.1. All these amendments are to be carried out forthwith.

10. In this case, it is not disputed by Mr. Fonseca that no leave under Section 170 of the Motor Vehicles Act was obtained from the Motor Accident Claims Tribunal. In the absence of such leave, this appeal will have to be held not maintainable 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.

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

12. The appellant-insurance company has deposited the awarded amount in this court. Now that this appeal has been dismissed as not maintainable, the respondents no.1A and 1B will be entitled to withdraw the same together with the interest that may have accrued thereon after six weeks from today. This is no

doubt subject to any other orders restraining the withdrawal of such deposit in the meanwhile.

13. Ms. Afonso states that the Registry of this Court may be directed to deposit the amount together with interest thereon in the bank account of the Goa Xavier Company Pvt. Ltd. i.e. respondent no.1B in terms of the certificate transcribed above and marked as 'Y' for identification. The Registry to do the needful accordingly but only after six weeks from today and if, in the meanwhile, there is no other restraint order produced by the appellant-insurance company.

14. This appeal is disposed of in the aforesaid terms. There shall be no order for costs.

M. S. SONAK, J.