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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.127 OF 2019
WITH
CIVIL APPLICATION NO.191 OF 2019
AND
MISC. CIVIL APPLICATION NO.206 OF 2020

Bajaj Allainz General Insurance Co. Ltd.,
a company incorporated under the
Companies Act, 1956
Having its office at 1st Floor,
Guru Sai Plaza,
Near Adarsh School,
Pajifond, Margao, Goa.
Through its authorized signatory
Mr. Satyajit Kumbhar ...Appellant

Versus

1. Smt. Rehanabi Tipu Sultan Mulla,
Widow of late Tipu Sultan KarimMulla,
Of major age, housewife,
Resident of H.No. 294, St. Mathias,
Malar, Diwar, Tiswadi, Goa.

2. Shri Shamshad Israil Ansari,
Son of Israil Ansari, Of major age, driver,
Resident of c/o Shri Vinron Xavier
Fernandes, H.No. 82/2, Xelvona,
Curchorem, Quepem ~ Goa.

3. Shri. Vinron Xavier Fernandes,
Son of Jose RemedioFernandes,
Owner of the vehicle,
Resident of H.No. 82 /2, Xelvona,
Curchorem, Quepem - Goa.

....Respondents

4. Shri Pramod Gajanan Fadte,
Son of Gajanan Fadte,
Of major age, Motor cycle rider,
Resident of H.No.191 — 5,
Near Church, Morailim,
Curchorem, Quepem - Goa.

5. Mrs. Surekha Phadte,
Wife of Gajanan Phadte,
Resident of H.No.191 — 5,
Near Church, Morailim,
Curchorem, Quepem - Goa.

6. United India Insurance Co. Ltd.,
Church Road, Savordem,
Curchorem —Goa.

7. Mr. Abdul Karim Mulla,
Son of Karim Mulla,
Aged 60 years,
Resident of H.No. A-4,
Bansai Plaza,
Near PWD Office,
Kakoda, Curchorem, Goa.

8. Mrs. Sahajaha Abdul Karim Mulla,
Wife of Abdul Karim Mulla,
Aged 55 years,
Resident of H.No. A-4,
Bansai Plaza, Near PWD Office,
Kakoda, Curchorem, Goa.

Mr. Amey Kakodkar and Mr. Pankaj Shirodkar, Advocate *for the Appellant.*
Mr. Suraj Naik, Advocate *for the Respondent No.6.*

CORAM: M. S. SONAK, J.

DATED: 17th MARCH 2022

ORAL JUDGMENT :

1. Heard Mr. Kakodkar, learned Counsel for the appellant and Mr. Suraj Naik, learned Counsel for respondent no.6.

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. Kakodkar, learned counsel for the appellant/Insurance Company however pointed out that in ***Oriental Insurance Ltd. V/s. Sangita Devi and Ors.***[2]***,*** the Delhi High Court, relying upon the decision of the Hon'ble Supreme Court in ***United***

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1 (2020) 2 Bom.CR 465

2 2016 SCC Online Del. 1221

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 not referred to the decision of the learned Single Judge of the Delhi High Court in ***Sangita Devi*** *(supra)* or the decision of the

3 Civil Appeal No.8654/2013 decided on 24.09.2013

4 2014 ACJ 2396

5 (2011) 10 SCC 509

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. Nicolletta 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.

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

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6 (2002) 7 SCC 456

7 (2002) 2 SCC 265

8 (2013) 16 SCC 711

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. This appeal is disposed of in the aforesaid terms.

13. Misc. Civil Applications, if any, will not survive the disposal of the appeal and the same are disposed of.

M. S. SONAK, J.

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2022.03.21 10:00:59 +05'30'