Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.118 OF 2016

National Insurance Co. Ltd.
Through its Authorized officer,
Souza Towers, Office No.S/4-5,
Domingos Souza Road,
Near Municipal Garden, Panaji Goa. … Appellant

Versus

1. Mr. Vishnu Baburao Paryekar,
Son of Shri Baburao Paryekar,
Aged 25 years, Bachelor, Service,
R/o H.No.178/58, Narayan Nagar,
Honda, Sattari Goa.

2. Shri Manjunath Gounder
Son of Shri Marrippa Gounder,
R/o Anjunem Dem, Keri-Sattari Goa.

3. Shri Biju Jairaj,
Son of Shri M. K. Jairaj, major of age,
R/o H.No.2052, Housing Board,
Sanquelim Goa. … Respondents

Ms. Y. Mandrekar, Advocate for the appellant.
Mr. Ganesh Naik, Advocate for respondent No.1.

CORAM: M. S. SONAK, J.

DATED: 21st July 2022

ORAL JUDGMENT

1. Heard Ms. Mandrekar, learned counsel for the appellant-Insurance Company and Mr. Ganesh Naik, learned counsel for the respondent-claimant.

2. Ms. Mandrekar submits that only issue raised by the appellant-Insurance Company in this case is that the driver of the insured vehicle had a licence to drive Light Motor Vehicle (LMV) and therefore, this driver was not competent to drive Mahindra Jeep (insured vehicle). She submits that this would amount to fundamental breach of the terms of the insurance policy and therefore, the Insurance Company should have been absolved.

3. Ms. Mandrekar however, fairly pointed out the law laid down by the Hon'ble Supreme Court in ***Mukund Dewangan Vs Oriental Insurance Company Ltd***[1]***.*** However, she submitted that in ***M/s Bajaj Alliance General Insurance Co. Ltd. Vs Rambha Devi and others***[2]***,*** the Hon'ble Supreme Court has referred the decision in *Mukund Dewangan* (supra) for reconsideration by a larger Bench.

4. In ***M.S. Bhat V/s. National Insurance Company Limited***[3] the contention, identical to the one now raised by Ms. Mandrekar, came to be rejected precisely in the context of *Mukund Dewangan* (supra) being referred to the larger Bench for reconsideration. The Court held that the decision in *Mukund Dewangan* (supra) remains a binding precedent until the reference is decided and some contrary view taken. Therefore, Ms. Mandrekar's contention will have to be rejected. Following *Mukund Dewangan* (supra), this appeal will have to be dismissed and is hereby dismissed.

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1 (2017) 14 SCC 663

2 Civil Appeal No.841 of 2018 decided on 08.03.2022

3 (2019) 12 SCC 248

5. Consequent upon the dismissal of this appeal, the respondent-claimant will be entitled to withdraw the amount deposited by the appellant-Insurance Company in this Court together with interest that has accrued on the said amount. However, such withdrawal can be made only after six weeks unless in the meanwhile the appellant obtains any restraint order.

6. For withdrawal, the respondent-claimant will have to furnish the identification documents and bank details so that the registry can effect transfers directly into his bank account.

7. The appeal is disposed of in the above terms. There shall be no order for costs.

M. S. SONAK, J.

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