Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.91 OF 2016

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

Versus

1. Ms. Martinha Dias,
Wife of late Cassiano Francisco Dias,
Age 48 years, housewife,

1(a) Miss. Sabina Dias,
Daughter of late Cassiano Dias,
Aged 21 years,

1(b) Miss Mabel Dias,
Daughter of late Cassiano Dias,
Aged 18 years,
All residents of H.No.121,
Madhlowaddo, Keri, Pernem-Goa.

2. Mr. Tulshidas Pandurang Parab,
Son of Pandurang Parab,
Age 43 years,
Resident of H.No.216, Deulwada,
Palyem, Pernem-Goa,
(Driver of Maruti Omni Ambulance bearing no.GA-01-Z-6729)

3. Dr. Chandrashekar Madhav Kelkar,
Major of age, Resident of Waman Niwas,

Khorlim, Mapusa-Goa.
(owner of Ambulance). ... Respondents

Mr. U.R. Timble with Ms. Yadika Mandrekar, Advocates *for the Appellant*.

Mr. Jagannath J. Mulgaonkar, Advocate *for Respondent Nos.1, 1(a) & 1(b).*

Mr. Sudin Usgaonkar, Senior Advocate with Ms. T. Mashelkar, Advocate *for Respondent No.3.*

CORAM : M. S. SONAK, J.

DATE : 14th JULY 2022

ORAL JUDGMENT :

1. Heard Mr. U.R. Timble, who appears along with Ms. Yadika Mandrekar for the Appellant, Mr. J.J. Mulgaonkar for respondent nos.1, 1(a) & 1(b) (claimants), and Mr. Sudin Usgaonkar, Senior Advocate with Ms. T. Mashelkar for respondent no.3 (owner). Accordingly, respondent no.2 is already served.

2. This appeal is directed against judgment and award dated 04.09.2015 in Claim Petition No.11/2013, by which the Tribunal has awarded the claimants compensation of ₹7,30,600/- with interest at the rate of 9% per annum from the date of filing of the Claim Petition till actual payment.

3. Mr. Timble, the learned Counsel for the Appellant – Insurance Company, submits that the insured vehicle driver possessed only a license to drive Light Motor Vehicle (L.M.V.). However, this driver was found to be driving a transport vehicle. Mr. Timble submits that this amounts to a fundamental breach of the terms and conditions of the insurance policy. Therefore, no liability could have been imposed on the Appellant – Insurance Company.

4. Mr. Timble further submits that the Tribunal, in this case, has awarded ₹1,00,000/- towards loss of love and affection and further ₹1,00,000/- towards loss of consortium. He submits that such award is contrary to the law laid down by ***National Insurance Company Limited V/s. Pranay Sethi & Ors.***[1] . Mr. Timble points out that the Tribunal has awarded ₹1,00,000/- towards loss of estate and ₹25,000/- towards funeral expenses. Again he submits that such award is contrary to the law in *Pranay Sethi* (supra).

5. Mr. Mulgaonkar learned Counsel for the claimants submitted that the Insurance Company had not obtained any leave under Section 170 of the MV Act. Therefore, he submits

1 (2017) 16 SCC 680

that the Insurance Company cannot institute an appeal to question the quantum of compensation.

6. Mr. Usgaonkar submits that the Insurance Company has not proved the issue of fundamental breach. In any case, this issue has been answered against the Insurance Companies in ***Mukund Dewangan V/s. Oriental Insurance Company Ltd.***[2], ***Sant Lal V/s. Rajesh & Ors.***[3] and ***Jagdish Kumar Sood V/s. United India Insurance Company Limited & Ors.***[4].

7. Mr. Timble, in rejoinder, submits that *Mukund Dewangan* (supra) has been referred for reconsideration to a larger Bench. He, therefore, presents that the issue is open.

8. The rival contentions now fall for my determination.

9. On the first issue raised by Mr. Timble, the matter is covered against the Insurance Company by the decision in *Mukund Dewangan* (supra) and the other decisions relied upon by Mr. Usgaonkar.

2 (2017) 14 SCC 663

3 (2017) 8 SCC 590

4 (2018) 3 SCC 697

10. Mr. Usgaonkar correctly pointed out that the precedential status of a binding precedent remains intact even after such precedent is referred to a larger Bench for reconsideration.

11. In ***M.S. Bhat V/s. National Insurance Company Limited***[5] the contention, identical to the one now raised by Mr. Timble, 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.

12. For the above reasons, Mr. Timble's first contention must be rejected.

13. In this case, admittedly, no leave was obtained by the Appellant-Insurance Company under Section 170 of the MV Act. Therefore, following the decision of the Division Bench in ***I.C.I.C.I. Lombard General Insurance Co. Ltd., Amravati V/s. Surekha w/o. Prakash Ghurde and ors.***[6]***.*** This appeal to the extent it questions the quantum of the compensation would not be maintainable.

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5 (2019) 12 SCC 248

6 (2020) 2 Bom.CR 465

14. Mr. Timble, however, relied on some judgments and also pointed out the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited V/s. Nicoletta Rohtagi***[7] has been referred to the larger Bench for reconsideration.

15. ***United India Insurance Company Ltd. V/s. Shila Datta***[8] and ***Josephine James V/s. United India Insurance Company Limited***[9] , it is held that notwithstanding the reference made, the decision in *Nicolleta Rohtagi* (supra) holds good until the reference is decided.

16. Therefore, though there may be *prima facie* substance in Mr. Timble's contention about certain amounts being more than what is provided in *Pranay Sethi* (supra), the appeal of the Insurance Company on the aspect of quantum of compensation cannot be entertained in the absence of any leave under Section 170 of the MV Act.

17. Accordingly, this appeal is hereby dismissed. The claimants will be entitled to withdraw the deposited amounts together with the interest that may have accrued thereon **after six weeks** from

7 (2002) 7 SCC 456

8 (2011) 10 SCC 509

9 (2013) 16 SCC 711

today. However, the claimants will have to furnish proper identification documents and bank details so that the Registry can transfer the amounts directly into their bank accounts after six weeks. This is no doubt subject to any other order restraining the withdrawal of such deposit in the meanwhile.

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

M. S. SONAK, J.

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2022.07.15 10:47:30 +05'30'