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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.100 OF 2018

The National Insurance Company Ltd.,
Through the Manager Mapusa Branch
Office, 3rd floor VamanSmriti,
Near Laxmi Narayan Temple,
Mapusa, Bardez Goa. ...Appellant

Versus

1. Smt. Bhavana S. Desai alias Degvekar,
w/o. late Shyamsunderladu Desai alias
Degvekar, aged 60 years, housewife, r/o.
H.No.218, Nadora Wadi, Colvale, Bardez
– Goa.

2. Mrs. Nirmala T. Pednekar,
w/o. Tukaram Pednekar, major in age,
r/o. H.No.285, Colvale, Bardez, Goa.
(Owner of the vehicle)

3. Mr. Ladu E. Kotkar,
S/o. Eknath Kotkar, major of age,
r/o. Revora, Bardez, Goa.
(Driver of the vehicle). ....Respondents

AND
FIRST APPEAL NO.113 OF 2018

The National Insurance Company Ltd.,
Through the Manager Mapusa Branch
Office, 3rd floor VamanSmriti,
Near Laxmi Narayan Temple,
Mapusa, Bardez Goa. ...Appellant

Versus

1. Mr. Shriram R. Degvekar,
s/o. Mr. Ramesh Rama Degvekar,
aged 31 years, r/o. H.No.191,
Nadora Wadi, Colvale, Bardez-Goa.

2. Mrs. Nirmala T. Pednekar,
w/o. Tukaram Pednekar, major in age,
r/o. H.No.285, Colvale, Bardez, Goa.
(Owner of the vehicle)

3. Mr. Ladu E. Kotkar,
S/o. Eknath Kotkar, major of age,
r/o. Revora, Bardez, Goa.
(Driver of the vehicle). ....Respondents

Mr. Amey Kakodkar and Mr. Pankaj Shirodkar, Advocate *for the Appellant.*

CORAM: M. S. SONAK, J.

DATED: 17th MARCH 2022

ORAL JUDGMENT :

1. Heard Mr. Kakodkar, learned Counsel for the appellant. The respondents, though served, are absent.

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 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).*

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1 (2020) 2 Bom.CR 465

2 2016 SCC Online Del. 1221

3 Civil Appeal No.8654/2013 decided on 24.09.2013

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 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

4 2014 ACJ 2396
5 (2011) 10 SCC 509
6 (2002) 7 SCC 456
7 (2002) 2 SCC 265
8 (2013) 16 SCC 711

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 record indicates that the appellant/Insurance Company has deposited ₹25,000/- in each of the appeals as a precondition for instituting these appeals.

10. Now that these appeals are disposed of, the claimants will be entitled to withdraw the said amount deposited in this Court 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.

11. The claimants will have to submit 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.

12. 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.

13. The appeals are disposed of in the aforesaid terms.

M. S. SONAK, J.

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2022.03.21 10:04:52 +05'30'