Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.128/2019

BAJAJ ALLIANZ GENERAL INSURANCE CO.LTD., 3C-D, Sesa Ghor, 20 Patto Plaza, Panaji-Goa, through its Authorized Signatory, Mr. Nilesh Subhashchandra Gandhi. ... APPELLANT

Versus

1. MR. SOCORRO D'MELLO, son of Mr. Santan D'mello, aged 60 years, R/o H.No.47, Dongari, Vasco-da-Gama-Goa.

2. SMT. CANDELINA D'MELLO, wife of Mr. Socorro D'mello, aged 49 years, R/o H.No.47, Dongari, Vasco-da-Gama-Goa.

3. MR. DILIP GOPAL SURLEKAR, son of Gopal Surlekar, major in age, driver, resident of H.No.89, Mangor Hill, Vasco-da-Gama, Mormugao -Goa. ... RESPONDENTS

Mr. P. Shirodkar, Advocate for the Appellant.
Ms. Maria Correia, Advocate for Respondents No.1 and 2.

CORAM: M. S. SONAK, J.

DATED: 6th January 2023

ORAL JUDGMENT:

1. Heard Mr. Pankaj Shirodkar for the appellant and Ms. Maria Correia for respondents no.1 and 2.

2. The appellant-insurance company challenges the Judgment and Award dated 23.11.2016 in Claim Petition No.173/2015 by which the Tribunal has awarded the claimants - parents of Aliston Cruz D'Mello, who died in a vehicular accident compensation of ₹4,39,700/- with interest @ 9% p.a. There is no dispute that Aliston was 22 years old at the time of the unfortunate accident.

3. Mr. Shirodkar submitted that the claim petition under Section 163A of the Motor Vehicles Act was not maintainable because Aliston was driving the Maruti Zen Estilo car at the time of the accident, which he unfortunately expired. He submits that Aliston was thus not a "*third party*", and no petition under Section 163-A of the Motor Vehicles Act is maintainable unless a third party institutes the same. He relied on ***Ramkhiladi & Anr. vs. United India Insurance Company and Anr. - (2020) 2 SCC 550*** to submit that a borrower/permissive user of the vehicle cannot maintain a petition under Section 163-A of the Motor Vehicles Act against the owner/insurer because such borrower/permissive user steps into the shoes of the owner and the owner cannot be both the claimant and the recipient.

4. Mr. Shirodkar, however, submitted that since a comprehensive insurance policy was taken out, compensation of ₹2 lakhs could be paid to the claimants in terms of the insurance policy.

5. Ms. Maria Correia, the learned counsel for the claimants, submits that this appeal by the insurance company is not maintainable because no leave was obtained before the Tribunal under Section 170B of the M.V. Act. She relies upon the decision of the Division Bench of this Court in ***ICICI Lombard General Insurance Co. Ltd., Amravati vs. Surekha wd/o. Prakash Ghurde and Ors. - (2020) 2 Bom CR 465*** in support of this contention. She also relies on the decision in ***United India Insurance Company Limited vs. Mrs. Maya Jangbahadur Gharti Magar and Ors. - First Appeal No.1/2020 decided on 17.03.2022*** where an appeal challenging an award made under Section 163-A of the Motor Vehicles Act was not entertained by this Court by overruling the objection that the decision of the Division Bench of this Court in *ICICI Lombard General Insurance Co. Ltd.* (supra) does not apply in case of a challenge to an award made under Section 163-A of the Motor Vehicles Act.

6. Ms. Maria Correia, further submitted that the insurance company, in its written statement, had claimed that the owner for hire and reward gave out the vehicle. She offered that even otherwise, there is no clear evidence about the status of the deceased. In such circumstances, the decision in the case of *Ramkhiladi* (supra) would not apply.

7. Finally, Ms. Maria Correia pointed out that the deceased was only 22 years of age at the time of his death in the accident. Therefore it would not be in the interest of justice if even a meagre compensation of ₹4,39,700/- awarded to his parents is now interfered with. She submits that the Motor Vehicles Act is a social legislation; therefore, considering its object, the impugned award should not be interfered with.

8. The rival contentions now fall for my determination.

9. The defence raised by the appellant-insurance company or the ground now pressed by the appellant-insurance company is not one of the grounds contemplated under Section 149 of the Motor Vehicles Act. Basically, the appellant-insurance company now questions the quantum of compensation awarded to the parents. Therefore, the main issue in this appeal is whether the quantum of compensation must be ₹4,39,700/- or whether it should be only ₹2 lakhs in terms of the comprehensive insurance policy.

10. Admittedly, no leave was obtained by the appellant-insurance company under Section 170(b) of the Motor Vehicles Act. In the absence of such leave, the decision of the Division Bench in *ICICI Lombard General Insurance Co. Ltd.* (supra) and of the Single Judge in *United India Insurance Company Limited vs. Maya Magar* (supra) would apply, rendering this appeal itself as not maintainable.

11. Be that as it may, there is no clear evidence of the capacity in which the deceased was driving the vehicle in which he met with the accident. The owner of the vehicle filed a written statement in which nothing was stated about the status of the deceased. The owner only admitted his ownership and pleaded that the vehicle was insured with the appellant-insurance company. The owner also admitted that the deceased had a valid driving license. In its written statement, the appellant-insurance company claimed that the vehicle was given out for hire and reward. Considering the nebulous state of evidence on record, the principle in *Ramkhiladi* (supra) may not apply.

12. Besides, as was pointed out by Ms. Maria Correia, this is a claim for compensation by the parents of deceased Aliston, who was all of 22 years at the time of the accident. The compensation amount awarded is also only ₹4,39,700/-. Accordingly, it would not be appropriate to interfere with the impugned award.

13. Thus, for all the reasons above, this appeal is dismissed as not maintainable and, in any case, on merits. Accordingly, there shall be no order for costs.

14. Now that the appeal is dismissed, the claimants will be entitled to withdraw the deposited amount. However, at the request of Mr. Shirodkar, such withdrawal will be only after six weeks from today unless, in the meanwhile, there is any restraint order produced by the appellant-insurance company from the Hon'ble Supreme Court.

15. The claimants will have to furnish their identification and bank details. After six weeks, and in the absence of any restraint order, the Registry to ensure that this amount is directly transferred into the claimants' bank accounts.

M. S. SONAK, J.