

Maria S.

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.85 OF 2023**

National Insurance Company Ltd., a company incorporated under The Companies Act, 1956 (New Companies Act, 2013) having its Divisional Office at Souza Towers, Second floor, S/4, Dr. Domingos Souza Road near Municipal Garden, Panaji, Goa Through its Divisional Manager, Mr Pandharinath S. Anvekar

... Petitioner

Versus

1. Manisha Mahendra Soliyekar
Widow of Shri Mahendra Soliyekar, Age 37 years, married, housewife, Indian National.

2. Jeet Mahendra Soliyekar
Son of Mahendra Soliyekar, Age 5 years through his natural guardian mother Mrs. Manisha Soliyekar, Both residents of house no.247/1, Soliyem, Honda, Goa.

3. Harishchandra Yamanappa Chahan, Son of Shri. Yamanappa Chauhan, major in age, residing at c/o Shri Pandurang Annu Gawade Soliye, Honda, Sattari, Goa.

4. Rama Krishna Gawade,
Son of Krishna Gawade, major in age, residing at House No.265/1, Soliyem, Honda, Sattari, Goa.

...Respondents

Mr Amey Kakodkar, Advocate *with Mr P. Shirodkar, Advocate for the Petitioner.*

Mr Deepak Gaonkar, Advocate *for Respondents No.1 and 2.*

Mr Ambarish Gavandalkar, Advocate *for the Respondents No.3 and 4.*

CORAM:
DATED :

PRAKASH D. NAIK, J
27th SEPTEMBER, 2023

ORDER:

1. The petitioner has challenged order dated 27.08.2022 passed by Presiding Officer, Motor Accident Claims Tribunal, Mapusa rejecting application preferred by the petitioner under Section 170 of Motor Vehicles Act.
2. The respondent No.1 and 2 filed Claim Petition No.13/2019 under Section 140 and Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.45 lakhs. The petitioner filed a reply and written statement to the application. The respondents No.3 and 4 filed a reply to the application under Section 140 of the Act and written statement to the application under Section 166 of the Act. The defence of claimants was recorded. Respondents No.3 and 4 failed to remain present. Claimants were not cross-examined.
3. The petitioner filed an application under Section 170 of the Motor Vehicles Act, 1988. The application was rejected vide order dated 27.08.2022.

4. Learned advocate for the petitioner submitted that the impugned order is contrary to law. Learned Presiding Officer relied upon decision of the Supreme Court in the case of ***United India Insurance Company Ltd.v/s. Sheela Dutta***¹. However, the latter decision in the case of ***Josephine Hames v/s. United India Insurance Company Limited And Another***² and the decision in the case of ***I.C.I.C.I Lombard General Insurance Company Ltd., v/s. Surekha wd/O Prakash Ghurde and Others***³ decided by this Court were not considered. The petitioner will not be able to file any appeal against the judgment and award under Section 166 in the absence of leave under Section 170 of the Motor Vehicles Act. The Tribunal has failed to consider Section 170(b) of the Motor Vehicles Act that against whom the claim is made has failed to contest the claim. Learned Presiding Officer has not dealt with the application preferred by the petitioner in proper perspective and rejected the application on erroneous ground.

5. Learned advocate for respondents no.1 and 2 submitted that there is no infirmity in the order. The respondents No.1 and 2 had appeared before the Tribunal. They filed written statements and reply. Petitioner had taken defences in the reply to application under Section 166 of Motor Vehicles Act and cross-examined AW-1. Application under Section 140 of the Motor Vehicles Act was allowed after hearing respective advocates.

¹ 2011 (4) TAC 874 (SC)

² (2013) 16 SCC 711

³ 2019 SCC OnLine Bom 2042

6. The petitioner filed an application under Section 170 of the Motor Vehicles Act, 1988 with a prayer that the petitioner may be allowed to contest the claim on all the grounds available to respondents no.1 and 2. It was contended that the respondents No.3 and 4 herein have not been appearing in the claim petition since long and therefore the Tribunal was pleased to issue fresh summons to them. They failed to appear. The evidence of claimant no.1 is concluded on 05.01.2022. However, the respondents no.3 and 4 have failed to appear. The conduct of respondents No.3 and 4 show that they are not willing to contest their claim.

7. The Presiding Officer rejected the application on the ground that defences have already been taken by the petitioner which are available to respondents No.3 and 4 herein and as such no prejudice would be caused to the petitioner and there is no ground made out of collusion and hence, the application under Section 170 of Motor Vehicles Act is not maintainable.

8. Section 170 of the Motor Vehicles Act reads as follows:-

170. Impleading insurer in certain cases.--Where in the course of any inquiry, the Claims Tribunal is satisfied that--

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding

and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 150, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.'

9. The aforesaid provision indicate that if the Claims Tribunal is satisfied that there is collusion between the person making the claim and the person against whom the claim is made or the person against whom claim is made has failed to contest the claim, the Tribunal can direct that the insurer who may be liable in respect of such claim shall be impleaded as a party to the proceedings and the insurer who is impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of Section 150, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

10. The Presiding Officer in the impugned order has observed that respondents No.3 and 4 herein had appeared and filed written statement and reply. The petitioner had taken defences in the application under Section 166 of Motor Vehicles Act and cross-examined AW-1. The Presiding Officer relied upon the decision in the case of ***United India Insurance Company Ltd.v/s. Sheela Dutta*** (supra) and concluded that the defences are already taken by the petitioner which are available to respondents No.3 and 4 and no prejudice will be caused to petitioner and that there is no ground made out of collusion. Hence, the application under Section 170 of the Act is not maintainable.

11. The order passed by the Presiding Officer is not in consonance with the purport of application preferred by the petitioner under Section 170 of the Motor Vehicles Act. In the event the petitioner challenges the award, if any, passed under Section 166 of Motor Vehicles Act, 1988, the petitioner is required to obtain leave under Section 170 of the Act before the Motor Accident Claims Tribunal. Learned advocate for the petitioner has pointed out the decision of this Court delivered in the case of ***The New India Assurance Co. Ltd. v/s. Suhanand Gangaram Sawant***⁴ and submitted that the appeal preferred by the Insurance Company was dismissed by this Court on the ground that permission under Section 170(b) of the Motor Vehicles Act was not obtained by the Insurance Company. In the case of ***Josephine James v/s. United India Company Ltd*** (supra), it was held by the Supreme Court that the Insurance Company is not entitled to file appeal questioning the quantum of compensation awarded in the absence of permission obtained by the Insurance Company from the Tribunal under Section 170(b) of Motor Vehicles Act to avail the defence of the insured. In the case of ***I.C.I.C.I Lombard General Insurance Company Ltd., v/s. Surekha wd/O Prakash Ghurde and Others*** (supra), the Division Bench of this Court had answered a reference in respect of the question whether the appeal of insured in terms of Section 173 of Motor Vehicles Act is maintainable in the absence of permission obtained from the Tribunal as per Section 170(b) of the Motor Vehicles Act. It was held that the appeal of the insured in the absence of leave under Section 170(b) of the Motor Vehicles Act

⁴ First Appeal No.46 of 2019 dated 17.03.2022

is not maintainable in the absence of leave under Section 170(b) of the Motor Vehicles Act.

12. Be that as it may, the impugned order indicates that the application preferred by the petitioner has not been decided in accordance with law and the object for making such application. In the circumstances, it would be appropriate to set aside the impugned order and remit the matter back to the Presiding Officer to decide in accordance with the application preferred by the petitioner.

ORDER

(i) The impugned order dated 27.08.2022 passed by the Presiding Officer, Motor Vehicle Claims Tribunal, Mapusa, rejecting the application preferred by the petitioner vide Exhibit 46 in Claim Petition No.13/2019 is set aside.

(ii) The case is remanded back to the Presiding Officer, Motor Vehicle Claims Tribunal, Mapusa, with direction to decide the application preferred by the petitioner vide Exhibit-46 in consonance with the scope and prayers in the application.

(iii) Petition stands disposed of.

(PRAKASH D. NAIK, J.)