

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1003 of 2025

National Insurance Co. Ltd.

VERSUS

Lirasa Bibi And Anr

For Appellant/Insurance Co.: Mr. Rajesh Singh, Adv.

For Claimants/Respondents.:
Ms. Sima Ghosh, Adv.
Ms. Ankhi Kayel, Adv.

Last Heard on: January 27, 2026

Judgment on: February 04, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was an opposite party in a claim under Section 163A of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 21st January 2025 passed by Learned Additional District Judge Fast Track 3rd Court Berhampore Murshidabad in MAC Case No-341 of 2015. The respondent no-1 being also aggrieved by the Judgment and Award passed by the Learned Trial Judge has filed a cross objection.

The case of the claimant/respondent no-1 before the Learned Trial Court may be summed up thus:

On 29-03-2015 at about 20:00 hrs the victim Saidul Mondal riding on a Bi-cycle was proceeding from Balsenda towards his house. While the said victim reached at Palsanda More under P.S. Nabagram, the offending vehicle bearing No. WB-25F/3903 (Truck) coming from Moregram side towards Berhampore in a rash and negligent manner with excessive high speed dashed the said victims bi-cycle on the road side and sustained several blood injuries over his body. Then and there a few assembled people of the locality shifted the said victim into the Murshidabad Medical college and Hospital for his treatment. He died there on 30-03-2015.

Pursuant to filing of the case notice was issued upon the opposite parties opposite party vehicle owner appeared but did not contest the case. Opposite party Insurance Company Appellant herein contested the case by filing written statement.

Issues were framed and evidence was adduced by the claimant/respondent no-1. Upon considering the evidence and upon hearing the Learned Advocates the Learned Trial Court was pleased to dispose of the claim case by observing and directing as follows:

Hence it is ORDERED that the Motor Accident Claim Case No-341 of 2015 be and the same is allowed on contest against the O.P./National Insurance Co. Ltd. but without costs claimant/petitioner do get Award of Rs.

4,70,000/- (Rupees Four Lakhs Seventy Thousand) only as compensation along with interest @ 6% per annum from the date of filing this case i.e. on 22-04-2015 till realization of the award.

The O.P./National Insurance Co. Ltd. is directed to pay the awarded amount by issuing Account Payee Cheque along with interest as stated within 60 days hereof failing which claimant will be at liberty to put this order into execution with further interest @7% per annum from the date of order till the date of realization.'

The appellant National Insurance Company Limited being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal.

Although different grounds were taken by the appellant National Insurance Company Ltd. but at the time of argument, the submission advanced by the Learned Advocate is that the driver of the offending vehicle was driving without valid driving license. Learned Advocate draws attention to the seizure list and submits that the driving license seized goes to show that the driver of the offending vehicle was permitted to drive non-transport vehicle and not a truck. Learned Advocate further submits that by driving truck with a driving license of non-transport vehicle goes to show that there is violation of policy conditions thus the Learned Trial Court ought to have passed order of pay and recovery.

Learned Advocate for the respondent no-1/claimant submits that the claimant is entitled to Rs. 500000/- (Rupees five lakh) under Section 164 of the Motor Vehicles Act 1988 but the Learned Trial Judge erred in awarding compensation of Rs. 4,70,000/-.

With regard to the submission made by the claimant/respondent no-1 with regard to the quantum of compensation this Court is of the view that as Section 164 of the Motor Vehicles Act 1988 provides compensation of Rs. 500,000/- and the claim compensation legislation is a welfare one the compensation awarded should be enhanced to Rs. 500,000/-.

Now with regard to the submission of pay and recovery it is well settled that in case of violation of Insurance Policy Condition, the Insurance Company is entitled to recover from the insured the compensation amount awarded after making payment to the claimant/victim. However before proceeding to recover from the insured, the compensation amount the insurer upon making necessary enquiry and upon giving the vehicle owner an opportunity of being heard shall ascertain as to whether the violation of policy condition was bona fide unintentional or deliberate. Thereafter the Insurance Company may decide whether to proceed against the insured or to condone such breach.

In the case of **Reliance General Insurance Company Ltd. VS Niyati Kumar and ors** FMA-1326 of 2025 reported in 2025 SCC Online Cal 8886 it was observed as follows:

'Thus it is well settled that in order to absolve from liability of paying compensation and to obtain an order of pay and recovery it is mandatory for the Insurer to prove breach of the condition of Insurance Policy.

Although all Insurance Companies are not 'State' within the meaning of Article 12 of the Constitution of India but the fact that third party Motor Insurance Law is a beneficial Legislation and it has a public aspect and its object is to protect the public (third parties) from financial losses due to accidents caused by a motorist by ensuring that victims are compensated. On one hand, and also to protect the vehicle owners from bearing huge burden of compensation in case of accidents where the insurance policy condition is complied with on the other hand. Thus considering the public aspect of Motor Insurance Claims Insurance Companies have responsibilities to ensure that genuine accident claims are settled without delay and the vehicle owner who has not violated the terms of policy is not unnecessarily harassed.

In the event the Insurance Company has reasons to believe that policy conditions were violated it should conduct an enquiry issue notice upon the vehicle owner and give him an opportunity of being heard. Where the Insurance Company is satisfied after enquiry that conditions of policy were not violated the allegations of violation of policy, namely the vehicle was driven without permit or without valid driving license should not be raised in Court.

However upon Enquiry if the Insurance Company finds that there was violation of terms of policy such findings should be recorded by Insurance

Company and necessary evidence should be adduced in Court. In such a case the Enquiry Report should also be filed in Court, apart from adducing evidence.

A vehicle owner after getting his vehicle insured proceeds with the assumption that Insurance Company will settle the compensation claim in case of accidents thus the vehicle owners ordinarily do not appear in Court to contest claim cases. Thus in the event there is allegation of violation of condition of Policy the vehicle owners should be given an opportunity of being heard before such allegation being made in Court and before being examined in Court as witness. Upon such enquiry being made the Insurance Company can decide as to whether policy violation was minor or major and whether to condone such violation or recover the amount of compensation paid.

In the instant case the Appellant Insurance Company has merely alleged that the vehicle was driven without permit on the ground permit was not seized by Police Authority but no steps were taken to conduct an enquiry and to examine officers of Regional Transport Authority as witness with regard to permit of the vehicle.'

In the event the violation of policy condition appears at the time of argument when the case is at the verge of disposal and there was no scope for the Insurance Company to make preliminary enquiry and give the vehicle owner an opportunity of being heard the Learned Tribunal after it arrives at a finding that there was breach of policy condition shall after directing payment by the Insurance Company to the claimant issue show cause upon the

Insured/vehicle owner as to 'why the compensation amount directed to be paid shall not be recovered.' Copy of the Award shall also be enclosed with the notice.

Upon hearing the vehicle owner/insured with regard to violation of policy condition if the tribunal/Court comes to the conclusion that there was violation of policy condition which was not bona fide and without sufficient explanation, the Court/Tribunal will order recovery of amount directed to be Paid by Insurance Company.

In the normal course where vehicle owners receives notice of claim case they ordinarily do not appear in Court on the ground that Insurance Company will settle the claim. However if subsequent allegation is made in the written statement about violation of policy condition and additional issue in this regard is framed, and evidence adduced by the Insurance Company further notice in this regard should be issued upon vehicle owner to meet the allegation. In the event the Court/Tribunal is of the view that notice to be issued after considering the evidence adduced in this regard Learned Tribunal may issue notice after evidence. In any event prior to directing recovery after payment notice in this regard must be issued specifically and the vehicle owner should be given an opportunity of being heard.

In the instant case the vehicle owner/insured was not put to notice with regard to violation of policy condition for the purpose of pay and recovery. Thus no order with regard to recovery can be directed without the Appellant

Insurance Company causing enquiry and giving the vehicle owner/insured an opportunity of being heard. Thus the Appellant National Insurance Company Limited is granted liberty to cause service of notice upon the vehicle owner/insured annexing copy of the order of trial Court and this order and upon hearing him with regard to violation of policy condition and recovery of compensation amount awarded. Upon hearing the insured respondent no-2 Subrata Nath the Appellant National Insurance Company Limited will decide whether to proceed against the said respondent for recovery. In the event recovery proceedings is instituted parties will be entitled to take relevant points involved to enable the Court/Tribunal to arrive at a just decision.

Thus this Appeal FMA-No-1003 of 2025 and COT-155 of 2025 stands disposed. The Judgment and Award dated 21st day of January 2025 passed by Learned Additional District Judge Fast Track 3rd Court Berhampore Murshidabad in MAC Case No-341 of 2015 stands modified to the extent that the Respondent no-1 and-2 namely Lirasa Bibi and Kamala Bibi will be entitled to total compensation of Rs. 500,000/- (Rupees five lakh) from the Appellant National Insurance Company Limited along with interest @6% per annum from the date of filing claim case till today. Such deposit shall be made before the Registrar General High Court Calcutta within 8 weeks from the date of communication of the Order. In the event the amount awarded by the trial Court is already deposited, the balance amount shall be deposited. The Appellant/Insurance Company upon making the deposit is granted liberty to proceed for recovery upon compliance of the procedure as observed above.

Let a copy of this Order be sent to the Registrar General High Court Calcutta for forwarding the same to all Motor Vehicle claim Tribunals/District Judges within State of West Bengal and Andaman and Nicobar Island with a request to consider the same with regard to similar cases involving pay and recovery.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)