IN THE HIGH COURT AT CALCUTTA
Circuit Bench At Jalpaiguri

Present:

The Hon'ble Justice Biswaroop Chowdhury

FMA 56 of 2025

The Oriental Insurance Company Ltd.
VERSUS
Sri Ranthu Tigga & Ors.

For the appellant: Mr. Rishin Chakraborty, Adv.

For the respondent /Insurance Company: Mr. Kishan Lal Lohia, Adv.
Mr. Satyaki Basu, Adv.
Mr. Durga Bagani, Adv.

Last Heard on: December 18, 2025

Judgment on: December 23, 2025

Biswaroop Chowdhury, J:

The Appellant before this Court was an opposite party in a claim case under Section 166 of the Motor Vehicles Act 1988 instituted by the respondent no. 1 to 6 and is aggrieved by the Judgment and Award dated 27th day of March 2024 passed by Learned Additional District Judge 1st Court Siliguri Darjeeling in MAC Case No. 63 of 2010.

By Judgment and Award dated 27th day of March 2024 Learned Trial Judge disposed the claim case by observing and directing as follows:

Hence it is ORDERED that the MAC Case be and the same is allowed on contest against the OP No. 4. Oriental Insurance Co.Ltd. and in ex-parte against Op. No. 1 to 3.

The petitioners, 1. Ranthu Tigga, 2. Suchitra Tigga, 3. Sabita Tigga, 4, Sushmita Tigga, 5. Sunita Tigga, 6. Master Subham Tigga do get just compensation of Rs. 18,07,372/- (Rupees Eighteen lakh Seven thousand and three Hundred and seventy two only) from the OP No-4 Oriental Insurance Company Limited being the insurer of the offending vehicle being Regd. No. WB-71-0023.

OP No. 4 Oriental Insurance Company Limited is directed to pay compensation of Rs. 300,395/- to the petitioners No. 2 to 6 being the children of the deceased and a sum of Rs. 3, 05,395/- to the petitioner No-1 Ranthu Tigga husband of the deceased together with interest @ 6% Per annum from date of filing ie. 03-07-2010 till payment to the petitioners by way of issuance of six (6) A/C payee cheques of the said amounts in favour of the petitioners within two months from the date of this order failing which the petitioner will be at liberty to put the award into execution.'

The Appellant Insurance Company being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal.

The grounds on which the Judgment of the Learned Trial Court is assailed is that the offending vehicle was plying without a valid route permit and fitness certificate and the charge sheet does not mention the permit number and date of validity. Thus the Insurance Company is not liable to pay the compensation.

Heard Learned Advocate for the Appellant and Learned Advocate, for the respondent no. 1 to 6. Perused the evidence adduced and materials on record.

Learned Advocate for the Appellant submits that the Learned Trial Judge erred in directing the Appellant to pay compensation to the claimants when the offending vehicle did not have valid permit. Learned Advocate further submits that the Learned Trial Judge ought to have passed order to pay the claimants and recover from the owner of offending vehicle. Learned Advocate also submits that liberty be granted to the appellant to recover the compensation from owner of offending vehicle.

Learned Advocate relies upon the following Judicial decision:-

Tirupati Construction VS Priya Arora Aand others.

Reported in 2024 ACJ. 1487.

Upon hearing the Learned Advocate and upon perusing the evidence adduced it appears that the Appellant United India Insurance Company Ltd. did not adduce any evidence either oral or documentary and the same is observed by the Learned Trial Judge in the Judgment dated 27th day of March 2024. With regard to the submission of the Learned Advocate for the Appellant Insurance Company that the permit of the offending vehicle was not valid no argument was made before the trial Court in this regard secondly the Appellant did not examine either the Officers of the Regional Transport Authority who would have been competent to state as to whether the permit of the offending vehicle was valid or not, neither the Appellant examined the owner of the offending vehicle.

In the case of National Insurance Co. Ltd. VS Swaran Singh and others reported in (2004) 3 SCC P. 297 the Hon'ble Supreme Court observed as follows:

'69 The proposition of law is no longer resintegra that the person who alleges breach must prove the same. The insurance Company is thus required to establish the said breach by cogent evidence. In the event the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability.' (see Sahan Lal Passi")'

The Hon'ble Supreme Court further observed as follows:

'68. In Rukmoni VS New India Assurance Co. Ltd, this Court while upholding the defences available to the insurer to the effect that the vehicle in question was not being driven by a person holding a license held that the burden of the insurer would not be discharged when the evidence which was brought on record was that in Inspector of police in his examination in chief merely stated, 'My enquiry revealed that the 1st respondent did not produce the license to drive the aforesaid scooter. The 1st respondent even after my demand did not submit the license since he was not having it.'

In the case of Rukmini and others VS New India Assurance Co. Ltd. reported in 1998(9) SCC-the Hon'ble Court observed as follows: "1. The Insurance Company has been absolved from liability in respect of the claim for compensation by the High Court on the ground that the driver had no valid licence. The High Court has noted that under Section 96(2)(b)(ii) of the Motor Vehicles Act, 1939, if the Insurance Company contends that the driver of the vehicle had no valid driving licence, the burden is on the Insurance Company to establish it. The High Court, however, came to the conclusion that this burden had been discharged by the Insurance Company.

2. We have seen the only evidence which the Insurance Company produced in support of the plea. This is the evidence of Inspector of Police who investigated the accident. In his evidence, PW 1 who was the Inspector of Police, stand in his examination-in-chief, "My enquiry revealed that the 1st respondent even after my demand did not submit the licence since he was not

having it." In his cross-examination he has said that it is the Inspector of Motor Vehicles who is required to check whether the licence is there but he had not informed the Inspector of Motor Vehicles that the 1st respondent was not having a licence since he thought it was not necessary. In these circumstances, the Insurance Company has not discharged the burden cast upon it under Section 96(2)(b)(ii) of 20 the Motor Vehicles Act, 1939. The impugned order of the High Court is, therefore, set aside and the order of the Tribunal is restored. The appeal is allowed accordingly. No order as to costs."

In the case of Reliance General Insurance Company Ltd. VS Niyati Kumari and others being FMA 1326 of 2025 With COT 146 of 2024 a Single Bench of this Court observed as follows:-

'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.'

Upon considering the facts of the case and the relevant judicial decisions this Court is of the view that the Appellant has not been able to prove that there was breach of condition of Insurance. Thus there is no error in the judgment and award passed by the Learned Trial Court.

Hence this Appeal is dismissed. The Judgment and Award dated 27th day of March 2024 passed by Learned Additional District Judge 1st Court Siliguri Darjeeling in MAC. No-63 of 2010 is affirmed. The respondents no- 1 to 6 is permitted to withdraw the awarded sum along with interest as directed by the Learned Trial Court, and deposited by the Appellant. It is however clarified that if the statutory amount of Rs. 25, 000/- (Rupees twenty five thousand) is deposited apart from deposit of awarded sum, the appellant will get back the statutory amount.

(Biswaroop Chowdhury, J.)