

Form No. J(2)

District: Burdwan

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Biswaroop Chowdhury

FMA 3282 of 2013

+

IA NO: CAN 1 of 2016(Old No: CAN/154/2016)

PAPIYA PAKHIRA & ORS.

VS

**ROYAL SUNDARAM ALLIANCE INDUSTRIES
CO. LTD. & ANR.**

Mr. Uday Sankar Chattopadhyay

Ms. Trisha Rakshit

Ms. Aishwarya Datta

... for the claimants/appellants

Mr. Rajesh Singh

... for the respondents

Heard on : 06.01.2026

Judgment on : 06.01.2026

Biswaroop Chowdhury , J.

1. Learned advocates for the parties are present.
2. Heard advocates for the parties.
3. The appellant before this court was a claimant in a claim case under Section 166 of the Motor Vehicle Act, 1988 and is aggrieved by the Judgement and Award dated 22nd November, 2011 passed by the learned Additional District Judge, 5th Court, Burdwan in MAC Case No.50 of 2010/270 of 2010.

4. Learned Trial Judge by Judgement and Award dated 22nd November, 2011 was pleased to dispose of the claim case by observing and directing as follows :-

“ Accordingly, it is

Ordered

That the M.A.C Case No.50 of 2010 is allowed in part on contest against the owner of the vehicle bearing No.WB 06C/3547 and dismissed against the insurer.

Petitioners do get compensation to the tune of Rs.13,21,829/- along with interest @9% accrued thereon from the period starting from 3.9.2010 to till the date of realization thereof. Petitioner no.1 shall get Rs.5000/- extra.

Owner herein is hereby directed to pay Rs.4,40,610/- each to petitioner no.2 and 3 and Rs.4,45,610/- to petitioner no.1 along with interest accrued over the amounts for the period commencing from 3.9.2010 to till the date of realization thereof by A/c payee cheques positively within a period one and half months from the date failing which petitioners shall be at liberty to recover the total amount of compensation along with interest from the owner through this tribunal as per direction given hereinabove.

With the above order and observation, this MAC case No.50 of 2010 is thus disposed of.”

5. The appellants/claimants being aggrieved by the direction of the learned Trial Court in directing the owner of the vehicle to pay the claim compensation and not directing the respondent

No.1/Insurance Company to pay and then recover has come up with the instant appeal.

6. Learned advocate for the appellants submits that the learned Trial Judge ought to have awarded compensation by directing the respondent no.1 Royal Sundaram Alliance Insurance Company Limited to make payment of compensation and thereafter recover the same from the respondent no.2 vehicle owner but the learned Trial Judge has imposed the liability upon the respondent no.2 the vehicle owner.

7. Learned advocate relies upon the following decisions:-

- i) Shamanna & Anr. vs. Divisional Manager, Oriental Insurance Company Limited & Ors. Reported in (2018) 9 SCC 650.
- ii) Rani & Ors. Vs. National Insurance Company Limited & Ors. Reported in (2018) 8 SCC 492.
- iii) National Insurance Co. Ltd. vs. Baljit Kaur & Ors. Reported in (2004) 2 SCC 1.

8. In the case of Baljit Kaur & Ors. the Hon'ble Supreme Court of India observed as follows :-

“ The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had

proceeded in terms of the decision of this court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding.”

9. In the case Shamanna and Another(supra) the Hon'ble Supreme Court has observed as follows :-

“13. Since the reference to the larger Bench in Parvathneni case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case followed in Laxmi Narain Dhut and other cases hold the field. The award passed by the Tribunal directing the

insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgement passed by this court in Swaran Singh and Laxmi Narain Dhut cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgement of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.

14. So far as the recovery of the amount from the owner of the vehicle, the Insurance Company shall recover as held in the decision in Oriental Insurance Co. Ltd. v. Nanjappan wherein this court held that (SCC p.226, para 8)

“8. ... For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.”

15. In the result, the impugned judgement of the High court insofar as enhancement of the compensation to Rs.4,94,700/- is concerned is affirmed. Insofar as direction of the impugned judgement directing the appellant claimants to recover the compensation from the owner of the vehicle is concerned, is set aside and the

appeal is partly allowed. The first respondent insurance company shall pay the enhanced compensation to the appellant claimants along with the accrued interest and the insurance company shall recover the same from the owner of the vehicle. No costs.”

10. Mr. Singh, learned counsel appearing for the respondent no.1 Insurance Company dispute the submission of the learned advocate for the appellant and submits that there are other decisions by virtue of which the Insurance Company is not liable to pay and then recover.

11. Upon hearing the learned advocates and considering the facts of the case and the fact that this Motor Vehicle Claim is a beneficial legislation, this Court is of the view that in the interest of justice the payment of compensation shall be by the respondent no.1 Royal Sundaram Alliance Insurance Company Limited and then recovery be made from the owner of offending vehicle being respondent no.2 herein.

12. Thus, the appeal stands disposed.

13. The Judgement and Award dated 22nd November, 2011 passed by the learned Additional District Judge, 5th Court, Burdwan in MAC Case No.50 of 2010/270 of 2010 is modified to the extent that the respondent no.1 Royal Sundaram Alliance Insurance Company Limited shall pay compensation as awarded by the learned Trial Court. However, upon considering the submission of the learned advocate for Insurance Company and the fact that the compensation

should be just and reasonable, this Court is of the view that the interest awarded is excessive and thus, the claimant is entitled to interest of six per cent per annum and not 9% per annum from the date of filing of the claim being 03.09.2010 till today. Such deposit shall be made by the respondent no.1 Insurance Company before the Registrar General, High Court, Calcutta within eight weeks from date of communication of this order. Thereafter, the appellant shall be at liberty to withdraw the amount after compliance of all necessary formalities.

14. The respondent no.1 upon making such payment will be entitled to recover by instituting an execution proceeding before the self same court which has passed the award.

15. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Biswaroop Chowdhury, J.)