IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 263 of 2015

Kalimata Transport

VERSUS

Jamir Mallik @ Jamir Hossain & Ors.

For the appellant: Mr. Pradeep Kumar, Adv.
Mr. Saswata Bhattacharya, Adv.

For the respondent No. 2:

For the respondent No.3/Insurance Co.: Mr. Rajesh Singh, Adv.

Last Heard on: April 21, 2026

Judgment on: May 08, 2026

Biswaroop Chowdhury, J:

The appellant before this Court was an opposite party in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 22-04-2014 passed by Learned Additional District Judge 13th Court Alipore in. MAC Case No-29/2011.

The case of the respondent no. 1, and 2/claimants before the Learned Trial Court may be summed up thus:

On 03.02.2011 at about 10 a.m. while the victim was proceeding on his bicyle at that time the offending vehicle bearing No. WB-15A/7295. (Lorry) dashed against him and as a result the victim sustained injuries and died on the spot. The victim used to earn Rs. 3,200/- per month. Pursuant to filing of this case notice was issued upon the opposite parties. Opposite Party Bazaz. Allianz General Insurance Co. Ltd. contested the case by filing written statement but opposite party Kalimata Transport the appellant herein did not appear to contest the case. ISSUES were framed and evidence was adduced by the claimants and insurance company. The Learned Trial Judge by Judgment and Award dated 22-04-2014 was pleased to dispose of the claim case by observing and directing as follows:

'Hence ORDERED that the claim case be and the same is hereby allowed on contest against the O.P. No. 2, Bajaj Allianz General Insurance Co. Ltd. and ex-parte against the OP. 1, the owners of the offending vehicle. The petitioners are entitled to get a sum of Rs. 2,92,500/- towards compensation. They are also entitled to get interest @8% per annum from the date of filing of the case till realization of the awarded amount. The O.P. No. 1 owner of the offending vehicle is directed to pay the above amount of Rs. 2,92,500/- to the petitioners by issuing two account payee cheques of Rs. 1,46,250/- each in the names of Jamir Mallik @ Jamir Hossain Mallik, and Marjina Mallik, parents of the deceased victim along with interest @8% per annum from the date of filing of the case till realization of the above amount within two months from this date, failing which the petitioners shall have the liberty to put the order in execution.'

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

Heard Learned Advocates for the parties. perused the evidence adduced and materials on record.

Mr. Kumar Learned Advocate for the appellant/vehicle owner submits that the Learned Trial Judge erred in not appreciating the contents of Exhibit No. 2 and 3 being charge sheet and seizure list in connection with Budge Budge Police Station Case No. 37 dated 03-02-2011. It is apparent from the said Exhibits that the driving license of B. Roy the driver of the offending vehicle bearing No. WB115018353 valid upto 12-03-2011. It is evident that the driver was holding valid license at the time of accident.

Learned Advocate further submits that the D.W.-1 in her evidence and affidavit mentioned the exhibit 2 and 3 being charge sheet seizure list, and further claimed that she verified the same from the concerned RTO and furnished the particulars of said driving license. In her cross examination D.W.-1 contended that the particular of the driving license which are contrary to the particulars available at the time of charge sheet and seizure list. Moreover the seized driving license has not been called for in course of Trial. Nor investigating officer of the police case was called upon for adducing evidence in order to ascertain the authenticity of the seized Driving License.

Learned Advocate also submits that in evidence of P.W.-3 it has been clearly admitted that the old driving license number has been converted to the new digital number. The license was first issued on 10-03-1988 and same was renewed from time to time. The said license in the nature of non-transport license is valid upto 09-11-2016 and valid upto 2014 as transport license.

It is submitted by the Learned Advocate that the Learned Trial Judge erroneously held that there is a breach of contract between insurer and insured. It is further submitted the Learned Judge erred in observing that it cannot be argued without any evidence that the owner of the offending vehicle did not know at all that the driver of the offending vehicle was without valid driving license.

It is also submitted that at the time of engagement of the driver vehicle owner had seen his driving license of 1988 which has been renewed time to time and satisfied that the driver has valid and effective license for transportation of the vehicle.

Learned Advocate relies upon the following Judicial decisions:-

Sohan Lal Passi VS P. Sesh Reddy and ors.

Reported in (1996) 5 SCC. P-21.

Skandia Insurance Co. Ltd. VS Kakilaben Chandravadan and others.

Reported in (1987) 2 SCC 654.

Mr. Singh Learned Advocate for the respondent Insurance Company submits that from the deposition of P.W. 3 RTO it is clear that the Driving License of the driver with regard to Transport Vehicle was valid from 08-01-2005 to 06.01.2008 and from 21-04-2011 to 20-04-2014. Learned Advocate further submits that the date of accident is 03.02.2011 thus on the said date the driver was not having a valid driving license. Learned Advocate also submits that as on the date of accident the driver of the offending vehicle was not holding valid driving license there is breach of Insurance Policy and the Insurer is absolved and not liable to pay compensation.

Learned Advocate relies upon the following Judicial decision:-

Rama Bai VS M/S. Amit Minerals

Through Incharge Officer.

Civil Appeal No-9669 of 2024.

Supreme Court of India.

It is true that in case of breach of policy Insurance Companies are absolved from paying compensation and employing driver without valid driving license is a breach of condition of policy. In the instant case the driver of the offending vehicle was not having valid driving license on the date of accident. It is to be remembered that all breach of policy condition is not willful some may be bona fide, and Insurance Companies cannot be absolved in case of bona-fide breach.

In the case of Skanda Insurance Co. Ltd. VS Kakilaben Chandravadan and other reported in (1987) 2 SCC P-654 the Hon'ble Supreme Cort while dealing the conduct of driver in handing over the vehicle to cleaner did not absolve the Insurance Company from paying compensation. The Hon'ble Court while clarifying the concept 'breach' was pleased to observe as follows:

'The very concept of infringement or violation of the promise that the expression 'breach' carries within itself induces an inference that the violation or infringement on the part of the promisor must be a willful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be continuously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving license, that it can be said that he is 'guilty' of the breach of the promise that the vehicle will be driven by a licensed driver.'

The issue of being absolved of paying compensation or the right to recover after making payment of compensation was, dealt with and decided by this court in the case of National Insurance Co. Ltd. VS Liraza Bibi and Anr. FMA-1003 of 2025 and reported in MANU/WB/0213/2026. It was observed as follows:

'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.'

It was further observed as follows:

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."

It was also observed in the case of Lirasa Bibi as follows.

'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.'

In the instant case it is not a fact that the driver of offending vehicle was not holding a driving license at any point of time. The driver was holding a driving license which was renewed from time to time. It is also not the case the vehicle owner engaged a driver without driving license. In this case all that appears in on the date of accident the driver was not having a valid driving license.

The said license was subsequently renewed. Now whether the vehicle owner took necessary steps to verify the driving license from time to time or if there was sufficient cause for not verifying the same at the time of accident can only be ascertained upon causing enquiry and giving the vehicle owner of being heard. Upon causing enquiry and hearing the vehicle owner the Insurance Company can ascertain as to whether breach of condition is bona fide or willful, whether to proceed against vehicle owner for recovery in full or in part or to condone the breach or to settle the matter with certain conditions.

In the usual course the proper procedure is to remit the matter to Insurance Company to cause an enquiry and hear the vehicle owner and thereafter decide whether breach of condition was willful or bona fide. However considering the fact that this appeal is pending for about twelve years and the appellant vehicle owner has already deposited the compensation amount referring the matter back to the respondent Insurance Company for consideration and thereafter to Court if the vehicle owner is aggrieved will further cause delay and hardship to the parties. Thus the issue should be resolved in this appeal itself.

Upon considering the facts that the driver of the offending vehicle earlier had license which was extended from time to time, and that the fact after the accident also the said license was renewed it cannot be said that the breach was willful or that the vehicle owner was totally negligent.

However there was some negligence on the part of the vehicle owner, as on the date of accident the driving license of driver was not renewed. Thus in the view of this Court it would be just and proper to direct the appellant vehicle owner and respondent no-3. Insurance Company to share the compensation awarded equally. As the appellant vehicle owner/insured has already deposited the compensation amount in Court the Respondent no-3 Bazaz Allianz General Insurance Company Ltd. shall pay the appellant vehicle owner 50% of the Compensation amount.

Hence this Appeal FMA-263 of 2015 stands disposed. The Judgment and Award dated 22-04-2014 passed by Learned Additional District Judge 13th Court Alipore in MACC case No. 29 of 2011 stands modified to the extent that the appellant Kalimata Transport and respondent no-3. Bazaz Allianz General Insurance Co. Ltd. shall share compensation of Rs. 2,92,500/- along with interest as awarded by the Learned Trial Court equally. As the appellant vehicle owner has deposited the entire awarded sum along with interest, the respondent no-3 Bazaz Allianz General Insurance Co. Ltd. shall deposit before the Registrar General High Court Calcutta in favour of the appellant Rs. 1,46,250/- (Rupees one lakh forty six thousand two hundred and fifty) along with interest @8% per annum from date of filing of claim case till today. Such deposit shall be made within 8 weeks from the date of communication of this order. As respondent no-1, is dead respondent no. 2/claimant is entitled to withdraw the entire compensation amount deposited by Kalimata Transport Appellant herein along with accrued interest if any upon compliance of necessary formalities. Similarly upon deposit of 50% of the compensation amount by respondent no-3 Insurance Company along with interest the appellant will be entitled to withdraw the same upon compliance of necessary formalities.

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.)