Item No. 6 & 7 **10.06. 2026**

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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 144 of 2026
With
IA NO: CAN 2 of 2025
CANT 3 of 2026
The Oriental Insurance Company Limited
Vs
Smt. Gita Rani Betal & Ors.

With

COT 30 of 2026
Gita Rani Betal & Anr.
Vs.
The Oriental Insurance Company Limited & Anr.

Mrs. Suchotira Paul
… for the appellant in FMA 144 of 2026 and respondent no.1 in COT 30 of 2026.

Mr. Amit Ranjan Roy.
… for the respondents in FMA 144 of 2026 and appellant in COT 30 of 2026.

Learned advocates for the parties are present.

Heard learned advocates.

The appellant before this Court was an opposite party/insurance company in a claim case under Section 163A of the Motor Vehicles Act, 1988 and is aggrieved by the judgment and award passed by the Learned Additional District Judge, Haldia, Purba Medinipur in MACC No. 7 of 2016.

The respondent nos. 1 and 2/claimants before the Learned Trial Court have also filed an application for enhancement of the compensation. The ground of challenge in this appeal by the appellant/insurance company is that the Learned Trial Court although came to a finding that the driver of offending vehicle was not having a valid license and further observed that the appellant/insurance company is entitled to recover the compensation but the same liberty is not granted in the order of compensation. Learned advocate submits that the once it is held by the Learned Trial Court that driver was not having valid license, the appellant/insurance company is entitled to proceed against the vehicle owner for recovery of the compensation amount in accordance with law. Learned advocate for the respondent nos. 1 and 2/claimants although does not dispute the submission of learned advocate for the appellant/insurance company but submits that the compensation claim Under Section 163A of the Motor Vehicles Act, 1988 as per the amended provision, the claimants are entitled to Rs.5,00,000/- which the Learned Trial Court erred in not awarding.

Upon perusing the award passed by the Learned Trial Court and considering the provision of amended Section 163A of the Motor Vehicles Act, the amount of compensation shall be Rs.5,00,000/-.

Thus, the respondent nos. 1 to 2/claimants are entitled to Rs.5,00,000/- from the appellant/ The Oriental Insurance Company Limited.

With regard to the principle of pay and recovery, it appears that the Learned Trial Judge did not grant the recovery of the compensation amount from the vehicle owner being the respondent no.3 in the instant appeal.

Thus, in order to recover the compensation amount from the vehicle owner the principle as laid down in the decision of Lirasa Bibi Vs. United India Insurance Company Limited being FMA 1003 of 2025 should be followed. In the case of Lirasa Bibi Vs. United India Insurance Company Limited 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.'

Thus the observation made in the case of Lirasa Bibi should be followed by the appellant/insurance company to recover the compensation amount from the vehicle owner/respondent no.3 herein. The respondent no.3 shall be given an opportunity of being heard before a decision is taken in this regard by appellant. All relevant points are kept open before the learned trial Court/Executing Court.

As this appeal stands disposed of, the appellant/insurance company shall pay Rs.5,00,000/- along with interest @6% per annum from the date filing of the claim case till today. Such payment shall be made by depositing before the Registrar General, High Calcutta within eight weeks from the date of communication of this order.

In the event the compensation awarded by the learned Trial Court is already deposited the balance amount be deposited within eight weeks.

The claimants/respondent nos. 1 and 2 will be entitled to withdraw the compensation upon compliance of all necessary formalities.

Both **FMA 144 of 2026** along with **COT 30 of 2026** stands disposed of.

(Biswaroop Chowdhury, J.)