IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A.T. (MV) 70 of 2025

With

CAN 2 of 2025

Sri Mrinmoy Sam

VERSUS

Smt. Shila Biswas & Ors.

For the appellant:	Mr. Krishna Banik, Adv. Mr. Tathagata Banik, Adv.
For the respondent no. 3/Insurance Co.:	Mr. Rajesh Singh, Adv.

Last Heard on: February 24, 2026

Judgment on: May 15, 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 01-04-2024 passed by Learned Additional District Judge 2nd Court Suri Birbhum in MACC No-187/2015.

The case of the claimants/respondents no. 1 and 2 before the Learned Trial Judge may be summed up thus;

On 29-09-2014 at 16.00 hrs the victim and his friend were going by motor cycle bearing no. WB-54L/2022 at Dubrajpur Illambazaz Highway. The said motor cycle bearing no. WB-54L/2022 on Dubrajpur Illambazar Highway. The said motor cycle was driven by Dayamay Hazra and Tanmay Biswas was the Pillion rider of the said motor cycle. The said motor cycle was proceeding towards Illambazar and from Dubrajpur and with excessive high speed rash and negligently and near Sunmuni bus stop the said motor cycle dashed one Kalipada Baski and his wife heavily and they also fell down and received serious injuries and both of them died shortly. The accident took place due to rash and negligent driving by the driver of the said motor cycle.

The victim was a fruitseller and used to earn Rs. 3,300/- per month.

Pursuant to filing of this case notice was issued upon the opposite party vehicle owner and opposite party Insurance Company. Opposite party vehicle owner did not contest the case. Opposite party United India Insurance Co. Ltd contested the case by filing written statement. ISSUES were framed and evidence was adduced. Learned Trial Judge upon considering the evidence adduced and upon hearing the Learned Advocates was pleased to dispose the claim case by observing and directing as follows:

‘Hence it is ORDERED that the MAC Case being no-187/2015 be and the same is hereby allowed on contest against the OP/United India Insurance Co. Ltd.

That the petitioner no. 1 Shila Biswas and 2. Bhagrirath Biswas are being the legal heirs of the deceased Tanmoy Biswas are entitled to get compensation of Rs. 500,000/- (Rupees five lakh) only along with interest @9% from the date of filing this case (04.09.2015) and increased @5% of compensation amount per year from 25-04-2019 to till final realization of the compensation amount u/s. 163A of the MV Act from the OP/United India Insurance Co. Ltd. The claimants/petitioners also entitled to get cost of litigation from the OP/United India Insurance Co. Ltd.

The O.P./United India Insurance Co. Ltd. is hereby directed to pay the aforesaid amount of Rs. 500,000/-(Rupees five lakhs) only along with interest and enhanced increased amount and cost of litigation as aforesaid by issuing an account payee cheque in the name of the petitioners/claimants as aforesaid within two months from this date. The insurance company first shall pay the compensation and for want of driving license the insurance company shall recover the amount from the owner.

The appellant/vehicle owner being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up will the instant appeal.

Heard Learned Advocate for the appellant and Learned Advocate for the respondent no-3/insurance company. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the respondent no-3 Insurance Company could not establish before the Learned Trial Court that the offending vehicle was driven without valid driving license. Thus the Learned Trial Judge erred in directing recovery from the vehicle owner.

Learned Advocate for the respondent no-3 Insurance Company submits that vehicle owner did not appear and prove that the driver had valid driving license thus it is an admitted position there was no driving license.

The following decisions are relied upon.

Lal Chand VS Oriental Insurance Company Ltd.

2006 (3) TAC-321(S. C.)

Iffco Tokio General Insurance Co. Ltd. VS Geeta Devi and ors.

Reported in 2023 ACJ 2701.

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

Reported in AIR-1987 S.C. 1184.

Hind Samachar Ltd. (Delhi Unit) VS National Insurance Co. Ltd. and ors.

2025(4) TAC. 358(SC).

In the instant case the Learned Trial Court absolved the Insurance Company from paying compensation on the ground the driver did not hold a valid license. Now upon perusing the evidence of OPW-1 who was the investigating officer of the accidental death case in his examination in chief has stated that all the articles of the offending vehicle being no. WB54L. 2202 except Driving License of the offending driver was seized. He further stated that he did not take any steps for want of driving license of Dayamay Hazra.

In cross examination OPW. 1 stated that he did not search whether the Driving license of the offending driver was in his pocket or not.

At the very outset it is to be considered that there was no issue framed whether driver of offending vehicle had driving license, and it is on the basis of the evidence of Investigating Officer Learned Court came to the conclusion that as no driving license was seized from the offending vehicle the driver of offending vehicle was driving without driving license. Mere non-seizure of driving license is not sufficient to conclude that driver was driving without driving license.

Section 3 of the Motor Vehicles Act 1988 provides that no person shall drive a motor vehicle in any public place. Unless he holds an effective driving license issued to him authorising him to drive and Section 5 of the said out prohibits the owner or person in charge of the vehicle to permit a person to drive the vehicle without driving license. Section 180 of the Act provides that whoever being the owner or person in charge of a motor vehicle causes or permits any other person who does not satisfy the provisions of Section 3 or Section 4 of the Act to drive the vehicle shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or both. Thus it is clear that a owner of vehicle cannot permit a vehicle to be driven by any person who is not having driving license to drive the said vehicle. However it is also clear from section 180 that the allegation of permitting a vehicle to be driven without driving license must be proved. Thus mere non availability of driving license inside the vehicle is not a ground to conclude that the driver did not have a valid driving license. Although a driving license is one of the valid documents to be kept with the person who drives the motor vehicle but it is not necessary that the said license has to be kept inside the vehicle. A person may keep his driving license in his custody, which may be his pocket or money purse. Moreover in the instant case the driver of the offending motor cycle was not owner. When a person is driving motor cycle of another person it is quite natural that driving license will not be kept inside the vehicle. The police authority did not search the pocket of victim driver and being uncertain as to whether vehicle was driven without driving license could not submit charge-sheet against appellant/vehicle owner under Section 180 of the Motor Vehicles Act 1988. When there is uncertainty pursuant to investigation by Police Authority it cannot be said that the offending vehicle was permitted to be driven without driving license.

Now the second point to be taken into consideration is whether owners of vehicle are duty bound to peruse the driving license before permitting any person to drive the vehicle owned by him and keep a Xerox copy inside the vehicle. This issue has two fold aspects. Firstly when a vehicle owner employs a paid driver to ply his vehicle, he is under obligation to ascertain as to whether the driver engaged by him has a valid driving license. Secondly in case where vehicle owner permits his vehicle to be used by a person on one occasion where the said person is known to the vehicle owner and is having ability to drive vehicle to the knowledge and belief of the vehicle owner, in such a case perusal of driving license of such person may not be strictly required. In the event the vehicle owner has acted bona-fide he cannot be alleged to have violated policy conditions. On the other hand the person not having driving license if drives the vehicle will be guilty under Section 181 of the Motor Vehicles Act 1988. As the vehicle driven was motor cycle and the motor cycle is not driven by owner of the vehicle, and paid drivers are usually not engaged to ply motor cycle it can be reasonably presumed that driver of the motor cycle was not paid driver engaged by vehicle owner.

As man is a social being and comes in contact with different people and faces different situations, at times a vehicle owner is required to permit his vehicle to be driven by another person who is not his paid driver in case of exigency for his own need, and in some situations of exigency a vehicle owner have to permit his vehicle to be used by another person in case of urgent need of the said person. In both the cases it may not be feasible to peruse the driving license of the said persons but simple knowledge and belief about the said persons ability to drive and bona-fide belief of their having driving license may be sufficient. Thus upon discreet enquiry by Insurance Company it can be ascertained as to whether the act of violation policy condition by the vehicle owner was wilful or bona fide.

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 2026:CHC-AS:691 7 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.'*

Upon considering the facts of the case and considering the judicial decisions this Court is of the view that although no driving license was recovered from the offending vehicle but neither police authority came to a finding nor the Insurance Company conducted enquiry whether the offending vehicle was driven without driving license. However, it appears from record that the contention made by the respondent no-3 in written statement that the appellant/vehicle owner did not comply with the provisions contained in Section 134(c) of the Motor Vehicles Act 1988 by furnishing to the Insurance Company date particulars of the accident particulars of injury, name of driver, and particulars of policy. Thus there is a violation of the provision of Section 134(c) of Motor Vehicles Act which is punishable under Section 187 of the Motor Vehicles Act 1988. Hence some negligence is there on the part of vehicle owner appellant. Thus the vehicle owner/appellant should be directed to bear some portion of the compensation liability. In the facts of this case it would be just and reasonable to direct appellant/vehicle owner to bear 5% of the compensation awarded which comes to Rs. 25,000/-.

Hence this Appeal FMAT (MV) 70 of 2025 stands disposed. The Judgment and Award dated 07-02-2024 passed by Learned Additional District Judge 2nd Court Suri Birbhum in MAC Case No-187 of 2015 stands modified to the extent that the appellant/vehicle owner shall bear 5% of the principal compensation awarded, which comes to Rs. 25,000/-. The appellant shall pay Rs. 25,000/- to respondent no-3 United India Insurance Company Ltd. within 8 weeks from the date of communication of this order. The payment may be made directly to the Insurance Company or deposited in the Executing Court. On deposit/payment of Rs. 25,000/- the Execution case will stand disposed. In the event there is failure the amount shall be recovered in accordance with law.

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.)