IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1194 of 2025

With

IA NO: CAN 2 OF 2025

CAN 3 OF 2025

National Insurance Co. Ltd.

VERSUS

Lakshmi Kanta Patra & Anr.

For the Appellant: Mr. M.P. Chakraborty, Adv.
Ms. Ratnadipa Karmakar, Adv.

For the Respondents: Mr. Amit Ranjan Roy, Adv.

Last Heard on: December 08, 2025

Judgment on: January 19, 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 30th January 2025 passed by Learned Additional District Judge 2nd Court Tamluk Purba Medinipur in MAC Case No-83 of 2013.

The case of the claimants/respondent no-1 may be summed up thus:

On 27-07-2013 at about 8.30 P.M while the claimant was standing along with some other persons in front of Santu Jewellery at a safe distance about 7 ft. from the bus road at that time the offending truck being no-WB-29A/3600 was coming from Mecheda side in a terrific high speed suddenly at the place of occurrence front wheel of the offending vehicle no-WB-29A/3600 opened from the chassis and dashed the claimants and others standing in a great force.

As a result of the accident the claimant and others suffered bleeding injury dangerously. The claimant/respondent no-1 received injury on her left leg and also on her head. At first the claimant was admitted at SAB Nursing Home at Durgachok then for better treatment she was admitted at CMRI Kolkata where she was treated upto 21.08.2013 and second time she was admitted on 28.08.2013 and treated upto 04.9.2013. The expenses incurred for the treatment of claimant is more than Rs. 700,000/- The claimant is fully unemployed and not fit to do anything. The accident took place due to rash and negligent driving by driver of offending vehicle being WB-29A/3669 (Truck).

Pursuant to the filing of claim case notice was issued upon the appellant and respondent no-2 being the opposite parties of the said claim case.

The appellant Insurance Company contested the case by filing written statement. The respondent no-2 owner of the vehicle although appeared but did not contest the case.

The Learned Trial Court by Judgment and Award dated 30.01.2025 was pleased to dispose the claim case by observing and directing as follows:

'Hence, it is ordered that the instant MAC Case No. 83 of 2013 (Registration No.-1823/2014) u/sec. 166 of the MV Act be and the same is allowed on contest against OP-2 ie. National Insurance Co. Ltd. and ex-parte against OP-1 Lutfannesa Begam owner of the offending vehicle bearing No-WB-29A/3660 but without any order as to costs.

The claimant Lakshmi Kanta Patra do get an award of Rs. 4,84,344/- (Rupees four lakh eighty four thousand three hundred forty four only) together with an interest @6% p.a. from the date of filing of the instant case till the payment by OP No. 2/National Insurance Co.Ltd.

The OP-2/National Insurance Co. Ltd. is hereby directed to pay the awarded amount with interest by an A/C payee cheque in the name of claimant Lakshmi Kanta Patra. The O.P.-2/National Insurance Co. Ltd. is further directed to issue the said cheque within one month from the date of this order, failing which the awarded amount shall carry further interest @ 8% p.a. from the date of this Order till realization of that amount.'

The appellant being aggrieved by the Judgment and Award dated 30/01/2025 passed by the Learned Trial Judge has come up with the instant appeal.

It is the contention of the Appellant that the Learned Trial Judge erred in passing the award without considering that though the Driving License was seized but the validity of Driving License was not confirmed. It is further contended that the Learned Trial Judge erred in not allowing the Insurance Company to recover the awarded sum from owner of vehicle. It is also contended that the interest awarded is arbitrary as several adjournments were obtained by the claimants.

Heard Learned Advocate for the Appellant and Learned Advocate for the respondent no-1/claimant perused the materials on record.

Learned Advocate for the Appellant submits that the Learned Trial Judge erred in directing the appellant Insurance Company to pay the compensation without granting leave to the Appellant to recover the same from the owner of the offending vehicle being respondent no-2 herein. Learned Advocate further submits that the Learned Trial Court ought to have granted leave to recover the awarded sum from the owner of the vehicle Learned Advocate also submits that leave be granted to recover the awarded sum from the respondent no-2 the owner of the offending vehicle. Learned Advocate relies, upon the following decision of a Learned Co-ordinate Bench of this Court.

FMA-148 of 2023.

The Oriental Insurance. Co. Ltd. VS Aysa Khatoon and ors.

Upon perusing the materials on record and upon hearing the learned Advocates it appears that the point regarding driver of the offending vehicle not holding valid license was not argued before the Learned Trial Court nor any evidence was adduced in this regard. The Police Authority has seized from the driver of the offending vehicle driving license along with other documents. In the event the appellant had any doubt about validity of the driving license the appellant could have caused necessary, enquiry, gave the vehicle owner an opportunity of being heard, filed an additional written statement and adduced necessary evidence, but all these steps are missing.

In the event the Insurance Company seeks to obtain an order of payment and recovery the breach of policy condition has to be established before Court by adducing evidence which is not done in this case.

In the case of K. Nagendra VS The New India Insurance Company Ltd. reported in 2025 INSC. 1270 the Hon'ble Supreme Court observed as follows:

""25.... The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and

believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person."

In the case of National Insurance Co. Ltd. VS Chella Bharathamma and ors. in Appeal (Civil)-6178 of 2004 before the Hon'ble Supreme Court the Hon'ble Court observed as follows:

'Sub-Section (7) of Section 149 of the 1988 Act clearly indicates in what manner sub-Section (2) of Section 149 has to be interpreted. Sub-Section (7) of Section 149 provides that no insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section 3 otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be. The expression 'manner' employed in sub-section (7) of Section 149 is very relevant which means an insurer can avoid its liability only in accordance with what has been provided for in sub-section (2) of Section 149. It therefore shows that the insurer can avoid its

liability only on the statutory defences expressly provided in sub-section (2) of Section 149 of the 1988 Act. We are therefore of the view that an insurer cannot avoid is liability on any other grounds except those mentioned in sub-section (2) of section 149 of the 1988 Act.

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

'67. 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 Sohan Lal Passi")'

In the case of Sohan Lal Passi reported in (1996) 5 SCC P-21 the Hon'ble Supreme Court observed as follows:

'The road accidents in India have touched a new height. In majority of cases because of the rash and negligent driving innocent persons become victims of such accidents because of which their dependants in many cases are virtually on the streets. In this background the question of payment of compensation in respect of motor accidents has assumed great importance for public as well as for courts. Traditionally before the Court directed payment of tort compensation it had to be established by the claimants that the accident was due to the fault of

the person causing injury or damage. Now from different judicial pronouncements it shall appear that even in western countries fault is being read and assumed as someone's negligence or carelessness. The Indian parliament, being conscious of the magnitude of the plight of the victims of the accidents has introduced several beneficial provision to protect the interest of the claimants and to enable them to claim compensation from the owner of or the insurance company in connection with the accident.'

In the case of Reliance General Insurance Company Ltd. VS Niyati Kumar and other being FMA-1326 of 2025 With COT 146 of 2024 a single Bench of this Court, while refusing the plea that vehicle violated condition of policy was pleased to observe 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.

In the instant case the Appellant Insurance Company has merely alleged that the vehicle was driven without permit on the ground permit was not seized by Police Authority but no steps were taken to conduct an enquiry and to examine officers of Regional Transport Authority as witness with regard to permit of the vehicle.

In this regard it is necessary to quote the observation of the Hon'ble Supreme Court in the case of Swaran Singh (supra).

The Hon'ble Supreme Court in the case of Swaran Singh (supra) 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 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."*

Upon considering the Judicial decisions and the facts of the case this Court is of the view that the Appellant National Insurance Company Limited failed to prove that there was breach of condition of police by conducting necessary enquiry and adducing evidence.

Thus this Appeal FMA-1194/2025 fails and the same is dismissed. However the direction of the Learned Trial Court that the Appellant Insurance Company shall pay additional 8% interest in the event payment is not made within one month is hereby set aside. The Respondent no-1 claimant is entitled to withdraw the awarded sum along with interest @6% p.a. from date of filing of claim case till date of deposit including accrued interest. The residuary amount if any along with accrued interest be returned to the Appellant National Insurance Company Limited.

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.)