IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1016 of 2025

Smt. Sudha Devi

VERSUS

The New India Assurance Company Ltd. & Ors.

For the appellant/claimant:	Mr. Subir Banerjee, Adv. Mr. Sandip Bandyopadhyay, Adv. Ms. Ruxmini Basu Roy, Adv.
For the respondent No.1/New India Assurance Company:	Mr. Rajdeep Bhattacharya, Adv.
For the respondent No.2/Bajaj Allianz General Insurance Company:	Mr. Soumalya Ganguli, Adv.

Last Heard on: February 18, 2026

Judgment on: May 22, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was a claimant in a case under Section 163A of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 24-05-2016 passed by Learned Additional District Judge 4th Court Jalpaiguri in MAC Case No. 165 of 2011.

The case of the appellant/claimant before the Learned Trial Court may be summed up thus;

On 21-06-2011 at about 2.30 AM. while Dinesh Prasad @ Yadav was proceeding towards Assam from the side of Siliguri by one Truck-Trailer bearing no. JH-09-N-1246 in the capacity of a Khalasi at that time near Himalayan Cold Store, Maynatali under P.S. Dhupguri one truck bearing no. AP-27-X-2139 which was proceeding towards Siliguri collided with each other. As a result the said deceased sustained serious injuries on his person and died on spot. The deceased was Khalasi by Profession and used to earn a sum of Rs. 3,000/- per month from the owner of truck trailer and the accident occurred out of the involvement of both the offending vehicle bearing no JH-09-N. 1246 (truck trailer) and AP-27 X-2139 (truck).

Pursuant to the filing of this case notice was issued upon the opposite parties. Opposite Parties vehicle owner of AP 27-X-2139, and JH-09-N-1246 filed written statement but did not contest the case. Opposite parties New India Assurance Company Limited and Bajaj Allianz General Insurance Company Limited, contested the case by filing written statements. ISSUES were framed and evidence was adduced.

Learned Trial Judge upon considering the evidence adduced and upon hearing the parties was pleased to dispose the claim case by observing and directing as follows:

'Hence it is ORDERED that the MAC Case No. 165/2011 be and the same is allowed on contest against the OP. No. 3 New India Assurance Company Limited and allowed ex-parte against the OP No-2 Manjesh Singh and dismissed against OP No. 4 Bajaj Allianz General Insurance Company Limited.

The petitioners are entitled to get Rs. 4,17,500/- along with interest at the rate of 6% per annum from the date of filing of the application i.e. on 13-07-2011.

The OP No-3 New India Assurance Company Limited is directed to Pay 50% of the total amount i.e. Rs. 2,08,750/- and also directed to pay 50% of the total amount i.e. Rs. 2,08,750/- and also directed to issue account payee cheque of Rs. 1,04,375/- to the name of each petitioners, namely petitioner no-1 Smt Subas Devi and petitioner no. 2 Smt Sudha Devi along with interest at the rate of 6% per annum from the date of filing of the application i.e. on 13-07-2011 within two (2) months from the date of receiving of this order failing which the OP No. 3. New India Assurance Company Limited will be liable to pay 50% of the amount i.e. Rs. 2,08,750/- along with interest at the rate of 9% per annum from the date of filing of the application i.e. on 13-07-2011.

The OP No-2 Manjesh Singh is also directed to pay 50% of the total amount i.e. Rs. 2,08,750/- and also directed to pay Rs. 1,04,375/- to each petitioners, namely petitioner no. 1 Smt Subas Devi and petitioner no. 2. Smt. Sudha Devi along with interest at the rate of 6% per annum from the date of filing of the application i.e. on 13-07-2011 within two (2) months from the date of receiving of this order failing which the OP No. 2 Manjesh Singh will be liable to pay 50% of the total amount i.e. Rs. 2,08,750/- along with interest at the rate of 9% per annum from the date of filing of the application i.e. on 13-07-2011.'

The appellant being aggrieved by the Judgment and Award passed by the Learned Trial Judge in not directing upon the New India Assurance Company Ltd. and Bazaz Allianz General Insurance Company Limited to share the compensation equally has come up with the instant appeal.

Heard Learned Advocate for the appellant and Learned for the respondents Bajaj Allianz General Insurance Co. Ltd. and New India Assurance Company Limited. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that it is a case of composite negligence and the Learned Trial Judge ought to have directed the New India Assurance Company Limited to pay the entire amount and recover the same from Bazaz Allianz General Insurance Company Ltd.

Learned Advocate for the respondent Bazaz Allianz General Insurance Company Ltd submits that Khalasi is not a third person and in the instant case extra policy Premium is not paid to bring Khalasi within the purview. Thus Bazaz Allianz General Insurance Company Limited is not Liable.

The following decisions are relied upon by the Learned Advocates:

New India Assurance Co. Ltd. VS Urmila Halder.

Reported in 2024 SCC Online SC 4983.

Jahura Bewa and ors. VS New India Assurance Company

Reported in (2012) 1WBLR (Cal), 147.

Oriental Insurance Co. Ltd. VS Sudhakaran KV and ors.

Reported in AIR 2008 S.C. 2729.

Khenyei VS New India Assurance Company Ltd.

Reported in (2015) 9 SCC. 273.

TO. Anthony VS Karvarnan and others.

Reported in (2008) 3 SCC -748.

National Insurance Company Limited and Anr. VS Shyamali Biswas.

FMA-1776 of 2018

(High Court Calcutta)

FMA-3282 of 2013.

Papiya Pakhira and ors. VS Royal Sundaram and Anr.

High Court Calcutta.

Now the point for consideration is whether Khalasi is a third party under Motor Accident Insurance Claim or a Gratuitous passenger.

As per the deposition of D.W. 1 for Bazaz Allianz General Insurance Company Limited the said policy was taken to cover 3rd party risk against premium of Rs. 6,770/- and also premium of Rs. 25/- was taken to cover the risk of LL to person for operation/maintenance of one person that is the paid driver and with a further Rs. 100/- premium was taken for PA cover of the owner cum driver. However upon perusal of the Insurance Policy marked Exhibit 'B' it appears that driver means 'Any person including the insured provided he has effective driving license.' It further provides that LL for operation/Maintenance for 1 person. The said clause does not provide that LL for operation/maintenance means paid driver. Further the said clause does not specifically exclude the Khalasi. It is well known that in all goods vehicle/truck there is Khalasi to assist the driver and look after the maintenance aspect also. Thus unless Khalasi is specifically excluded it cannot be said that Khalasi is not covered under the Policy, being maintenance staff.

The decision of the Hon'ble Supreme Court in the case of Oriental Insurance Co. Ltd VS Sudha Kaur KV andors. (supra) relied upon by the Learned Advocate for the respondent Bazaz Allianz General Insurance Company Ltd. is not applicable to the facts of the case. The said case dealt with Pillion rider of motor cycle and the present case is with regard to Khalasi of truck.

In the facts and circumstances as observed above it can be concluded that Khalasi is covered under the policy of Insurance of Bazaz Allianz General Insurance Co. Ltd. being helper cum maintenance staff. Thus respondent Bazaz Allianz General Insurance Company Ltd. is liable to pay 50% of the compensation.

Hence this Appeal FMA 1016 of 2025 stands disposed. The Judgment and Award dated 24-05-2016 passed by Learned Additional District Judge 4th Court Jalpaiguri in MAC Case No-165 of 2011 stands modified to the extent that Respondent no-2 Bazaz Allianz General Insurance Company Limited shall pay the Appellant Rs. 2,08,750/- along with interest @6% p.a. from date of filing of claim case till today. The payment shall be made by making deposit before the Registrar General High Court Calcutta within 8 weeks from the date of communication of the order.

The appellant will be permitted to withdraw the compensation amount 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.)