IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 288 of 2024

National Insurance Co. Ltd.

VERSUS

Sandhya Keora And Ors.

With

COT 22 of 2023

Sandhya Keora And Anr.

VERSUS

National Insurance Co. Ltd. & Anr.

For the appellant: Mr. Sanjay Paul, Adv.

For the respondents/claimants: Mr. Subhankar Mondal, Adv.

Last Heard on: February 04, 2026

Judgment on: February 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 26-08-2022 passed by Learned Additional District Judge 2nd

Court Asansol Paschim Bardhaman in MAC Case No-52 of 2016. The respondent no-1/claimants also being aggrieved by the Judgment and Award passed by the Learned Trial Judge has filed a cross objection.

The case of the respondent no-1/claimant before Learned Trial Court may be summed up thus:

On 28/06/2015 at about 17.35 hrs, the victim Suresh Keora was going towards Kulti side from his working place i.e. Kumarpur of Asansol through G.T. Road by riding his Motor Cycle bearing No-WB/44C-0921, in his left side of the road with moderate speed. When he reached near New Road of Neamatpur, under P.S. Kulti at that time, another Motor Cycle bearing No-WB/38J-9128, which was also proceeding in a same direction dashed the side Motor Cycle, from its' back rashly and negligently, with high speed. As a result of such accident the victim fell down by the side of the road from the Motor Cycle and sustained multiple grievous bleeding injuries all over the body and head as evident from P.M. report. Soon after the accident the nearby persons have arranged to sent the victim to Astha Hospital Asansol for better treatment. Due to non-availability of the expert doctor the victim was shifted to Vivekananda Hospital Private Limited, Durgapur where the victim succumbed to his above injuries on 02/07/2015.

Thereafter the P.M. examination was done by the Autopsy surgeon S.D. Hospital Durgapur vide NTS. P.S. UD case No. 294/2015 dt. 03/07/2015.

The victim had no fault at all for this accident and it actually took place due to the fault of the driver of the Motor Cycle no-WB-/38J-9128.

The victim was very energetic person having good and sound physique. The victim was a permanent employee of Bharat Sanchar Nigam Limited (A Govt. of India Enterprise) as a Regular Mazdoor. The victim would have bright future in his service carreer if he would have been alive. Due to such accident the claimants/petitioners have suffered irreparable loss, which cannot be compensated by way of money but the amount claimed will help them to survive.

Pursuant to filing of the claim case notice was issued upon the opposite parties. Opposite Party National Insurance Company contested the case by filing written statements. Opposite Party vehicle owner although filed written statement but did not contest the case. ISSUES were framed and evidence was adduced. Learned Trial Court upon perusing the evidence and hearing the Learned Advocates was pleased to dispose of the claim case by observing and directing as follows:

Hence it is ORDERED that the MAC case No. 52 of 2016. (15 of 16) CIS Regd. No. 86 of 2016 be and the same is allowed on contest without any cost against the OP no. 2./National Insurance Company Ltd. and ex-parte against the O.P., No. 1 the owner of the offending vehicle being No. WB/38-J-9128.

The claimant do get an award of Rs. 22, 59, 616- (Twenty Two Lakh Fifty Nine Thousand Six Hundred Sixteen only) in this proceeding subject to deposit of deficit Court fee.

The OP no-2 National Insurance Company Ltd. the Insurer of the offending vehicle being No. WB/38J-9128 is directed to pay the compensation of Rs. 22,59,616/- (Twenty Two Lakhs Fifty Nine Thousand Six Hundred Sixteen only) to the claimant/wife i.e. petitioner no. 1 and her daughter i.e. petitioner no. 2 by two account payee cheques of Rs. 11,49,808/- to the petitioner no. 1 being the spouse of the deceased and Rs. 11,09,808/- to the petitioner no. 2 being the daughter of the deceased through the Tribunal within two months hereof with the interest at the rate of 6% per annum on the amount of compensation from the date of filing of application till realization in full subject to deposit of deficit court fees.'

The Appellant National Insurance Co. Ltd. being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal. The respondent no-1 and 2/claimants also being aggrieved by the Judgment and Award passed by the Learned Trial Judge has filed a cross objection.

Learned Advocate for the appellant submits that the FIR was lodged after 26 days from the date of accident which makes the case of the claimant doubtful. Learned Advocate further submits that the driver of the motor cycle was not having valid driving license thus the award ought not to have been passed against the Insurance Company. Learned Advocate also submits that Award cannot be sustained.

Learned Advocate for the respondent no-1, and 2/claimants submits that the delay in lodging FIR is explained Learned Advocate further submits that the driver of the motor cycle was holding driving license to drive light Motor Vehicle Non Transport WEF 26/04/2013. Learned Advocate also submits that the Learned Trial Court erred in not awarding future prospects to the extent of 15%, thus the compensation awarded should be enhanced.

With regard to the first submission of the Learned Advocate for the appellant that there was delay in lodging the FIR it appears that the accident took place on 28-06-2015, and pursuant to the accident the victim was admitted to hospital where the victim died on 02/07/2015. The FIR was lodged on 21-07-2015. The FIR maker in the FIR itself has stated that due to the treatment of her father in hospital till his death and thereafter for the purpose of completing the rituals there was delay in lodging the FIR. It is held in different Judicial pronouncements that in Indian Society after accidents members of the family rushes towards hospital and not for lodging FIR. In the instant case the victim after accident was admitted to hospital where he died after three days. Pursuant to the death on 2/07/2015 the FIR was lodged on 21/07/2015. It is quite natural that when a near relation is lost in road accident the members of the family will be in a state of depression and it takes time to recover partially from the depression to resume normal work and then lodge FIR along with compensation claim case. Moreover on the death of a member, to complete the rituals it takes about 10 to 12 days and this period being the mourning period. Thus mere delay in FIR is not fatal in a claim case. In the instant case as the FIR maker/claimant has explained the grounds of delay in the FIR and the delay should not be viewed with suspicion.

With regard to the second argument of the Learned Advocate for the appellant that the driver of offending vehicle being WB-38J-9128 was permitted to drive LMV (Non Transport) and not Motor Cycle and hence there was violation of policy for which Insurance Company is not liable to pay compensation, it is settled that when there is violation of policy condition the Insurance Company upon payment of the compensation may recover the same in accordance with law. However to recover the compensation the Insurance Company has to follow certain procedures by conducting enquiry and giving the vehicle owner an opportunity of being heard.

In the case of National Insurance Co. Ltd. VS Lizasa Bibi and Anr. FMA. 1003 of 2025 (Calcutta High Court) it was observed 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 case of Reliance General Insurance Company Ltd. VS Niyati Kumar and ors 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.*

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 the instant case although Investigator from the Insurance Company conducted investigation and collected driving license and documents of the offending vehicle but the opposite party Insurance Company on the said documents did not come to a finding that there is a violation of policy condition and neither made prayer before Court for framing such issue of violation of policy condition and adduce evidence in this regard by examining necessary witnesses. Neither did the Insurance Company issue notice to the insured/vehicle owner, to seek explanation from the said owner and ascertain as to whether the act of the vehicle owner/insured is deliberate or bona-fide. Moreover the opposite party Insurance Company did not examine officials of the Motor Vehicles Authority who would have been in a position to state as to whether motor cycle can be driven with LMV license, nor the vehicle owner is examined. Thus in the facts and circumstances it cannot be held that there was violation of policy condition. Hence the Learned Trial Judge rightly allowed the claim case and granted compensation, by issuing direction upon Insurance Company and by not directing recovery.

Now with regard to the quantum of compensation it appears that the Learned Trial Judge considered the Net Salary by deducting GPF, profession Tax GSLIS MOU Bank and others. However the income to be considered for the purpose of computing compensation is the income which remains after deducting Income Tax and Profession Tax.

In the instant case Learned Trial Court considered the monthly income to be Rs. 34,340/-. Although profession tax is uniformly deducted Rs. 150/- per month, the income tax deduction in different months varies; In one month deduction is 409, another it is 410, and there is no Income Tax Return document, thus average Income Tax deduction is considered as Rs. 500/- per month. Thus deduction on account of Income Tax and profession Tax comes to Rs. 650/- per month. Thus the monthly income after deduction of tax comes to Rs. 33,690/-. The annual income comes to Rs. 4,04,280/-. Hence it would be reasonable to proceed by considering yearly income to be Rs. 400,000/-. 15% future prospect taken into consideration the income comes to Rs. 4,60,000/-. 1/3rd being deducted on account of personal expenditure the income comes to Rs. 3,06,667/-. Thus the annual dependency loss comes to Rs. 3,06,667/-. As the victim was 52 years of age multiplier to be applied is 11. The total dependency loss comes to Rs. 33,73,337/- Further the claimants are entitled to general damages of Rs. 70,000/-. Thus Rs. 34,43,337/- is the total compensation which comes by arithmetical calculation. However this Court is of the view that compensation of Rs. 34,00,000/- is just and reasonable.

Hence FMA-No-288 of 2024 along with COT. 22 of 2023 stands disposed. Judgment and Award dated 26-08-2022 passed by Learned Additional District Judge 2nd Court Asansal Paschim Bardhaman in MAC Case No. 52 of 2016 stands modified to the extent that the respondents no. 1, and 2/claimants are entitled to Rs. 34,00,000/- from the Appellant National Insurance Company Ltd. The Appellant Insurance Company shall deposit Rs. 34,00,000/- before the Registrar General High Court Calcutta along with interest @6% per annum from the date of filing of claim case till today. Such deposit shall be made within 8 weeks from the date of communication of the order. In the event amount directed by Learned Trial Court is already deposited balance amount shall be deposited.

The claimants/respondents are entitled to withdraw the awarded sum along with accrued interest if any 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.)