IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Md. Shabbar Rashidi

FMA/1193/2025
With
IA NO: CAN/1/2025

National Insurance Company Limited
Vs
Mamta Devi And Ors.

For the Appellant	:	Mr. Deb Narayan Ray, Adv.
For the Respondents/ Claimants	:	Mr. Ali Imam Shah, Adv.
Heard on	:	23.11.2026
Judgment on :	:	23.11.2026
Uploaded on	:	23.11.2026

Md. Shabbar Rashidi, J.:-

1. The instant appeal has been preferred by the National Insurance Company Limited against the judgment and order passed by the learned Motor Accident Claims Tribunal in M.A.C. Case no. 186 of 2014.

2. By the impugned judgment and order, the learned Tribunal allowed the M.A.C.C application as against the present appellant in favour of the claimants and awarded a sum of Rs. 7,35,280/- along with interest at the rate of 6% per annum from the date of filing of the claim application to the claimants. Accordingly, the insurance company was directed to issue five account payee cheques of equal amounts in the name of the five applicants.

3. Learned advocate for the appellant submits that the impugned judgment and order was passed by the learned Tribunal in erroneous construction of the law. He further submits that following a motor accident, an F.I.R. was lodged against unknown vehicle and unknown driver. In such view of the facts, there was no material before the learned Tribunal to hold the offending vehicle bearing registration number WB-38F/1668 to be involved in the alleged accident.

4. Moreover, the learned advocate for the appellant also submitted that the driver of the aforesaid offending vehicle was not holding a valid driving licence at the time of the accident and as such, the insurance company was not liable to pay compensation to the claimants. In support of his contention the learned advocate for the appellant relied upon a decision of the Hon'ble Supreme Court

reported in ***2008(4) T.A.C. 378(S.C.) (National Insurance Co. Ltd. vs. Vidhyadhar Mahariwala & Ors.)***.

5. Learned advocate appellant also referred to the driving licence of the alleged driver of the offending vehicle contained at page 28 of the paper book. He submits that their driving license was first issued in favour of the driver of the offending vehicle which was valid on and from 24th July, 2013. The alleged accident occurred on June 1, 2013. On such context, the learned advocate for the appellants submits that at the time of the accident, the driver of the offending vehicle carried a valid licence. Therefore, the insurance company is not liable for any award in favour of the claimants.

6. On the other hand, the learned advocate for the respondents submits that the claimants are the near relatives of the deceased victim. The accident took place on June 1, 2013 and at that point of time, the offending vehicle was insured under a valid insurance policy issued by the appellant. As such, the appellants are liable to pay compensation to the relatives/successors of the deceased victim in terms and conditions of the insurance policy.

7. The learned advocate for the respondents further submits that since at the time of the accident, the offending vehicle was insured with the appellant under a valid insurance policy, they are liable to

pay compensation to the kins of the victim. As to the non-existence of a valid driving licence issued in favour of the driver of the alleged offending vehicle, the learned advocate for the respondents submits that since the victim of the offending vehicle was covered under a valid driving licence, primarily the insurance company is liable to pay compensation. He may have a right to recover the same from the erring driver or the owner of the offending vehicle. In support of his contention, the learned advocate for the respondents relied upon an unreported decision of the Hon'ble Supreme Court referred in ***Civil Appeal No. 9669 of 2024 (Rama Bai vs. M/s Amit Minerals through In-Charge Officer/Competent Officer & Anr.)***.

8. As it transpires from the materials on record, an accident took place on June 1, 2013, at about 12:25 hrs. The deceased victim Gopal Mahato, was returning on foot from on the Kajora Northern side and at that time one Maruti bearing registration No. WB-38F/1668 coming from Asansol side at high speed and dashed the victim from behind. As a result of such accident, the victim sustained severe injuries and died on the spot.

9. Post-mortem examination was conducted over the dead body of the victim. Ultimately, a First Information Report was recorded against the offending vehicle. Subsequently, the police took up investigation

and on completion thereof, submitted charge-sheet against the driver of the offending vehicle, Sk. Azharuddin.

10. Later on, the heirs and successors of the deceased filed an application under Section 166 of the Motor Vehicles Act claiming compensation, which was registered as M.A.C. Case No. 186 of 2014. The insurance company entered appearance in such proceeding and contested the application. Evidences were adduced on behalf of the parties. On conclusion of the trial, the learned Tribunal by the impugned judgment and order, held the National Insurance Company/appellant to be liable for payment of compensation in favour of the claimants. The learned Tribunal calculated such claim on the basis of the materials on record as well as the law governing the field at Rs. 7,35,280/-, which was directed to be paid by five separate cheques of equal amount in favour of the five claimants.

11. At the time of hearing, learned advocate for the appellant also submitted that this entire awarded amount along with interest has been deposited with the learned Registrar General, High Court, Calcutta in terms of an order passed in this appeal.

12. It is claim of the appellant that since the driver of the offending vehicle was not having a valid driving licence, the insurance company could not have been made liable to pay compensation to the

claimants. From the materials on record, it transpires that the first driving licence was issued in favour of the driver of the offending vehicle on July 24, 2013, that is, after the accident occurred.

13. With the ***Vidhyadhar Mahariwala & Ors.*** (supra) it was held by the Hon'ble Supreme Court that:

> *"14. This Court in Swaran Singh, 2004 (3) S.C.C. 297: 2004 (1) T.A.C. 321, clearly laid down that the liability of the Insurance Company vis-a-vis the owner would depend upon several factors. The owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-a-vis the driver being not possessed of a valid licence was considered in Swaran Singh stating: (S.C.C. pp. 336-37, para 89)*
>
> *"89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are :*
>
> *(a) motorcycle without gear,*
>
> *(b) motorcycle with gear,*
>
> *(c) invalid carriage,*

(d) light motor vehicle,

(e) transport vehicle,

(f) road roller, and

(g) motor vehicle of other specified description.

The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are 'goods carriage', 'heavy goods vehicle', 'heavy passenger motor vehicle', 'invalid carriage', 'light motor vehicle', 'maxi-cab', 'medium goods vehicle', 'medium passenger motor vehicle', 'motor-cab', 'motorcycle', 'omnibus', 'private service vehicle', 'semi-trailer', 'tourist vehicle', 'tractor', 'trailer' and 'transport vehicle'.

In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for 'motorcycle without gear', [sic. may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for 'light motor vehicle' is found to be driving a 'maxi-cab', 'motor-cab' or 'omnibus' for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of

> *licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."*

14. However, it has not been denied on behalf of the appellant that the offending vehicle was covered under a valid insurance policy issued by the appellants. In terms of the ratio laid down in ***Vidhyadhar Mahariwala & Ors.*** (supra) the liability of the insurance policy, however, was limited to a vehicle being driven by a driver having a valid driving licence. However, since the offending vehicle was covered under a valid insurance policy issued by the appellants, the Hon'ble Supreme Court in various decisions have laid down that the insurance company should pay to the claimants and recover the amount from the person liable that is, the owner of the vehicle who let his vehicle be driven by a person not authorized to drive such vehicle.

15. In ***Rama Bai*** (supra), the Hon'ble Supreme Court observed the following:

> *"6.1 The High Court in the impugned judgment relied upon the decision in Ram Babu Tiwari to find that as per the specific provisions of the Motor Vehicles Act, if the driver does not possess a valid and effective driving licence, it results in a breach of conditions of the insurance policy, exonerating the insurer from its liability. But while affirming the order of the High Court, absolving the liability for breach of conditions in the*

policy, this Court refused to interfere with orders of 'pay and recover' as directed by the High Court.

7. In the above circumstances, going by the series of decisions of this Court, it is only proper that the insurer be directed to satisfy the award, which however can be recovered by the insurer from the insured-owner of the vehicle. The appeal stands allowed."

16. On the basis of such materials on record as well as the discussions made hereinbefore, we find no reason to interfere with the impugned judgment and order. However, the same is also fixed to the extent that the appellants shall be at liberty to recover the amount from the owner of the offending vehicle by due process of law after making payments in terms of the impugned judgment and order.

17. The respondents/claimants are at liberty to withdraw the amount lying due with the learned Registrar General, High Court, Calcutta along with accrued interest proportionately upon due identification and verification within a period of four weeks from date. If applied for, the learned Registrar General, High Court, Calcutta will disburse the amount lying with it in connection with the instant appeal to the claimants upon due identification and verification within a period of four weeks.

18. Accordingly, the instant appeal being **FMA 1193 of 2025** is disposed of. Connected application(s), if any, stand disposed of.

19. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

(Md. Shabbar Rashidi, J.)

(Samarpita /Moumita)