IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 66 of 2017

The United India Insurance Co. Ltd.

VERSUS

Sumati Das & Ors.

For the Appellant:	Mr. Soumendranath Ganguly, Adv. Ms. Suprana Das, Adv.
For the Respondent:	Mr. Subir Banerjee, Adv. Mr. Sandip Bandyopadhay, Adv. Ms. Ruxmini Basu Roy, Adv. Ms. Priyanka Samanta, Adv.

Last Heard on: July 30, 2026

Judgment on: August 18, 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 23-06-2016 passed by Learned Additional District Judge Fast Track Court Alipurduar in MAC Case No. 24 of 2012.

The case of the claimant before the Learned Trial Court may be summed up thus:-

On 25-09-2012 Madhu Das was proceeding towards Bhatibari side from his residence by riding his by-cycle by marinating the left flank of the Tufanganj-Bhatibari Road. At about 8.00 a.m. while he reached at Kumarijan area at that time the offending Pick-up Van bearing No. A S-17B 1369 was coming from Tufanganj side with a very high speed and in negligent manner and dashed the above-named Madhu Das from his behind.

As a result of the said accident the above named Madhu Das sustained injuries with a heavy impact on his person, his by-cycle was also badly damaged and he succumbed to his injuries on the spot of the said accident.

The said accident took place due to rash and negligent driving of the driver of the offending vehicle bearing No. AS 17B 1369. (Pick-up van).

Opposite party Vehicle owner did not contest the case. Opposite Party Insurance Company 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 No. 24/12 be and the same is allowed on contest against OP No-2 the United India Insurance Co. Pvt. Ltd. and ex-parte against the O.P. No-1 without cost. The petitioners do get an award of Rs. 17,03,500/- along with interest @9% from the date of filing of the application. The opposite party no-2 United India Insurance Co. Ltd. is directed to pay compensation of Rs. 17,03,500/- along with interest @9% from the date of filing of the application by account payee cheques within two months from the date hereof failing which the OP. No. 2 will pay a further interest from the date of default till the date of final payment thereof along with the principal amount to the petitioners through this tribunal.

The petitioners are also directed to file deficit Court fees before withdrawing the cheques from Court if not paid earlier by the petitioners. Petitioner No-1 Smt. Sumati Das mother of petitioners no. 2,3,4 is permitted to accept the cheques on behalf of the minor petitioner no's 2,1,3 and 4 and she is also directed to keep the same in a fixed deposit scheme in a post office or any Nationalized Bank. She is also at liberty to withdraw the interest from the fixed deposit for the welfare of the minors till they attain majority.'

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

Learned Advocate for the appellant submits that the Learned Trial Judge erred in not considering Issue No-4 which reads as follows:-

'4 Whether the driver of the offending vehicle had valid and effective driving license at the relevant time of the said accident.'

Learned Advocate further submits that MVI Bongaign has stated that the said driving license was not issued by the said authority thus the Learned trial Judge erred in not holding that the offending vehicle was driven without valid driving license. Learned Advocate also submits that compensation awarded is excessive.

Learned Advocate for the respondents claimants disputes the submission of Learned Advocate for the appellant and submits that the Learned Trial Judge rightly passed the award thus interference may not be made.

Upon perusing the Judgment and Award passed by the Learned Trial Court so far the findings of rash and negligent driving by driver of Vehicle No. AS 17B. 1369 is concerned Learned Trial Court rightly came to the findings of rash driving by vehicle No. AS 17B. 1369. However with regard to the quantum of compensation this Court is of the view that compensation on the ground of consortium is excessive thus the total compensation should be reduced to Rs. 15,00,000/- (Rupees fifteen lac) which in the view of this Court is just and reasonable). With regard to the validity of driving license as the Insurance Company adduced evidence on that issue Learned Trial Judge ought to have come to a findings on the said issue. However with regard to right of recovery from vehicle owner in case of invalid permit, leading to violation of Policy condition it is necessary to consider some judicial pronouncements.

In the case of National Insurance Company Limited VS Liraza Bibi FMA-1003 of 2025 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 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.

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.*

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 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.'*

Hence this Appeal FMA-No-66 of 2017 stands disposed. Judgment and Award dated 23-06-2016 passed by Learned Additional District Judge Fast Track Court Alipurduar stands modified to the extent that the respondents/claimants are entitled to Rs. 15,00,000/- (Rupees fifteen lac) from the appellant Insurance Company. The appellant United India Insurance Company Limited shall deposit Rs. 15,00,000/- along with interest @6% p.a. from date of filing claim case till today such deposit shall be made before the Registrar General High Court Calcutta within 8 weeks from the date of communication of this order. In the event compensation awarded by Trial Court is deposited no further deposit be made.

The respondents/claimants will be entitled to withdraw the compensation amount upon compliance of necessary formalities. Balance amount along with accrued interest be returned to the Appellant Insurance Company.

The appellant will be entitled to cause enquiry by giving the vehicle owner an opportunity of being heard as per the procedure laid down in the Case of National Insurance Company VS Liraza Bibi (supra). In the event recovery proceedings is instituted against vehicle owner all points of law will be kept open.

TCR be sent by special messenger cost to be deposited by claimant/respondent within one week.

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.)