IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

<u>F.M.A. 14 of 2026</u>

Urmila Singha & Anr.

VERSUS

Bajaj Allianz General Insurance Co. Ltd. & Anr.

For the appellants/claimants:	Mr. Subir Banerjee, Adv. Mr. Sandip Bandyopadhyay, Adv. Ms. Ruxmini Basu Roy, Adv. Ms. Priyanka Samanta, Adv.
For the respondent/Insurance company:	Mr. Rajesh Singh, Adv.

Last Heard on: August 13, 2026

Judgment on: August 20, 2026

<u>Biswaroop Chowdhury, J:</u>

The appellants before this Court were claimants in a case under Section 163A of the Motor Vehicles Act 1988 and are aggrieved by the Judgment and Award dated 27-11-2015 passed by Learned Additional District Judge Islampur Uttar Dinajpur in MAC Case No-69 of 2011.

The case of the claimants before the Learned Trial Court may be summed up thus;

On 01-05-2011 at about 7.00 P.M. Dipu Singh was travelling in the cabin of a pick up van bearing No. WB-73B/7034 and going towards Islampur side from Siliguri side as the Khalasi of the said truck through the NH-31. When the pick up van reached near Gupta Hotel at Koltahar Kalabari, the pick up van driver lost his control over the vehicle and dashed a Tractor which was coming from opposite direction. As a result the Khalashi of pick up van namely Dipu Singha, sustained grievous bleeding injuries over his whole body and died instantly. His P.M. examination was held at Islampur S.D. Hospital. Due to accidental death of Dipu Singha the petitioners are facing great financial loss mental pain and agony, love and affection and they will have to suffer throughout their rest lives.

Pursuant to filing of the case notice was issued upon the opposite parties. Opposite Party vehicle owner did not contest the case. However 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 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 instant case be and the same is allowed in part ex-parte without cost as against Md. Jamatul Islam Ansari/OP. No.1 and dismissed on contest without cost as against Bajaj Allianz General Insurance Co. Ltd./OP. No. 2 Md. Jamatul Islam Ansari is directed to issue account payee cheque of Rs. 1,58,250/- each with interest is stated above in favour of petitioner no.1 Urmila Singha and petitioner no. 2. Fagu Singha @ Faguran Singha within one month from this date of Judgment.'

The appellants/claimants being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal.

The ground of challenge in this appeal is that the claimants are entitled to Rs. 5 lakh compensation by virtue of amendment as provided in Section 164 of the Motor Vehicles Act 1988, and secondly the Learned Trial Judge ought to have directed the Insurance Company to pay the compensation amount and then recover the same from the vehicle owner.

Heard Learned Advocate for the appellants claimants and Learned Advocate for the respondent/insurance company. Perused the evidence adduced and materials on record.

With regard to the issue of compensation of Rs. 5 lakhs as by virtue of amendment of Section 164 of the Motor Vehicles Act 1988 compensation of Rs. 5 lakh is provided under the said section and as Motor Vehicle Claim Legislation is beneficial legislation claimants/Appellants should be awarded compensation of Rs. 5 lakhs.

Now with regard to violation of policy condition by driving vehicle without valid permit it is held in different judicial decisions of Hon'ble Supreme Court that the Insurance Company should pay the compensation and recover the same from the vehicle owner. This procedure is being followed by Courts and

Tribunals. Moreover a vehicle owner cannot be imposed the liability of payment of compensation in the event of vehicle being driven without valid driving unless the vehicle owner has knowledge of the same and his conduct is mala-fide. With regard to this issue in the case of National Insurance Company Ltd. 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.'

In the case of Sova De and ors. VS National Insurance Company & Anr. FMA-1442 of 2014 it was observed as follows:-

'As the Motor Accident claim Legislation is a Welfare legislation Tribunals and Courts have to see that the compensation amount reaches to the victims or their legal heirs without delay and without any unnecessary hardship. When after adjudicating compensation cases insured/vehicle owners are directed to pay it may take considerable time for them to arrange the compensation amount and when there is failure to pay the amount the victims or their families will again have to knock the doors of Court to get the compensation realized. Thus

after suffering injury in accident or losing near relation in accident, and after pursuing case in Court of Law if the victim or their family is unable to get the compensation realized the object of the welfare legislation will be frustrated. On the other hand if the Insurer/Insurance Company is directed to make the payment they can do so within a short period and pursuant to payment may either settle the matter with the insured to repay the compensation by granting instalments or recover the same by instituting recovery proceeding.

In the conduct of recovery proceedings it may be possible for Insurance Companies to engage its officers and employees to pursue the recovery case for long period and to make all necessary enquiries for realization of the amount paid which may not be possible for the victims of accident or their relatives. A victim of accident or their relatives if made to institute a recovery case to realize compensation from vehicle owner/insured they will be in a helpless situation even after obtaining award of compensation which is not the object of a welfare legislation. Moreover the vehicle owner/insured who has to enter into contract of Insurance with Insurance Companies under the Law can be approached by the Insurance Companies for settlement before initiating recovery proceedings which is not possible for third party victims. It is held in different judicial pronouncements that Tribunals are not required to adhere rigidly to the doctrine of stare decis so that they can consider the claim more sympathetically. The contribution of the Tribunals should be to ensure that the benefits reach the helpless person.'

In the facts and circumstances this Court is of the view that the Judgment and Award of the Learned Trial Court should be modified.

Hence this Appeal FMA-14 of 2026 stands disposed. Judgment and Award dated 27-01-2015 passed by Learned Additional District Judge Islampur Uttar Dinajpur in MAC Case No. 69 of 2011 stands modified to the extent that the appellants/claimants are entitled to compensation of Rs. 5 lakhs from the respondent no-1 Bajaj Allianz General Insurance Company Limited. The respondent no-1 shall deposit Rs. 5 lakh along with interest @6% per annum from date of filing claim case till today. Such deposit shall be made before Registrar General High Court Calcutta within 8 weeks from the date of communication of this Order.

The appellants will be entitled to withdraw the compensation upon compliance of necessary formalities.

The respondent no-1 Insurance Company is granted liberty to institute recovery proceedings before trial Court upon conducting enquiry first and upon giving the vehicle owner an opportunity of being heard by following the procedure as laid down in the case of National Insurance Company Limited VS Liraza Bibi (supra).

Deficit Court fees be paid within one week. TCR be sent by Special Messenger cost to be put in by Appellant 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.)