IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 457 of 2025

National Insurance Company Ltd.

VERSUS

Bhaskar Purkait & Anr.

For the appellant: Ms. Sucharita Paul, Adv.

For the respondents: Mr. Abu Abbaruddin, Adv.

Last Heard on: August 01, 2026

Judgment on: August 19, 2026

Biswaroop Chowdhury, J:

The appellant before this Court was an opposite party in a case under Section 164 of the Motor Vehicle Act 1988 and is aggrieved by the Judgment and Award dated 11-04-2022 passed by Learned Additional District Judge 4th Court Alipore in MAC Case No-441 of 2022.

The case of the claimant before the Learned Judge may be summed up thus;

On 28.01.2022 at about 7.02 hrs a Maruti Alto Car bearing no. WB-20Z-3493 was proceeding along E.M. Bye pass and when it reached Patuli, in front of Khadiya Furniture it dashed a standing bus from behind. As a result the victim Bhaskar Purkait who was travelling as one of the passengers in the Maruti Alto, sustained severe injuries on his person including fracture and dislocation of right hip joint with multiple other injuries. He was taken to Calcutta National Medical College and Hospital where he remained admitted.

Pursuant to the filing of the Case notice was issued upon the opposite parties. Opposite party vehicle owner Dibyendu Maity filed written statement on 11.08.2022 wherein he denied liability on the ground that he had already transferred the offending vehicle bearing registration no. WB-20Z/3493 to Amit Kumar Sardar son of Madan Kumar Sardar on 8th August 2021 hence on the date of the accident the said Amit Kumar Sardar was the registered owner of the offending vehicle. He further contended that the vehicle was covered by Insurance Policy. Although the opposite party no-1 filed written statement but 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 adduced and upon hearing the Learned Advocates was pleased to dispose of the claim case by observing and directing as follows:-

‘ORDERED that the instant case being Motor Accident Claim case No. 441 of 2022 u/s 164 of the MV Act 1988 is allowed on contest against OP. No-2 and ex-parte against OP. No. 1 without costs.

The petitioner/claimant namely Bhaskar Purkait do get an award of Rs. 2,50,000/- (Rupees two lakh fifty thousand) only from OP NO-2 the National Insurance Company Ltd. on account of the grievous hurt sustained by him in course of the road traffic accident dated 28-01-2022. The claimant is further entitled to receive interest @7% per annum on the aforesaid sum with effect from the date of filing of the case i.e. 11.04.2022 till the date of making payment by OP. 2.

The OP No. 2 is directed to pay the said amount, accordingly by one account payee cheque in the name of the claimant after deduction of the applicable tax if any. OP No.2 is to make deposit of such cheque within one month from the date of this Order failing which the claimant will be at liberty to put the award into execution as per law. The deficit Court fees to be paid in full before handing over the cheque to the claimant.’

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

The ground of challenge by the appellant is that the Learned Trial Judge failed to appreciate that the involved Alto Car was insured under ‘Private Car Liability Only Policy’ wherein the owner of the said vehicle had not taken any insurance coverage for the passengers/occupants of his vehicle and since the victim was a passenger of the said vehicle, the claimant was not entitled to get compensation from the appellant. Secondly compensation awarded is exorbitant.

Heard Learned Advocate for the appellant Insurance Company and Learned Advocate for the respondent/claimant. Perused the evidence adduced and materials on record. The following decision is relied by Learned Advocate for the appellant.

Sunita and others VS United India Insurance Co. Ltd. and ors.

Reported in 2025 SCC. Online S.C. 1464.

With regard to the plea taken by the respondent no-2 who was opposite party no-1 in the claim case that he has transferred the vehicle prior to accident, there is no evidence adduced by him in this regard thus his liability continues.

Now with regard to the plea that the vehicle was insured it appears that the Policy was 'Motor Private Car – Liability only'.

Thus it is necessary to consider the decision of the Hon'ble Supreme Court in the case of Sunita and others VS United India Insurance Co. Ltd. and ors. (supra) In the said case the Hon'ble Supreme Court observed as follows:-

'13. Adverting to the facts in hand from a bare perusal of the record it is borne that the vehicle in question was insured with 'Liability Only Policy' and no premium was paid to cover the driver, owner or a gratuitous passenger travelling therein. However even then in our view the Courts below erred in holding that the Insurance Company is not liable to pay the compensation to the claimant-appellants, for the principle of 'Pay and Recover' ought to have been invoked. As such we are inclined to interfere with the above findings of the Courts below.

14. We must advert to the exposition of this Court in National Insurance Co. Ltd VS Baljit Kaur. The deceased therein was travelling as a gratuitous passenger, and due to the rash and negligent driving of the offending vehicle lost his life. The Insurance Company was directed to satisfy the amount awarded by the Courts below and recover the same from the owner of the vehicle towards gratuitous passenger.'

Thus in view of the Judgment of the Hon'ble Supreme Court. It is clear that in case of Liability only Policy passengers of vehicle are not covered. However from the statement in the written statement of opposite party no-1 vehicle owner it appears that he was of bona-fide belief that even passengers of vehicle are also covered. These conceptions are due to lack of awareness while taking policy of Insurance. Similar cases of such type of belief by vehicle owners are being observed in other matters also. Unless law is amended to bring all persons travelling in vehicle including driver compulsorily under insurance coverage and legal awareness programme are carried out and vehicle owners are convinced to take comprehensive Policy covering all passengers in vehicle including driver, the vehicle owner will continue to face the problem and will be in a helpless situations when directed to pay huge compensation to either claimant directly or to Insurance Companies in recovery proceedings.

In the facts and circumstances this Court is of the view that although Insurance Company will be entitled to recover the compensation from vehicle owner respondent no-2 but a sympathetic view should also be taken with regard to the vehicle owner and prior to recovery proceedings being instituted vehicle owner should be granted opportunity to pay the compensation by monthly installments to Insurance Company. The appellant Insurance Company shall intimate by notice to the vehicle owner and other Policy holders with a request to take a comprehensive policy covering all, enclosing copy of this Judgment. The Insurance Regulatory Development Authority shall also look into this matter for doing the needful. The Secretary West Bengal State Legal Service Authority is also requested to carry out awareness programme in this regard.

Hence this Appeal FMA-457 of 2025 stands disposed. The Judgment and Award dated 11/04/2022 passed by Learned Additional District Judge Fast Track 4th Court Alipore South 24 Parganas is confirmed with regard to the Principal Compensation awarded. However with regard to rate of interest the same is reduced to 6% p.a. The appellant Insurance Company is granted liberty to recover the compensation amount from vehicle owner respondent no-2. in the event he fails to pay the same within 1 year by 12 equal monthly installment. The monthly installments shall be decided between the parties mutually upon notice to respondent no-2 by holding discussion failing which necessary direction may be obtained from trial Court.

The claimant/respondent will be entitled to withdraw the compensation deposited upon compliance of necessary formalities. Balance amount if any be returned to the Appellant Insurance Company.

Let a copy of this Order be sent to the Registrar General High Court Calcutta with a request to communicate the same to the Secretary State Legal Service Authority West Bengal and Insurance Regulatory Development Authority for doing the needful.

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.)