IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1008 of 2024

With

IA No.:CAN/1/2024

National Insurance Company Ltd.

VERSUS

Babla Halder & Ors.

With

COT 105 of 2024

Babla Halder & Ors.

VERSUS

National Insurance Company Ltd.

For the appellant No. 1/Insurance Co.:	Mr. Sucharita Paul, Adv.
For the respondents/claimants:	Mr. Ashique Mondal, Adv.

Last Heard on: August 20, 2026

Judgment on: September 11, 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 07-05-2024, passed by Learned Additional District Judge Fast Track IInd Court Diamond Harbour South 24 Parganas in MAC Case No. 36 of 2023.

The case of the claimants/respondents before the Learned Trial Courts may be summed up thus:-

On the material point of accident ie. on 14.12.2022 early morning around 3.30 hrs. the victim TAPASI HALDER as passenger of the offending vehicle bearing No. WB-19L-1956 was returning from Purulia towards her house.

The said offending vehicle came in tremendous speed in rash and negligent manner endangering human life. Due to tremendous speed the said offending vehicle (WB-19L-195) overturned and fell down the side canal beside 26 No. Road in front of Petrol Pump near Ilahipur more under Haripal P.S. as a result the victim Tapasi Halder sustained severe grievous bleeding injuries on her person, as well as other persons also injured, thereafter the victim TAPASI HALDER was taken to HARIPAL GRAMIN HOSPITAL and the attending doctor declared her dead.

Only due to rash and negligent driving on the part of the driver of the offending vehicle. (Bus-Bearing No WB-19L-1956) the accident took place. Pursuant to filing of this 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 adduced and upon hearing the Learned Advocates was pleased to dispose of the claim case by observing and directing as follows:-

'Hence it is ORDERED that the instant proceeding being MAC Case No-36 of 2023 be, and the same is allowed on contest against the OP No-2/National Insurance Co. Ltd. and ex-parte against the OP No. 1 (owner of vehicle).

The claimants/petitioners together do get an award of Rs. 18,29,940/- (Rupees eighteen lac twenty nine thousand nine hundred forty only) as compensation together with interest @6 per annum with effect from the date of filing of the instant proceeding till realization of the entire claim.

The O.P. No. 2 (National Insurance Co. Ltd) being the Insurer is directed to pay the total awarded amount together with upto date interest in the aforementioned rate by issuing three A/C. Payee cheques of equal amount in favour of the claimants within 30 days hereof failing which the rate of interest would raise to 9% p.a. with effect from the date of passing of the order till realization of the entire amount and the award shall be mature for execution after the expiry of the period of appeal if the amount remains unpaid within such period.

The amount payable to the minor claimant shall have to be deposited in fixed deposit scheme of any Nationalized Bank by the father, the petitioner no-1 and the said fixed deposits cannot be closed or en-cashed before the minor petitioner attains majority. Photocopy of the fixed deposit certificate is to be filed by the claimant no-1 before this Tribunal in due course of time.'

The Appellant Insurance Company being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up with the instant appeal. The respondents/claimants being also aggrieved by the quantum of compensation awarded has filed the cross-objection.

Heard Learned Advocate for the appellant Insurance Company, and Learned Advocate for the respondents/claimants. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the Learned Trial Judge erred in considering the income of the victim to be Rs. 10,000/- per month. Learned Advocate further submits that the compensation awarded to the claimant is excessive and the same should be reduced. Learned Advocate also submits that the Learned Trial Judge although held that the vehicle owner plied the vehicle in violation of the policy condition by driving the vehicle in violation of the route permit but no liberty was given to recover from the vehicle owner the compensation awarded. Learned Advocates appearing for the claimant/respondents submits that the Learned Trial Judge erred in considering the monthly income of the victim to be Rs. 10,000/- instead of Rs. 15,000/-. Learned Advocate further submits that in view of the evidence adduced by P.W. 2 Suman Halder the Learned Trial Court ought to have considered the monthly income of victim as Rs. 15,000/- per month. Learned

Advocate also submits that the compensation awarded by the Learned Trial Judge should be enhanced.

With regard to the monthly income of the victim it appears that the claimants in their claim petition, and evidence of P.W. 1 have specifically stated the name and address of the employer of the victim as well as the monthly income. In the evidence of P.W. 1 also it is specifically stated that the victim was working as a manager at Halder Engineering and earning of Rs. 15,000/- per month. In the cross-examination also P.W. 1 specifically stated that the victim was working as a manager of Halder Engineering and used to receive salary of Rs. 15,000/- per month. This evidence is corroborated by the deposition of P.W. 2 where P.W. 2 Suman Halder has stated that he has a Grill manufacturing business and the victim Tapasi Halder was his employee and she used to receive monthly salary of Rs. 15,000/-. In the cross-examination also he stated that he runs his business in the name and style. 'Halder Engineering Works. The computer generated trade license was also filed by him and the names of the workers also mentioned in his cross-examination. In the facts and circumstances there remains no iota of doubt that the victim Tapasi Halder was employee of P.W. 2 who had business in the name of Halder engineering works and that she used to earn Rs. 15,000/- per month. In the event monthly income of the victim is Rs. 15,000/- $1/3^{rd}$ deducted on account of personal expenses net monthly income comes to Rs. 10,000/- 40% added on account of future prospect, monthly income comes to Rs. 14,000/-. The annual income comes to Rs. 1,68,000/-. By applying the multiplier of 15 total dependency loss comes to Rs. 25,20,000/-. Further the claimants respondents are entitled to Rs. 70,000/- on account of loss of consortium loss of estate and funeral expenses. Thus total compensation comes to Rs. 25,90,000/- by arithmetical calculation. However in the view of this Court compensation of Rs. 25 lakh is just and reasonable.

Now with regard to the liberty prayed for by the Appellant Insurance Company to recover the compensation amount from vehicle owner after making payment it appears that although the learned Trial Judge observed in the judgment that the insurer is to satisfy the award first and then recover the amount from the insured in due process of law but no liberty was granted in the operative portion of the Judgment. In the facts and circumstances the appellant Insurance Company should be granted liberty to recover compensation from vehicle owner in accordance with law upon making payment of the compensation. As the vehicle owner did not appear to contest claim case nor was the vehicle owner examined as a witness by Insurance Company with regard to violation of permit conditions the Insurance Company prior to instituting recovery proceedings shall give the vehicle owner notice and an opportunity of being heard. Upon hearing the vehicle owner the appellant Insurance Company if is of the view that violation of condition of policy is minor and the conduct of vehicle owner is bona-fide the Insurance Company may condone such breach, and in the event the Insurance Company is of the view that breach of policy is major and the conduct of vehicle owner is mala-fide the Insurance Company will be entitled to institute recovery proceedings in accordance with law. In each case the Insurance Company shall pass a reasoned order and communicate the same to the vehicle owner.

In this regard it is necessary to quote the observation made in the case of National Insurance Company Limited VS Lirasa Bibi FMA-1003 of 2025. In the said case 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.'

Although National Insurance Company Limited VS Lirasa Bibi (supra) deals with violation of policy condition in the event driver of offending vehicle did not have valid driving license and in the instant case the allegation is violation of route permit condition, the principles laid down in the decision is applicable as violation of route permit is also violation of Policy condition.

Hence this FMA-1008 of 2024 along with COT 105 of 2024 stands disposed. Judgment and Award dated 07.05.2024 passed by Learned Additional District Judge Fast Track, Second Court Diamond Harbour, South 24 Parganas in MAC 36 of 2023 stands modified to the extent that the respondent claimant is entitled to compensation of 25 lakhs. The appellant Insurance Company shall deposit Rs. 25 lakhs along with interest @6% per annum from date of filing claim case till today. Such deposit shall be made before Registrar General High Court at Calcutta within 8 weeks from the date of communication of this order. In the event compensation awarded by Learned Trial Court is deposited balance deposit be made.

The claimants/respondents will be entitled to withdraw the compensation upon compliance of necessary formalities.

The appellant Insurance Company will be entitled to recover the compensation amount by following the procedure as laid down in the case of National Insurance Company Ltd. VS Lirasa Bibi (supra). In the event recovery proceeding is instituted all points of Law will be kept open.

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.)