IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Md. Shabbar Rashidi

FMA 1294 of 2025

National Insurance Company Limited

Vs.

Sarifan Khatun And Others

With

COT 153 of 2025

Sarifan Khatun And Others

Vs.

National Insurance Company Limited And Another

For the appellant	:	Mr. Saibalendu Bhowmik, Adv. Mr. R.S. Basu, Adv.
For the Cross-objector	:	Mr. Subrata Bhattacharjee, Adv. Ms. Srilekha Chattopadhyay, Adv.
Heard on	:	09.09.2026 and 15.09.2026
Judgment on	:	22.09.2026

Md. Shabbar Rashidi, J.:-

1. The appeal being FMA 1294 of 2025 and Cross-Objection being COT 153 of 2025 are taken up together as they emanate from the self-same judgment and award.

2. FMA 1294 of 2025 is at the behest of the National Insurance Company Limited i.e. the insurer challenging the impugned judgment and award passed by learned MACC Tribunal-cum-Additional District Judge, 1st Court, Arambagh, Hooghly on May 3, 2024 in MAC Case No. 37 of 2021. COT 153 of 2025 is at the behest of the claimants against the self-same judgment and award dated May 3, 2024.

3. By the impugned judgment and award, the learned Tribunal allowed the MAC Case No. 37 of 2021. Appellant in FMA 1294 of 2025 i.e. the Insurance Company was directed to pay a sum of Rs. 1,41,500/- with simple interest at the rate of 6% per annum from the date of filing of the claim case till realization in full. The Insurance Company was directed to deposit such amount by separate cheques in the name of the claimants within three months of the date of the award.

4. It was contended by the appellant in FMA 1294 of 2025 that the learned Tribunal erred in passing the impugned award. It was contended by learned Advocate for the appellant i.e., Insurance Company, that the learned Tribunal did not consider that the offending vehicle was being driven in violation of the terms and conditions of the contract of insurance. While passing the impugned award, the learned Tribunal did not grant liberty to the insurance company to recover the awarded amount from the owner of the insured offending vehicle. He further submitted that the insured offending vehicle was being driven by the owner without a valid driving licence at the time of accident. Learned Advocate for the insurance company also stated that driving a vehicle without a driving licence was a clear violation of the terms and conditions of the contract of insurance and, as such, the insurance company was not available to pay compensation for such accident. In fact, the liability was with the owner of the offending vehicle.

5. The learned Advocate for the appellant-insurance company also submitted that the learned Tribunal failed to appreciate that the owner of the offending vehicle was under obligation to prove that there was no violation of the terms of the insurance policy and the owner having failed in discharging his onus, the learned Tribunal ought to have directed the owner of the vehicle to pay compensation to the claimants.

6. In COT 153 of 2025, the learned Advocate for the cross-objectors contended that the learned Tribunal erred in law and erroneously determined the awarded sum. It was contended that the accident occurred on September 1, 2021 which is after the amendment of the Motor Vehicles Act, 1988 (for short, the 'Act of 1988') had come into effect.

7. It was further submitted by the learned Advocate for the cross-objectors that as per the amended Schedule II of the Act of 1988, the claimants were entitled to an award of Rs. 5,00,000/-. The learned Tribunal erred in law in awarding the compensation of Rs. 1,41,500/-.

8. Learned Advocate for the cross-objectors also stated that since the insurance company had failed to pay the compensation amount to the claimants with the time stipulated by the learned Tribunal, the claimants are entitled for enhanced interest at the rate of 10% upon the minimum amount of Rs. 5,00,000/- prescribed under Schedule II of the Act of 1988. In support of his contention, learned Advocate for the cross-objector relied upon a Gazette notification issued by Ministry of Road Transport and Highways dated May 22, 2018. Learned Advocate for the cross-objectors also relied upon ***2025 SCC OnLine SC 2377 (Akula Narayana vs. Oriental Insurance Company Limited and Another)*** and ***2025 SCC OnLine SC 2297 (K. Nagendra vs. New India Insurance Co. Ltd. and Others)***.

9. On September 1, 2021 at about 9:00 p.m., an accident took place at Khanakul Garer Ghat Road. The victim was standing in front of his residential house at safe distance from the road. At that time, a motor cycle bearing registration No. WB-18Z-6725 was coming out at very high speed and in zigzag manner. The vehicle was being driven rashly and negligently towards Khanakul. The offending vehicle dashed the victim due to which the victim suffered grievous injuries. He was taken to hospital and was admitted to Khanakul BPHC from where he was referred to Arambagh SD Hospital. The victim died on his way to hospital. It was contended that the victim died due to rash and negligent driving of the offending vehicle.

10. The claim case under Section 163A of the Act of 1988 was filed by the legal heirs of the victim. In such application, it was contended that the family of the victim sustained financial loss and mental pain. The victim was said to be earning member of his family and, therefore, a sum of Rs.5,00,000/- was claimed by the claimants. Summons was served upon the opposite party in such claim application. Opposite party No. 1 therein, i.e., owner of the vehicle appeared in the case by filing a vakalatnama on April 21, 2022. Subsequently, the owner did not contest the case and the case proceeded ex parte against the owner. The opposite party No. 2, i.e. National Insurance Company also entered appearance and decided the case by filing a written statement.

11. On the basis of the pleading put by the parties, the learned Tribunal issued as many as seven issues for adjudication of the claim application which are as follows:

> "*1) Is the case maintainable in its present form and prayer?*
> *2) Whether the victim injured on 01.09.2021 in a road traffic accident due to involvement of the offending motorcycle bearing registration No. WB-18Z-6725"*
> *3) Whether the accident happened on the Khanakul-Garer ghat road at Dainan-Anantanagar on 01.09.2021 at about 9:00 pm caused by the motorcycle bearing registration No. WB-18Z-6725?*

4) Whether the offending motorcycle bearing registration No. WB-18Z-6725 had valid insurance coverage and other documents valid on the date of accident?
5) Whether the accident took place due to rash and negligent driving by the driver of the offending motorcycle bearing registration No. WB-18Z-6725?
6) Are the petitioners entitled to get compensation against the death of the victim in road traffic accident as prayed for? If so what would be the quantum of compensation for such death?
7) To what other relief or reliefs, if any, the petitioners are entitled to get?

12. In the course of trial, the claimants adduced to oral witnesses. Besides that, the claimants also relied upon several documents like First Information Report, seizure list, charge-sheet, insurance policy, post mortem report and other several documents which were admitted in evidence.

13. All the issues were taken up by the learned Tribunal for consideration together. Upon consideration of the oral as well as documentary evidence adduced on behalf of the claimants, the learned Tribunal decided that the case was maintainable in its present form and prayer and the victim was injured in a road traffic accident on September 1, 2021 involving offending vehicle bearing registration No. WB-18Z-6725. The learned Tribunal also came to a conclusion that the offending vehicle had a valid insurance coverage and that the accident occurred due to rash and negligent act on the part of the driver of the offending vehicle. Since, the claim application was under

Section 163A of the Act of 1988, the learned Tribunal held that the claimants were entitled for a compensation for the death of the victim occurred due to rash and negligent driving by the driver of the offending vehicle, proceeded to calculate the quantum of the compensation required to be awarded on structured formula basis provided in such section. The learned Tribunal, in calculating the compensation to be awarded, took in consideration the notional income, annual income, net monthly income, the multiplier to be used and the loss of future income etc. On the basis of a structured formula basis, the learned Tribunal awarded a sum of Rs. 1,41,500/- to the claimants.

14. As it transpires from the materials on record, the accident took place on September 1, 2021 and the victim expired on that very day on his way to the hospital. The claim case was decided on May 3, 2024.

15. The provisions of the Act of 1988 underwent an amendment by a notification issued by Ministry of Road Transport and Highways. Such amendment came into force from the date of its notification in the official Gazette i.e. May 22, 2018 which reads as follows:-

"MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

NOTIFICATION

New Delhi, the 22nd May, 2018

S.O. 2022(E).*- In exercise of the powers conferred by sub-section (3) of section 163A of the Motor Vehicles Act, 1988*

(59 of 1988), the Central Government, keeping in view the cost of living, hereby makes the following amendment to the Second Schedule to the said Act, namely:-

In the Motor Vehicles Act, 1988, for the Second Schedule, the following Schedule shall be substituted namely:-

"THE SECOND SCHEDULE

(See Section 163A)

SCHEDULE FOR COMPENSATION FOR THIRD PARTY FATAL ACCIDENTS/INJURY CASES CLAIMS

1. ***(a) Fatal Accidents:***

   Compensation payable in case of Death shall be five lakh rupees.

   (b) Accidents resulting in permanent disability:

   Compensation payable shall be = [Rs. 5,00,000/- x percentage disability as per Schedule I of the Employee's compensation Act, 1923 (8 of 1923)] :

   Provided that the minimum compensation in case of permanent disability of any kind shall not be less than fifty thousand rupees.

   (c) Accidents resulting in minor injury:

   A fix compensation of twenty five thousand rupees shall be payable:

2. *On and from the date of 1st day of January, 2019 the amount of compensation specified in the clauses (a) to (c) of paragraph (1) shall stand increased by 5 per cent annually.*
3. *This notification shall come into force on the date of its publication in the Official Gazette".*

[F. No.RT-11021/65/2017-MVL]

ABHAY DAMLE, Jt. Secy."

16. The amended Second Schedule of the Act of 1988 provides for compensation of death to be Rs.5,00,000/-. In view of the amended

Second Schedule appended to the Act of 1988, I find force in the contention of the learned Advocate for the cross-objector that the learned Tribunal erred in not granting the minimum amount of compensation as per the amended Second Schedule of the Act of 1988.

17. As to the contention of learned Advocate for the appellant-insurance company regarding the liability of the owner to pay compensation, the impugned judgment and award has directed the appellant-insurance company to pay compensation along with interest at the rate of 6% per annum from the date of filing of the claim to the claimants. The insurance company is aggrieved with such direction sans a liberty to the insurance company to recover the sum from the owner of the vehicle which was at fault by driving the offending vehicle without a valid driving licence. Driving a vehicle without a valid driving licence is violative of the terms and conditions of an insurance company. Such fact was apparently not taken into consideration by the learned Tribunal while passing the impugned judgment and award. In the impugned judgment and award, the learned Tribunal, upon consideration of Exhibit-4, came to a conclusion that the offending vehicle was covered under a valid insurance policy.

18. In ***K. Nagendra*** (supra), it was held by the Hon'ble Supreme Court that,

> *"9. The purpose of an insurance policy in the present context is to shield the owner/operator from direct liability when such an unforeseen/unfortunate incident takes place. To deny the victim/dependents of the victim compensation simply because the accident took place outside the bounds of the permit and, therefore, is outside the purview of the insurance policy, would be offensive to the sense of justice, for the accident itself is for no fault of his. Then, the Insurance Company most certainly ought to pay.*
>
> *10. At the same time though, when an Insurance Company takes on a policy and accepts payments of premium in pursuance thereto, it agrees to do so within certain bounds. The contract lays down the four corners within which such an insurance policy would operate. If that is the case, to expect the insurer to pay compensation to a third party, which is clearly outside the bounds of the said agreement would be unfair. Balancing the need for payment of compensation to the victim vis-à-vis the interests of the insurer, the order of the High Court applying the pay and recover principle, in our considered view, is entirely justified and requires no interference."*

19. Similarly, in ***Akula Narayana*** (supra), the Hon'ble Supreme Court observed as follows:-

> *"12. Where the contract of insurance is not disputed, even on breach of insurance conditions, this Court had allowed recovery of compensation from the insurer by giving right to the insurer to recover the same from the vehicle owner. The pay and recover principle has been consistently followed even though it was doubted in a reference which remained unanswered. Taking a conspectus of various pronouncements, this Court recently in Rama Bai v. Amit*

> *Minerals[7] again applied the said principle and while allowing the appeal of the claimant directed that the insurance company shall satisfy the award and may recover from the insured. Following the aforesaid decisions, we deem it appropriate to allow the appeal by directing that the first respondent (i.e., the insurer) shall satisfy the award, though, however, it can recover the amount so paid from the insured (i.e., owner of the vehicle)."*

20. In view of the aforegone discussions and applying the principles laid down in ***K. Nagendra*** (supra) and ***Akula Narayana*** (supra), I am of the opinion that the claimants are entitled to the minimum compensation provided in Schedule II of the Act of 1988 to the tune of Rs. 5,00,000/-. The aforesaid claim amount shall also carry interest at the rate of 6% per annum from the date of filing of the claim application till realization, as directed by the learned Tribunal.

21. The appellant-insurance company shall deposit the aforesaid amount of Rs. 5,00,000/- with interest by five separate cheques of equal amount in the name of five claimants which shall be disbursed to the claimants upon proper identification and verification. The appellant-insurance company shall comply such order within six weeks from date.

22. At the same time, in view of the ratio laid down in ***Akula Narayana*** (supra), the appellant-insurance company shall be at liberty to recover the amount of compensation paid by it to the claimants from the owner of the offending vehicle in due process of law.

23. With such observations, **FMA 1294 of 2025** along with **COT 153 of 2025** are disposed of, however, without any order as to costs. Connected applications, if any, shall also stand disposed of.

24. 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.]