S/L 7
11.09.2026
Court No.9
Swd

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 3595 of 2013

National Insurance Company ltd.
VS
Md. Maharam Hossain & Ors.

Mr. Rajesh Singh.
... for the Appellant/Insurance Co.

Mr. Sima Ghosh
... for the Respondent/Claimant.

1. The learned Advocates for the parties are present.
2. Heard learned Advocates.
3. The record is put up for necessary rectification of order dated 13th August, 2026. In the order dated 13th August, 2026 instead of "**SAT 3595 of 2013"** it has to be recorded as **"FMA 3595 of 2013".**
4. Let necessary rectification be made.
5. This appeal is directed against the order judgment and award dated 5th may, 2007 passed by the learned Additional Judge, First Court, Suri, Birbum, in MAC Case No.165 of 2005. In the judgment and award dated 5th May, 2007 passed by the learned Trial Judgment the following observation was made:-

   "Hence it is,

   Ordered

that the petitioner under Section 163A of M.V. Act filed by the two petitioners is allowed ex-parte against O.P No.1 without cost.

O.P.No. 1 is directed to pay a sum of Rs. 1.07,950/- (is. One Lakh Seven thousand Nine Hundred Fifty only) in favour of the petitioner wife Smt. Halima Bibi and a sum of Rs. 1,02,950/- (One Lakh Two but thousand Nine hundred fifty only) in favour of the petitioner Md. Maharam Hossain within one month from the date of this order.

Though O.P. No. 2 in view of the fake Insurance Policy has no primary liability to pay the amount, yet in view of protection u/s 147/149 of the M. V.Act in default of payment of the amount to be paid as directed by O.P. No. 1 within the stipulated time, the O.P. No. 2 shall make the payment of the compensation amount to the aforesaid two petitioners by issuing account payee cheques in favour of the two petitioners after expiry of one month and before expiry of two months (in case default in payment is made by O.P. No. 1).

The O.P. No. 2 shall be able to recover such amount from O.P. No. 1 with interest at the rate at the rate of 10% (ten per cent only) thereon from the date of payment by them to the petitioners to the

date of recovery of the amount from O.P. No. 1 in execution proceedings."

6. The appellant insurance company being aggrieved by the judgment and award passed by the learned Trial Judge has come up with the instant appeal.

7. Learned Advocate for the appellant submits that the learned Trial Judge erred in directing the insurance company to pay when there is finding that the insurance policy is fake.

8. Learned Advocate further submits that in the absence of insurance policy no liability can be fastened upon the insurance company. It is also submitted by the learned Advocate that the liability in the instant case should be borne by the vehicle owner.

9. Learned Advocate for the respondent submits that the claimants should not be made to suffer for the wrong act of the vehicle owner in not verifying the policy. Learned Advocate further submits that no FIR was lodged in this regard by the insurance company with regard to fake policy. It is also submitted that the order passed by the learned Trial Judge be affirmed.

10. Upon considering the submission of the learned Advocates and considering the relevant provisions of Motor Vehicles Act, 1988, it is very clear that an owner of the vehicle is liable to take

insurance covering third party risk. Unless a vehicle is insured by a contract of insurance, the liability of the insurance company does not arise. In the event, the liability of the insurance company does not arise, the entire liability is to be borne by the vehicle owner which is involved in any case of accident.

11. Upon perusing the judgment and award passed by the learned Trial Court, it is clear that there is finding of rash and negligent driving by driver of the offending vehicle No. UP 78 AN 3497. Learned Trial Judge has also directed the vehicle owner to make payment of the compensation. When there is liability of the vehicle owner to pay the compensation in the event of failure to make such payment, the recovery proceeding is the remedy under law and in such a case, the insurance company cannot be made liable to pay when there exist no insurance contract.

12. Thus, the judgment and award passed by the learned Trial Judge to the extent that the appellant National Insurance Company Ltd. shall pay is set aside. The payment shall be made by the respondent No.3, vehicle owner Sri Mustakim (Mestkeem). Such payment shall be made within one month from the date of communication of this order.

13. In the event, such amount is not paid, the respondents claimants will be entitled to initiate recovery proceeding. It is, however, made clear that at the time of recovery proceeding there is any proof or any further evidence that the vehicle was insured, the said insurance company may be impleaded.

14. The compensation amount which is already deposited may be withdrawn by the appellant insurance company along with all accrued interest.

15. Let a copy of this order along with a copy of the judgment passed by this Court in **Smt. Sova Dey & Ors. v. National Insurance Company Ltd. & Anr.,** reported in **2026:CHC-AS:208** be sent to the Secretary, Transport Department, Government of West Bengal as well as the Director General of Police by the Registrar General, High Court, Calcutta to take necessary steps so that uninsured vehicle do not ply on the road as well as with regard to fake insurance policies.

16. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(**BISWAROOP CHOWDHURY, J.)**