IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 865 of 2026

With

IA NO: CAN/1/2026

Madan Bhagat

VERSUS

National Insurance Co. Ltd. & Ors.

For the Petitioner: Mr. Ashique Mondal, Adv.

For the Respondent: Mr. Rajesh Singh, Adv.

Last Heard on: September 23, 2026

Judgment on: October 01, 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 11th August 2025 passed by Learned District Judge Dakshin Dinajpur Balurghat in MAC Case No-151 of 2022.

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

On 01-04-2022 victim Tuhina Parvin Mondal referred out from Balurghat hospital due to his illness and she went to Kolkata by an Ambulance No. WB.61-A/4102 with her son and son in law, and the vehicle was running with high and excessive speed and when the ambulance reached near at Lucky Hotel of More Gram the driver of ambulance lost his control over the vehicle and it dashed against a road sided stationary truck as a result all the occupants of ambulance received severe injuries to their persons and then they were taken to Murshidabad Medical College and Hospital where she succumbed to her injuries.

From the very face of accident it is clear that the accident took place due to rash and negligent driving of the driver of the offending ambulance No. WB. 61-A/4102.

Pursuant to filing of this case notice was issued to the opposite parties. Both the opposite parties vehicle owner and the Insurance Company contested the case by filing written statements. 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 MAC Case No. 151/2022 be and the same is allowed on contest against the OPs without any order as to cost.

The claimants are entitled to get an award amounting to Rs. 7,20,000/- (Rupees Seven Lakh Twenty Thousand only) as compensation u/s. 166 of the M.V. Act.

The claimants are also entitled to realize the amount with interest @7% per annum over the said amount from the date of filing of this case till actual realization.

The OP No-2/National Insurance Company Limited is hereby directed to pay the compensation to the tune of Rs. 7,20,000/- (Rupees Seven Lakh Twenty Thousand Only) with interest as mentioned above through three (03) equal amount account payee cheques directly in the name of the claimants/petitioners within 60 days from the date of supply of free copy of the judgment, failing which the claimants/petitioners will be at liberty to take necessary steps in accordance with law.

The OP/National Insurance Company Limited may recover the amount from the OP/owner of the involved vehicle.'

The appellant vehicle owner being aggrieved by the findings of Learned Trial Court that the driver of the ambulance has violated the rules and granting liberty to the Insurance Company to recover compensation from the vehicle owner has come up with the instant appeal.

Heard Learned Advocate for the vehicle owner appellant and Learned Advocate for the Insurance Company Respondent. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the Learned Trial Judge erred in relying upon the statement of P.W. 1 in cross examination although he was not eye witness. Learned Advocate further submits that statement of P.W. 2 who is an eye witness contradicts the evidence of P.W. 1 Learned Advocate also submits that the Insurance Company has also compensated the owner's loss in the accident thus the right of the Insurance Company to recover is waived.

Learned Advocate for the respondent/Insurance Company disputes the submission of Learned Advocate for the appellant and submits that evidence shows that there was violation of Policy condition.

Before proceeding with this matter at the outset it appears that there was no plea in the written statement that the ambulance carried more passengers than the approved seating capacity, and thus there was violation of Policy condition. Thus the vehicle owner did not get any opportunity to defend the issue. When there is an allegation of violation of policy terms which is a serious allegation there must be specific pleadings and evidence on that issue. When there is allegation of violation of policy condition regarding driver driving without valid license or violation of permit condition or violation with regard to seating capacity it is incumbent upon Insurance Company to issue notice upon

vehicle owner and give the vehicle owner an opportunity of being heard, and thereafter decide whether to condone such violation or proceed in accordance with law.

In the case of National Insurance Company Ltd. VS Liraza Bibi FMA-2003 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.'

Thus in the event Court is of the view that there is violation of Policy condition Courts should also prior to giving direction of Pay and recover shall either issue a show cause upon vehicle owner as to why recovery proceedings shall not be instituted against him or grant liberty to Insurance Company to

institute recovery proceedings upon giving the vehicle owner an opportunity of being heard prior to institution of such proceedings. In the instant case neither of the two conditions were followed by Learned Trial Court.'

Thus the direction of the Learned Trial Court should be modified and the Respondent Insurance Company should be permitted to institute recovery proceedings after giving the appellant/vehicle owner an opportunity of being heard if the conduct of vehicle owner is found to be mala-fide.

Hence this Appeal FMA-865/2026 stands disposed. The direction of the Learned District Judge Dakshin Dinajpur Balurghat in MAC Case No. 151/2022 stands modified to the extent that the Respondent National Insurance Company Limited will be entitled to recover compensation upon giving the appellant vehicle owner an opportunity of being heard in the event it appears that conduct of appellant was mala-fide. The appellant will be entitled to place relevant documents before the Insurance Company at the time of hearing. Till a decision is taken by the Insurance Company the Execution Proceedings will be kept in abeyance. In the event Execution Case is resumed 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.)