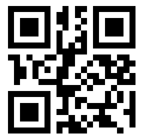


IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A.T. (MV) 181 of 2024

National Insurance Company Limited

VERSUS

Sri Kalyan Dangre & Ors.

With

COT 145 of 2024

Sri Kalyan Dangre & Ors.

VERSUS

National Insurance Company Limited & Anr.

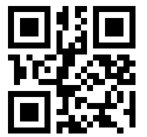
For the appellant in FMAT (MV) 181 of 2024 and respondent no.1 in COT 145 of 2024:	Mr. Saibalendu Bhowmik, Adv.
For the respondents in FMAT (MV) 181 of 2024 and appellants in COT 145 of 2024:	Mr. Jayanta Banerjee, Adv. Mr. Sandip Bandyopadhyay, Adv. Mrs. Ruxmini Basu Roy, Adv. Mr. Argha Bhattacharjee, Adv.

Last Heard on: March 11, 2026

Judgment on: April 30, 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

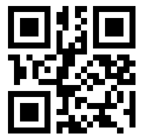


and Award dated 17.02.2024. Passed by Learned Additional District Judge 4th Court Paschim Medinipur in MAC Case No. 160 of 2017. The claimants/respondents no-1 and 2 being also aggrieved by the Judgment and Award passed by the Learned Trial Court have filed cross objection being COT No-145 of 2024.

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

On 31/12/2016 at about 10.00 P.M. the victim was returning his house from Chhota Tangra near Khargapur SD. Hospital by foot through the left side of Chhota Tangra to Jhapatapur Road. At that time on the way near Chhota Tangra Kali Mandir under Khargapur Town P.S. one Motor Cycle bearing No. WB-36E/2518 came from Khargapur. S.D. Hospital side towards Jhapatapur side with a very high speed and in rash and negligent manner and dashed the victim from his back side as he was thrown off and he came in contact with road side pole and received head injury and other injuries all over his body and became unconscious. Immediately after accident local people admitted him in Khargapur S.D. Hospital. As the injuries were serious he was referred to Midnapore Medical College and Hospital in that night but the victim died on the next day ie on 01/01/2017 in Midnapore Medical College and hospital.

The accident took place solely due to rash and negligent driving of the driver of the Motor Cycle bearing No. WB-36E/2518. The deceased was a bachelor. He was working as security Guard under Contractor DOLPHIN

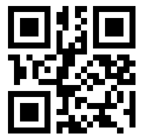


ENTERPRISE Subhas Pally Khargapur and he was posted at NURSING TRAINING SCHOOL, Khargapur S.D. Hospital and was drawring salary of Rs. 9,500/- (Rupees nine thousand and five hundred) approx. He was the sole earning member of his family consisting of himself and the petitioners. On his death the whole family is put to inconceivable difficulties and hardship and the petitioners received tremendous mental pain and shock which will continue throughout their lives.

Pursuant to the filing of this case notice was issued upon opposite party vehicle owner and opposite party Insurance Company. Opposite party owner although appeared and filed written statement but thereafter did not contest the case. Opposite Party National Insurance Company filed written statement and contested the case. ISSUES were framed and evidence was adduced by the claimants and Insurance Company. Learned Trial Judge by Judgment and Award dated 17-02-2024 was pleased to dispose the claim case by observing and directing as follows:

‘Hence it is ordered that the MAC case no-160 of 2017 be and the same is allowed on contest without cost against the OP No-2, National Insurance Company Limited and in ex-parte against the owner of the vehicle without costs.

However in accordance with the direction of Hon’ble Supreme Court in the above referred judgment reported in 2018(1) TAC 360(SC) the insurance



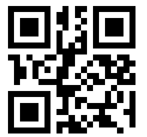
company is at liberty to recover the amount from the owner of the vehicle after making payment of the compensation to the petitioners.

OP No. 2 National Insurance Company Limited, the insurer of the offending vehicle bearing no. WB-36E/2518 is directed to pay the compensation of Rs. 10,91,200/- (Rupees Ten Lakh Ninety One Thousand and Two Hundred only except Rs. 50,000/- to the claimant no. 2 by account payee cheque and Rs. 50,000/- shall be payable to claimant no. 1 by account payee cheque within two months hereof with the interest as per banking rate applicable to fixed deposit from the date of filing of the application till realization of the amount.'

The appellant National Insurance Company Limited being aggrieved by the Judgment and Award dated 17-02-2024 passed by the Learned Trial Judge has come up with the instant appeal. Heard Learned Advocate for the appellant Insurance Company and Learned Advocate for the respondent no. 1 to 3/claimants. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant Insurance Company submits that there is long delay in lodging FIR without any explanation and the claim case was implanted against the owner.

Learned Advocate further submits that the evidence of P.W. 2 as eye witness in examination in chief and cross examination are at variance. Learned



Advocate also submits that driver of the offending motor cycle did not possess valid and effective driving license rather the D/L mentioned in the sezure list and charge sheet (Ext-3 and Ext-5) in the name of Rabindra Nemai was proved to be fake one.

Learned Advocate also submits that the evidence of P.W. 3 will go to show that Income Certificate was manufactured for the purpose of claim case.

Learned Advocate relies upon the following Judicial Decision:

Pappu and Ors. VS Vinod Kr. Lamba

Reported in 2018(3) SCC-208.

United India Insurance Co. Ltd. VS Rakesh Kr Arora and Ors.

Reported in 2008(13) SCC.

V. Subhulakshmi VS Lakshmi and Anr.

Reported in 2008 ACJ-936.

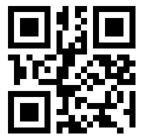
Rani and Ors VS National Insurance Company Ltd.

2018(8) Supreme 252.

Kerala State Electricity Board and Anr. VS Valsolak and Anr.

Reported in 1998(8) SCC-254.

National Insurance Co. Ltd. VS Challa Bharathamma and Ors.

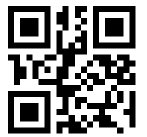


Reported in 2005(1) WBLR(SC)-271.

Learned Advocate for the respondents/claimants submits that P.W.2 as eye witness deposed that a two wheeler bearing registration number WB/36E-2518 came from the back side i.e.; Khargapur S.D. Hospital side with a very high speed and dashed one young man as a result he was thrown of and collided in street pole and received injuries all over his body. In cross examination he stated that he was examined by the I.O. of the case and he took the victim to hospital.

Learned Advocate also submits that the opposite party Insurance Company has not adduced evidence to show that there was no rash and negligent driving.

It is submitted by the Learned Advocate that merely 25 days delay in lodging the FIR, does not negate the claim case. It is further submitted that in our country it cannot be expected that a common man first rush to the police station after accident. Human behavior occupy the mind of Kith and kin to an extent that they give more importance to treatment rather than lodging F.I.R. Learned Advocate also submits that during investigation the I.O. of the case seized one driving license bearing number 067492 (NPL) in the name of Rabindra Nimai valid up to 21-06-2036. The said seizure list has been exhibited as Exhibit 4 without objection. The I.O. of the case after conclusion of investigation submitted charge sheet against the said Rabindra Nimai being the sole accused of the case who was driving the motor cycle at the time of



accident. Learned Advocate submits that the driver of the offending vehicle was the owner of the same who initially turned up to contest the case by filing written statement in the tribunal. But ultimately he did not contest the case. Even in the present context the insurance company failed to explain why they did not summon the said owner/driver before the tribunal to reveal the truth as to the driving license in question was fake or genuine since the insurance company itself took the plea before the learned tribunal that the driving license was not genuine and it's fake one.

On perusal of the record it is found that driving license vide No. 067492 is not produced in Court. The Trial Court had no opportunity to peruse the driving license to arrive at any definite conclusion. On the contrary, the contents of charge sheet (Exhibit-3) show that the driving license 067492 was valid up to 21-06-2036. The findings of the charge sheet are not proved to be false by adducing any cogent oral and documentary evidence.

Learned Advocate submits that the Insurance Company failed to establish that the driving license which was seized by the I.O. of the case was 067492 in the name of Rabindra Nemai as appearing from seizure List (Exhibit-5) and the driving license in the name of Animesh Mahato are different. Since the insurance company failed to produce the seized driving license of Rabindra Nimai it cannot be ascertained that the said driving license actually issued by the RTA Paschim Medinipur itself. Learned Advocate submits that if the driving license of Rabindra Nimai had been in the record of the tribunal then the

tribunal could have justified whether the document is fake or genuine. From the evidence of OPW. 3 the Court cannot come to a definite conclusion whether the said Driving License in question issued by the RTO Paschim Midnapore and not by any other RTO of the country.

Learned Advocate for the Respondents/Claimants examined P.W. 3 Prasanta Ghosh who stated that on being authorized on behalf of his wife Smt. Sutapa Ghosh he produced one authorization letter (Exhibit 10) and one Aadhar Card of himself, he also produced one income certificate of the deceased from his wife Smt. Sutapa Ghosh as proprietor of Nursing Training Institute Dolphin Enterprise of SD. Hospital. Thus evidence of P.W. 3 should be accepted.

Learned Advocate relies on the following judicial decisions:-

Ravi VS Badrinarayan and others.

Reported in 2011(1) TAC. 867(SC)

Smt. Anjali Ray and Ors. VS Bajaj Allianz General Insurance Co. Ltd.

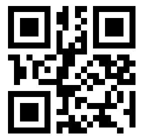
FMA 58-2025 High Court at Calcutta.

Now with regard to 1st submission of Learned Advocate for the appellant that the vehicle was implanted in the instant case as there was long delay in lodging FIR, it is to be remembered that in the instant case the victim being son of the claimants died on the following day of the accident. Thus when parents loose their child in street accident the extent of mental depression and

agony which comes requires no explanation. It is only when the mental agony reduces and there is advice of well wishers and legal Practitioners the parents choose to lodge FIR and file claim case. In the case of Ravi VS Badrinarayan and others reported in 2011(1) TAC 867 (S.C.) the Hon'ble Supreme Court observed as follows:-

'It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.'

With regard to the dispute of the accident taking place as raised by the Learned Advocate for the appellant upon perusal of evidence of P.W. 2 it appears that how he saw the accident how the accident took place is stated

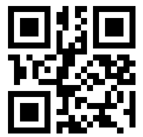


and that he and two other person took him to Kharagpur S.D. Hospital and admitted him there is also mentioned. In cross examination P.W. 2 stated that he was examined by I.O. after 20-25 days of the accident. He stated that the offending vehicle fell down and the accident occurred. Nothing could be shaken in the cross examination that P.W. 2 did not witness the accident. P.W. 2 is also a witness in the charge sheet submitted by Police Authority. Moreover the FIR and charge sheet corroborates the evidence of P.W. 2. The evidence was considered in details by the Learned Trial Court and Learned Court came to findings about rash and negligent driving. Thus there is nothing to interfere.

Now with regard to the argument of the Learned Advocate for the appellant that the driving license of the driver of the offending vehicle was fake and the Insurance Company was not liable to pay compensation, it appears that O.P.W. 1 in his evidence has stated that he is producing the driving license register showing issuance of original driving license in favour of Animesh Mahato.

In Cross examination O.P.W. 1 stated that the driving license no-064792 in the name of Rabindra Nemai was not issued from the office of Regional Transport Authority Paschim Mednipur which does not mean that the driving license is fake. A driving license can be issued in accordance with law under Section 9 of the Motor Vehicles Act 1988.

Section 9 of the Motor Vehicles Act 1988 provides as follows:-



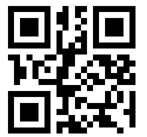
S-9-Grant of driving license – Any person who is not for the time being disqualified for holding or obtaining a driving license may apply to the licensing authority having jurisdiction in the area-

i) in which he ordinarily resides or carries on business.

ii) in which the school or establishment referred to in Section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated.

For the issue to him of a driving license.

Thus Section 9 of the Motor Vehicles Act 1988 mentions before which licensing authority application for driving license has to be made. Hence it cannot be inferred that save and except Regional Transport Authority Paschim Medinipur no other Regional Transport Authority can grant driving license. Moreover a driving license in order to be proved as fake should be produced before court and the holder of license should be given an opportunity of being heard. In the instant case the I.O. could have been summoned and examined and the driving license seized by him could have been produced and the vehicle owner cum driver should also have been summoned and examined by Insurance Company to enable the Learned Trial Court to come to a finding that driving license was fake and there was breach of policy condition. Thus the Learned Trial Court did not commit any error in coming to a finding that the Insurance Company has failed to prove breach of policy condition. The decision of the Hon'ble Supreme Court in the case of Pappu and Ors. (supra) and United



India Insurance Company Limited (supra) are not applicable to the facts of the case.

Normally a vehicle owner usually does not contest a motor accident claim case when the vehicle is insured. However in case of allegations by Insurance Company that there is breach of policy condition a new issue should be framed necessary evidence should be adduced and fresh notice should be issued upon vehicle owner.

This issue was dealt in the case of **Lirasa Bibi VS United India Insurance Company Ltd.** being FMA 1003 of 2025 Reported in MANU/WB/0213/2026 'The observation was 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.'

It was further observed as follows:

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:*

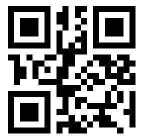
"Thus it is well settled that in order to absolve from liability of paying compensation and to obtain an order of pay and recovery it is mandatory for the Insurer to prove breach of the condition of Insurance Policy. Although all Insurance Companies are not 'State' within the meaning of Article 12 of 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."

It was also observed in the case of Lirasa Bibi as follows.

'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

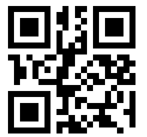
the tribunal/Court comes to the conclusion that there was violation of policy condition which was not bona fide and without sufficient explanation, the Court/Tribunal will order recovery of amount directed to be Paid by Insurance Company. In the normal course where vehicle owners receives notice of claim 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. In the instant case the vehicle owner/insured was not put to notice with regard to violation of policy condition for the purpose of pay and recovery. Thus no order with regard to recovery can be directed without the Appellant Insurance Company causing enquiry and giving the vehicle owner/insured an opportunity of being heard. Thus the Appellant National Insurance Company Limited is granted liberty to cause service of notice upon the vehicle owner/insured annexing copy of the order of trial Court and this order and upon hearing him with regard to violation of policy condition and recovery of compensation amount awarded. Upon hearing the insured respondent no-2 Subrata Nath the Appellant National Insurance Company Limited will decide



whether to proceed against the said respondent for recovery. In the event recovery proceedings is instituted parties will be entitled to take relevant points involved to enable the Court/Tribunal to arrive at a just decision.'

In the instant case the Learned Trial Judge granted opportunity to recover the compensation after making payment. The direction issued regarding recovery should be clarified and modified to prevent further dispute. Thus in the instant case the Appellant Insurance Company upon causing enquiry and giving the vehicle owner an opportunity of being heard will be entitled to recover the compensation amount if it comes to the finding that the driving license of vehicle owner was fake and the vehicle owner had knowledge.

Now with regard to the quantum of compensation it appears that P.W. 1 Father of the victim in his claim petition as well as in her evidence has specifically stated the institution where victim was employed, place of work the name of the proprietor of the institution address of the institution, and the nature of work which the victim used to do. These particulars regarding occupation of the victim given by the claimant in evidence is sufficient without corroboration to hold that the victim was working as Security Guard under Contractor DOLPHIN Enterprise. With regard to monthly salary. P.W. 3 in his examination in chief has stated that her wife Sutapa Ghosh is proprietor of Dolphin Enterprise. Although documents regarding existence of Dolphin Enterprise was not filed in Court but the Letter head mentioning the name of the enterprise with specification Govt. Contractor and General Order Supplier

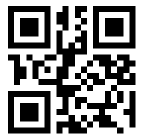


Service Tax Registration Number ward no-holding number and nature of services rendered is sufficient to create the belief about existence of the enterprise. Similarly the particulars of the victim mentioned regarding his place of posting from 04-03-2016 till 31-12-2016 his place of residence and monthly salary of Rs. 9,407/- in the certificate issued cannot be disbelieved. Moreover the nature of service which the victim used to render it is not unusual to earn salary of Rs. 9,407/- as mentioned in the certificate.

The decisions relied upon by Learned Advocate for the appellant regarding notional income does not apply to the facts of the case.

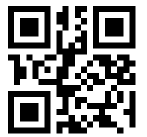
Although the income mentioned in the certificate issued by the employer of the victim is Rs. 9,407/- but it would be proper to proceed on the basis of monthly income of Rs. 9,000/-.

In the event monthly income is Rs. 9,000/- Future Prospect of 40% added brings the total monthly income to Rs. 12,600/- 50% deducted on account of personal expenses brings the net monthly income to Rs. 6,300/-. The annual dependency loss comes to Rs. 75,600/-. The multiplier of 18 should be applied and total dependency Loss comes to Rs. 13,60,800/-. Further the claimants/respondents no. 1 and 2 entitled to Rs. 40,000/- each on account of filial consortium and Rs. 30,000/- on account of funeral expenses and Loss of estate. Thus total compensation comes to Rs. 14,70,800/- by arithmetical calculation. However in the view of this Court Rs. 14 lakh is just and reasonable compensation.



Hence this FMAT (MV) No. 181 of 2024 along with COT No. 145 of 2024 stands disposed. The Judgment and Award dated 17-02-2024 passed by Learned Additional District Judge 4th Court Paschim Medinipur in MAC Case No-160 of 2017 stands modified to the extent that the claimants/respondent no. 1 and 2 are entitled to Rs. 14,00,000/- from the Appellant National Insurance Company Limited along with interest @6% per annum from the date of filing claim case till today. The Appellant National Insurance Company Ltd. shall deposit before Registrar General High Court Calcutta Rs. 14,00,000/- along with interest within 8 weeks from the date of communication of this order. In the event amount awarded by Learned Trial Court is already deposited the balance amount be deposited. The respondent no-1 and 2 claimants are permitted to withdraw the compensation amount upon compliance of necessary formalities.

With regard to recovery of compensation amount as observed above the appellant Insurance Company will be entitled to recover the compensation amount upon causing enquiry and giving the vehicle owner an opportunity of being heard. The recovery proceedings may be instituted only if the Insurance Company comes to a finding that the act of the vehicle owner was not bona fide and that the license seized by Police Authority was fake one and known to the vehicle owner. All points of law will be kept open before the Court where recovery proceedings is instituted.



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.)