IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A.T. 557 of 2018

Chandramaya Singh & Ors.

VERSUS

ICICI Lombard General Insurance Co. Ltd. & Anr.

For the Appellant:	Mr. Subir Benrerjee, Adv. Mr. Sandip Bandyopadhyay, Adv. Mrs. R. Basu Roy, Adv. Ms. Priyanka Samanta, Adv.
For the Respondent:	Mr. Gopa Das Mukherjee, Adv.

Last Heard on: July 02, 2026

Judgment on: July 09, 2026

Biswaroop Chowdhury,J:

The appellants before this Court were claimants in a case under Section 166 of the Motor Vehicles Act 1988 and are aggrieved by the Judgment and Award passed by Learned Additional District Judge 3rd Court Jalpaiguri in MAC Case No. 147 of 2014.

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

On 18-01-2014 at about 5.00 p.m. while the deceased Bikash Singh was performing his official duty. (RT-II, Mobile Duty), at Oil India More, Sonapur under P.S. Chapra, District U/Dinajpur at that time one Truck bearing No-PB-65-D-9345 coming at high speed dashed upon the Police Van of the deceased. As a result the said deceased sustained serious injuries on his person. After the accident the said deceased was taken to Dalua BPHC where the deceased expired on the same day.

The deceased was a constable of West Bengal Police and used to earn a sum of Rs. 21,123/- per month as his salary. His family members were completely dependent upon the income of the said deceased. Due to sudden demise the present petitioners have suffered irreparable pain shock and the suffering which will continue for a long period. The accident solely occurred due to rash and negligent driving on the part of the driver of the offending vehicle bearing No. PB-65/D-9345. Had the driver of the offending vehicle been little bit careful the aforesaid accident could have been averted.

Pursuant to the filing of the case notice was issued to the opposite parties.

Opposite party vehicle owner although filed written statement but did not contest the case. Opposite Party Insurance Company filed written statement and contested the case. ISSUES were framed and evidence was adduced. Learned Trial Judge upon considering the evidence adduced and upon hearing the Learned Advocates was pleased to dismiss the claim case.

The appellants/claimants being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal.

Learned Advocate for the appellants/claimants submits that the Learned Trial Judge erred in observing that the trial Court does not have territorial jurisdiction although there was no denial in written statement and no question put in Cross Examination that the claimants/respondents do not reside at Jalpaiguri. Learned Advocate further submits that the Learned Trial Judge inspite of holding that the claimants/respondents cannot maintain the case at Jalpaiguri proceeded to decide the case on merits instead of transferring the case to the Court having jurisdiction. Thus objection to the jurisdiction cannot be taken at the appellate stage.

With regard to the merits of the case Learned Advocate for the appellant submits that the Learned Trial Judge erred in Law, in dismissing the claim case when FIR and charge sheet shows that there was rash and negligent driving by driver of offending vehicle.

Learned Advocate further submits that there was no cross examination on the point of rash and negligent driving thus the Learned Judge erred in observing that the claimants failed to prove rash and negligent driving.

Learned Advocate also submits that the Learned Judge erred in holding that the driver of the vehicle was driving with fake license.

Learned Advocate for the respondent no-1 Insurance Company submits that P.W. 1 and P.W. 2 stated that vehicle was coming in high speed and there was no allegation of rash and negligent driving. Learned Advocate further submits that Learned Judge observed that only penal provision will not suffice thus there is no error in dismissal of claim case. Learned Advocate also submits that driving license was fake thus there is violation of condition of policy and Insurance Company is not liable.

With regard to point of territorial jurisdiction this Court is of the view that as the point of territorial Jurisdiction was not taken before the Learned Trial Court by the opposite party at the first instance and the matter was allowed to be proceeded on merits such plea cannot be taken by the respondent/opposite party at this stage in view of Section 21(1) of the Code of Civil Procedure.

In the case of MR. Krishnappa VS Smt Bhagyalakshmmamma reported in AIR 1982 Karnataka 77 the Hon'ble Court observed as follows:-

'20. Thus it is clear that even the CPC makes a distinction between inherent lack of jurisdiction with regard to the subject matter, and mere lack of territorial or pecuniary jurisdiction. The latter are considered as merely technical and they can be waived in the sense that if objection with regard to them is not taken at the earliest opportunity at any rate at or before the settlement of issues the same cannot be allowed to be raised at a later stage unless it is established that there is consequent failure of justice. This is not merely the result of an enactment. What is enacted is a principle of natural justice which prevail during the hearing even before a Tribunal.'

In the instant case as the appellants pleaded to be residing within the area Jalpaiguri but could not produce documents, and the matter was proceeded and decided on merits this Appeal should also be considered on merit.

Before proceeding to decide on the issue it is necessary to consider the provisions of Section 112 (1) 183 (1) and 184, of the Motor Vehicles Act 1988.

Section 112 (1) of the Motor Vehicles Act 1988 provides that no person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed or below the minimum speed fixed for the vehicle under this Act or by or under any other Law for the time being in force.

Section 183(1) of the Motor Vehicles Act 1988 provides that whoever drives [or causes any person who is employed by him or subjects someone under his control to drive] a motor vehicle in contravention of the speed limit referred to in section 112 shall be punishable in the following manner namely:

i) where such motor vehicle is a light motor vehicle with fine which shall not be less than one thousand rupees but may extend to two thousand rupees.

ii) where such motor vehicle is a light motor vehicle with fine which shall not be less than two thousand rupees but may extend to four thousand rupees and

iii) for the second or subsequent offence under this sub-section the driving license of such driver shall be impounded as per provisions of sub-section (4) of Section 206.

As per Section 184 of the Motor Vehicles Act 1988 whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, [or which causes a sense of alarm or distress to the occupants of the vehicle other road users and persons near roads] having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place shall be punishable for the first offence with imprisonment for a term [which may extend to one year but shall not be less than six months or with fine which shall not be less than one thousand rupees but may extend to five thousand or with both] and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years or with fine [of ten thousand rupees] or with both.

Explanation. For the purpose of this section:-

a) jumping a red light.

b) Violating a step sign.

c) Use of handheld communications devices while driving.

d) Passing or overtaking other vehicles in a manner contrary to Law.

e) Driving against the authorized flow of traffic or;

f) Driving in any manner that falls far below what would be expected of a competent and careful driver and where it would be obvious to a competent and careful driver that driving in that manner would be dangerous.

Shall amount to driving in such manner which is dangerous to public.

The Hon'ble Punjab High Court while considering the issue of negligence in the case of State of Punjab V Brij Mohan Singh 1975 ACJ 372 was pleased to observe as follows:

'8. 'Negligence' would mean breach of duty caused by the omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. Since no absolute rule can be laid down by which negligence or its absence can be judged in a given case, 'negligence' would necessarily vary in different cases and for judging the same all the attending and surrounding facts and circumstances of a particular case have to be taken into account. The test of negligence is the exercise of ordinary care and caution which is expected from a prudent man in the circumstances of a given case.'

In the instant case although charge sheet is submitted under Section 279 and Section 304A of the Indian Penal Code which deals with rash and negligent driving and not under Section 183, and 184 of the Motor Vehicles Act 1988 but driving in high speed without taking necessary care amounts to rash and negligent driving. Rule 17 of The Motor Vehicles (Driving) Regulations 2017 provides as follows:-

Rule-17 keeping safe distance. 1) A driver driving behind another vehicle shall keep sufficient distance commensurate with the traffic conditions, from the vehicle and so as to be able to stop (pull up) safely if the vehicles ahead suddenly slows down or stops.

2) When being followed by another vehicle not suddenly brake without a compelling reason.

3) The driver shall during rainfall snow or storm or ice on the road due to severe weather conditions and during other adverse weather conditions further increase the distance from the vehicle ahead.

Although in a Criminal Court the prosecution is to establish rash and negligent driving by driver of an offending vehicle beyond reasonable doubt but in case for compensation under the Motor Vehicles Act 1988 the same is to be decided on the touchstone of preponderance of probability.

In the instant case the offending vehicle being no. PB-65-D-9345 dashed the police van/victim vehicle from behind. There is evidence with regard to high speed by P.W. 2 witness, and nothing can be shaken with regard to high speed by vehicle no. PB-65D-9345 in cross examination. It is not a case of head on collision, nor is it a case of hitting any person walking on the street. Thus when a vehicle dashes another vehicle from behind and causing not only damage to the vehicle dashed but causing serious injury resulting in death of the passenger seating in the vehicle, the fact of high speed is established along with violation of Rule 17 of the Motor Vehicles (Driving) Regulations 2017 for the purpose of compensation under Section 166 of the Motor Vehicles Act. A separate plea of rash and negligent driving in this regard is not required Both oral evidence and FIR and charge sheet under Section 279 and 204A of the Indian Penal Code will go to show that the claimants have established rash and negligent driving by driver of the offending vehicle no. PB-65-D-9345 (Truck). Moreover there is no evidence of contributory negligence by Insurance Company or in Police report of driver of victim vehicle. Thus the Learned Trial Judge erred in dismissing the claim case filed by the appellants/claimants.

Now with regard to the issue of driving without valid driving license, it is well settled that in case of driving without valid driving license the Insurance Company cannot be absolved of the liability but it will entitled recover the compensation amount from vehicle owner upon making payment of the compensation.

In the case of National Insurance Company Ltd. VS Lirasa Bibi FMA 1003 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.*

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.'

As the claimants/appellants are entitled to compensation it is now necessary to consider the income of the victim.

Upon perusal of the pay statement exhibited it will appear that the victim received monthly salary of Rs. 21,836/- profession Tax deducted the net monthly income comes to Rs. 21,706/- 50% future prospect added the monthly income comes to Rs. 32,559/-. The annual income comes to Rs. 3,90,708/- 1/3rd being deducted on account of personal expenses the annual dependency loss comes to Rs. 2,60,472/-. The multiplier of 15 being applied total dependency loss comes to Rs. 39,07,080/-. Further the claimants are entitled to Rs. 1,10,000/- on account of funeral expenses loss of estate and loss of consortium. Thus total compensation comes to Rs. 40,17,080/- by arithmetical calculation. However as Courts and Tribunals are empowered to award just and reasonable compensation under Section 168 of the Motor Vehicles Act 1988 it is necessary to consider what would be just compensation in the instant case.

In the case of National Insurance Company Limited VS Indira Srivastava reported in AIR-2008. S.C. 845 the Hon'ble Supreme Court observed as follows:-

'23. The expression just must also be given its logical meaning. Whereas it cannot be a bonanza or a source of profit but in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration.'

In the case of KSRTC VS State the Hon'ble Supreme Court observed as follows:-

"10. Much of the calculation necessarily remains in the realm of hypothesis and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

In the instant case the victim was a Government Employee where due to death in harness widow of victim gets pension or compassionate appointment. Although the grant of pension or death benefit cannot deprive families of victim to claim compensation nor the death benefits can be adjusted from compensation awarded but it can be taken into consideration to decide just compensation after compensation by arithmetical calculation is ascertained. In the instant case upon considering the compensation computed by arithmetical calculation and the fact that the victim was Government Employee this Court is of the view that compensation of Rs. 38,00,000/- (Rupees thirty eight lakh) would be just and reasonable.

Hence the Appeal FMAT-557 of 2018 stands allowed. Judgment and Award dated 21-03-2018 passed by Learned Additional District Judge 3rd Court Jalpaiguri in MAC Case No. 147/2014 is set aside.

The appellants/claimants are entitled to compensation of Rs. 38,00,000/- (Rupees thirty eight lakh) along with interest @6% per annum from the date of filing claim case till today. The respondent no-1 ICICI Lombard

General Insurance Company Limited shall deposit before Registrar General High Court Calcutta Rs. 38, lakhs along with interest within 8 weeks from the date of communication of this Order. The appellant will be entitled to withdraw the compensation in equal shares upon compliance of necessary formalities.

The respondent no-1 Insurance Company upon making the deposit of the compensation will be entitled to recover the compensation upon causing necessary enquiry and giving the vehicle owner and driver an opportunity of being heard as per the conditions laid down in the case of National Insurance Company VS Lirasa Bibi being FMA-1003 of 2025.

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.)