

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

F.M.A. 2883 of 2016

with

CAN/2/2016 (OLD CAN/458/2016)

CAN/3/2017 (OLD CAN/2819/2017)

National Insurance Co. Ltd.

-Versus-

Sabitri Maji & Ors.

For the Appellants/Insurance Co. : **Mr. Saibalendu
Bhowmik.**

For the Respondents/Claimants : **Mr. Amit Ranjan Roy.**

Hearing concluded on : **24.08.2026**

Judgment on : **12.10.2026**

Judgment uploaded on : **12.10.2026**

Prasenjit Biswas, J:-

1. This appeal is directed against the judgment and award dated 14th August, 2015 passed by the learned Additional District

& Sessions Judge cum Motor Accident Claims Tribunal in connection with M.A.C. Case No. 48 of 2012 (M.A.C. No. 177 of 2011).

2. By passing the impugned judgment and award learned Tribunal awarded compensation to the tune of Rs. 27,27,500/- along with interest at the rate of 6% per annum from filing of the application till the payment by the appellant (herein)/Insurance Company Ltd.

3. The case of the claimants, as made out in the claim petition, is that on 31.10.2011, the victim, Ashis Maji, was proceeding towards Bankura from his residence along with his family members in an Alto car bearing registration No. WB-38S/6843. When the said vehicle reached Raha Lane on G.T. Road at Asansol, it was hit from behind by a Scorpio car bearing registration No. WB-20G/4458 (hereinafter referred to as the "offending vehicle"). As a result of the impact, the Alto car struck the road divider, causing injuries to the victim and the other occupants of the vehicle. The victim, Ashis Maji, was thereafter taken to the hospital, where he was declared dead.

4. In connection with the said incident, Asansol (South) Police Station Case No. 371/11 dated 08.11.2011 was registered against the driver of the offending vehicle under Sections 279, 337, 338, 427 and 304A of the Indian Penal Code. Upon completion of the

investigation, the investigating agency submitted a charge-sheet against the driver of the offending Scorpio car under the aforesaid provisions of law.

5. During the proceedings before the learned Tribunal, the claimants adduced oral evidence and produced documentary evidence in support of their claim, and the documents relied upon by them were duly marked as exhibits. Upon receipt of the notice issued by the learned Tribunal, the appellant-insurance company entered appearance and contested the claim petition by filing its written statement, wherein it denied the material allegations and averments made in the claim petition.

6. Although notice was duly served upon the driver of the offending vehicle, he did not enter appearance or contest the proceedings. Consequently, the learned Tribunal proceeded ex parte against him. The owner of the offending vehicle, despite service of notice, also chose not to appear or contest the claim proceedings.

7. Upon consideration and appreciation of the oral and documentary evidence adduced on behalf of the claimants, together with the materials available on record, the learned Tribunal passed the impugned award fastening liability upon the appellant-insurance company. Being aggrieved by and dissatisfied

with the said award, the appellant-insurance company has preferred the instant appeal.

8. Mr. Saibalendu Bhowmik, learned Advocate appearing on behalf of the appellant-insurance company, submits that the driver of the offending Scorpio car did not possess a valid and effective driving licence to drive the said vehicle on the date of the accident, i.e., 31.10.2011. It is, therefore, contended that respondent No. 4, being the owner of the offending vehicle, committed a breach of the terms and conditions of the contract of insurance by permitting a person who was not duly licensed to drive the vehicle. According to the learned Advocate, in view of such breach of the policy conditions, the appellant-insurance company could not have been saddled with the liability to satisfy the compensation awarded by the learned Tribunal.

9. In support of his contention, learned Advocate has drawn the attention of this Court to the authorisation letter/document relating to the driving licence of the driver of the offending vehicle, which has been marked as Exhibit C. According to the learned Advocate, the said document demonstrates that the driving licence authorising the driver to drive a four-wheeler was valid for the relevant period, except for the period commencing from 08.04.2011 and ending on 24.03.2014. Since the accident occurred on 31.10.2011, which falls within the aforesaid period, it

is argued that the driver did not possess a valid driving licence on the date of the accident. On such premise, learned Advocate contends that the owner of the offending vehicle violated the terms of the insurance policy and that the learned Tribunal committed an error in law in fastening liability upon the appellant-insurance company without properly considering the legal consequences flowing from such breach.

10. In support of the aforesaid submission, learned Advocate places reliance upon the decision of the Hon'ble Supreme Court in **New India Assurance Co. Ltd. v. Suresh Chandra Aggarwal**, reported in **AIR 2009 SC 2987**. Relying upon the said decision, it is contended that where the driver of the offending vehicle did not possess a valid and effective driving licence on the date of the accident, the insurer cannot be compelled to indemnify the insured in disregard of the applicable terms and conditions of the insurance policy. It is, accordingly, argued that the learned Tribunal failed to appreciate the legal implications of the absence of a valid driving licence and erroneously imposed liability upon the appellant.

11. Learned Advocate further submits that the learned Tribunal did not correctly ascertain the actual income of the deceased while computing the loss of dependency. In this connection, reference has been made to Exhibit 8 series, which, according to

the learned Advocate, contains the relevant materials concerning the salary and income of the deceased. It is argued that the learned Tribunal failed to undertake a proper assessment of the income actually available to the deceased after taking into consideration the admissible deductions, including income tax and other permissible deductions from the salary. Consequently, the determination of the multiplicand for the purpose of calculating the loss of dependency is assailed as being erroneous and not founded upon a proper appreciation of the documentary evidence on record.

12. It is further contended that the learned Tribunal awarded general damages without adhering to the applicable principles of law governing the assessment of compensation in motor accident claim cases. According to the learned Advocate, the amounts awarded under the relevant conventional heads are not in conformity with the governing legal principles and the decisions of the Hon'ble Supreme Court. The award is, therefore, challenged not only on the ground of the alleged breach of the insurance policy but also on the ground that the quantum of compensation has not been determined in accordance with law.

13. In conclusion, learned Advocate for the appellant submits that the absence of a valid driving licence on the date of the accident, as allegedly established by Exhibit C, constitutes a

breach of the conditions of the insurance policy attributable to the owner of the offending vehicle. It is argued that the learned Tribunal failed to consider the legal effect of such breach, as well as the alleged errors in determining the loss of dependency and awarding general damages. On these grounds, learned Advocate prays that the instant appeal be allowed and that the impugned award be set aside.

14. Per contra, learned Advocate for the claimants said that there are no illegality or material irregularity in the impugned award passed by the tribunal. No material has been brought in the record for which the decision of the tribunal is required to be interfered with.

15. Having heard the learned Advocates for the respective parties following points have been fallen for consideration.

1. Whether the learned Tribunal committed error at the time of calculation of the income of the deceased?
2. Whether the learned Tribunal committed error by giving direction upon the insurance company to pay the awarded compensation to the claimants when it appears that at the time of accident the driver of the offending vehicle did not possess any valid license?

3. Whether the learned Tribunal committed any wrong in respect of computation of general damages at the time of awarding compensation to the claimants?

16. At the time of calculating the monthly income of the deceased only the net income was taken into consideration by the Tribunal. As per submission of the learned Advocate for the appellant in computing the income of the deceased only the component of income tax should be deducted from gross income. In view of the decision rendered by the Hon'ble Apex Court in case of **National Insurance Co. Ltd.-vs- Indira Srivastava and Ors.** reported in **(2008) 2 SCC 763** the actual salary of the victim should be read as actual salary less tax.

17. In this context, it would be apposite to refer to the observations made by the Hon'ble Supreme Court in the judgment cited hereinabove, which are reproduced below for ready reference:—

"14. The question came for consideration before a learned Single Judge of the Madras High Court in National Insurance Co. Ltd. v. Padmavathy [CMA No. 114 of 2006 decided on 29-1-2007 : 2007 AIHC 1921] wherein it was held: (AIHC pp. 1927-28, para 7)

"7. ... Income tax, professional tax which are deducted from the salaried person goes to the coffers of the Government under specific head and there is no return.

Whereas, the general provident fund, special provident fund, LIC contribution are amounts paid under specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the legal representatives are entitled to lump sum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependency compensation, then the legal representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only statutory deductions such as income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contributions made by the employee during his lifetime,

form part of the salary and they should be included in the monthly income, while computing the dependency compensation."

18. It appears from the salary slip of the deceased Ashis Maji (exhibit 8 series) that the average annual gross salary of the deceased less Income Tax and P. Tax (to the tune of Rs. 20,405/-) was Rs.3 lakh (approximate). In view of the above decision, I find that the learned Tribunal did not commit any wrong in calculation of the actual salary after deducting professional tax and income tax from it.

19. It is the specific contention of Mr. Bhowmik, learned Advocate appearing on behalf of the appellant-insurance company, that the driver of the offending vehicle did not possess a valid and effective driving licence on the date of the accident, i.e., 31.10.2011. According to the learned Advocate, such absence of a valid driving licence constituted a breach of the terms and conditions of the insurance policy and, consequently, the appellant-insurance company ought not to have been saddled with the ultimate liability to satisfy the award passed by the learned Tribunal. It is further submitted that the materials available on record, particularly Exhibit C, establish the aforesaid breach and that the owner of the offending vehicle cannot escape the

consequences of having permitted a person without a valid and effective driving licence to drive the vehicle.

20. The aforesaid submission, however, requires consideration in the light of the settled principles governing the liability of an insurer towards third-party claimants, particularly the distinction between the obligation to satisfy an award in the first instance and the ultimate liability to bear the compensation.

21. In this connection, reliance may profitably be placed upon the decision of the Hon'ble Supreme Court in **Sadhana Tomar & Ors. v. Ashok Kushwaha & Ors., Civil Appeal No. 3763 of 2025, arising out of SLP (C) No. 6986 of 2023**. In the said decision, the Hon'ble Supreme Court considered a case in which the driver did not possess an effective driving licence and upheld the direction requiring the insurance company to pay the compensation awarded to the claimants in the first instance, with liberty to recover the amount from the driver and the owner, who were held jointly and severally liable.

22. The relevant observations of the Hon'ble Supreme Court, as contained in paragraph 16 of the said decision, are reproduced below:

"16. In the present case, it is necessary to note, as observed by the Tribunal are liable to pay compensation, as the driver did not possess an

effective driving license. On these facts, the High Court directed Respondent No. 3 – the Insurance Company, to first pay the compensation awarded to the appellants and then, recover the same from respondent Nos. 1 the driver and respondent No. 2, the owner, who are jointly and severally liable to pay the same. On this aspect, we are not inclined to interfere with the impugned order.”

23. The aforesaid pronouncement reinforces the principle that the absence of an effective driving licence, though relevant to determining the insurer’s liability under the policy, does not necessarily justify denying immediate relief to third-party victims or their dependants. The Court may, in an appropriate case, direct the insurer to satisfy the award in the first instance while preserving its right to recover the amount from the persons ultimately liable.

24. The legal position has further been elucidated by the Hon’ble Supreme Court in **Reliance General Insurance Company Ltd. v. Om Parkash & Ors., 2026 INSC 767**, decided on 30.07.2026. In that case, the Hon’ble Supreme Court examined the consequences of the driver not possessing a valid driving licence on the date of the accident and the circumstances in which the ultimate burden of satisfying the award would rest upon the driver and the owner rather than the insurer. The Court

held that the insurer could not be held liable to bear the award in the circumstances established in that case, while nevertheless applying the principle of “pay and recover” to ensure that the compensation was released to the claimants. The insurer was left at liberty to take appropriate steps in accordance with law for recovery of the amount.

25. The relevant observation contained in paragraph 18 of the said judgment is reproduced below:

“18. Following the dictum above, the appeal is allowed. The appellant insurer cannot be held liable to make good the award. The final burden shall be on both the employer and the driver. In the order issuing notice, we had directed that the amount as computed be released in favour of the claimants. In view of the above discussion, we hold the principle of ‘pay and recover’ to be applicable in this case. The appellant-insurer shall therefore be at liberty to take steps in accordance with law.”

26. The aforesaid decision makes it clear that the question of the insurer’s ultimate liability must be distinguished from the obligation to ensure payment of compensation to third-party victims. Where the insurer establishes a breach of the policy condition on account of the driver not possessing a valid and effective driving licence, the insurer may be exonerated from the ultimate financial burden. Nevertheless, having regard to the

protective object of the Motor Vehicles Act, 1988, the principle of “pay and recover” may be applied so that the claimants are not compelled to pursue the owner and the driver in the first instance to realise the compensation awarded to them.

27. Applying the aforesaid principles to the facts of the present case, it appears from Exhibit C, as relied upon by the appellant-insurance company that the driving licence in question was not valid for the relevant period extending from 08.04.2011 to 24.03.2014. The accident having occurred on 31.10.2011, the same falls within the aforesaid period. If Exhibit C is accepted as reliable and sufficient proof of the absence of a valid and effective driving licence, and the insurer has otherwise discharged its burden of establishing the relevant breach of the policy condition, the appellant-insurance company would be entitled to seek exoneration from the ultimate liability to bear the compensation. The mere absence of a valid driving licence, however, does not, by itself, dispense with the need to determine the insurer’s statutory obligations towards third-party claimants in accordance with the governing legal principles.

28. In view of the decisions in **Sadhana Tomar (supra)**, the appropriate course in the present case would, therefore, be to direct the appellant-insurance company to deposit and satisfy the compensation awarded by the learned Tribunal, together with the

applicable interest, in favour of the claimants in the first instance, with liberty to recover the amount so paid from the owner and the driver of the offending Scorpio car bearing registration No. WB-20G/4458, in accordance with law. Such a direction would preserve the right of the insurer arising from the established breach of the insurance policy while ensuring that the claimants are not deprived of the compensation awarded to them merely because the driver did not possess a valid and effective driving licence at the time of the accident.

29. Accordingly, the appeal, insofar as it challenges the fastening of the ultimate liability upon the appellant-insurance company, may be allowed to the limited extent of granting the insurer the right of recovery against the owner and the driver, while maintaining the direction for payment of the awarded compensation to the claimants in the first instance. The owner and the driver would remain responsible for the ultimate burden of satisfying the award, subject to the recovery proceedings undertaken by the insurer in accordance with law.

30. At the very outset, Mr. Bhowmik, learned Advocate appearing on behalf of the appellant-insurance company, submits that the learned Tribunal erred in law in awarding compensation under the conventional heads of general damages in a manner inconsistent with the principles laid down by the Constitution

Bench of the Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi**, reported in **(2017) 16 SCC 680**.

31. In above referred case the Hon'ble Supreme Court authoritatively settled the principles governing the award of compensation under conventional heads in motor accident claim cases involving death. The Constitution Bench held that compensation under the conventional heads should ordinarily be confined to loss of estate, loss of consortium and funeral expenses, and that the amounts awarded under such heads must conform to the guidelines laid down therein, subject to the applicable enhancement in terms of the judgment.

32. Upon examination of the impugned award, it appears that the learned Tribunal awarded a sum of Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- towards loss of consortium and Rs. 2,500/- towards loss of estate. The aggregate amount awarded under the aforesaid conventional heads was, therefore, Rs. 1,27,500/-.

33. However, having regard to the principles laid down by the Hon'ble Supreme Court in **Pranay Sethi (supra)**, the amounts awarded under the conventional heads require reconsideration. In terms of the figures prescribed in the said decision, the claimants would ordinarily be entitled to Rs. 15,000/- towards loss of estate,

Rs. 40,000/- towards loss of consortium and Rs. 15,000/- towards funeral expenses, subject to the applicability of the prescribed enhancement and the relevant facts of the case.

34. Accordingly, the compensation under the aforesaid conventional heads is required to be reassessed in conformity with the governing principles laid down by the Hon'ble Supreme Court. The amount awarded by the learned Tribunal towards funeral expenses and loss of consortium exceeds the original figures prescribed in Pranay Sethi, whereas the amount awarded towards loss of estate falls short of the figure prescribed therein. The impugned award, to this extent, therefore, calls for appropriate modification so as to bring the compensation under the conventional heads in conformity with the applicable legal principles.

35. In view of the above discussion, the calculation of compensation is made hereunder:

HEADS OF COMPENSATION	AMOUNT IN INR
Yearly Income (After Deduction of Income Tax and P.Tax)	3,00,000/-
Deduction 1/3	-1,00,000/-

	2,00,000/-
Multiplier to be "13"	26,00,000/-
Add: General damages	70,000/-
Loss of estate: Rs. 15,000/-	
Loss of consortium Rs. 40,000/-	
Funeral Expenses: Rs. 15,000/-	
Total	26,70,000/- (Rupees Twenty six lakh and seventy thousand)

36. In view of the foregoing discussion and having regard to the materials available on record, it appears that the driver of the offending Scorpio Car bearing registration No. WB-20G/4458 did not possess a valid and effective driving licence on the date of the accident. The absence of such a licence, as established by the relevant evidence, constitutes a breach of the applicable condition of the insurance policy. Consequently, the ultimate liability to satisfy the award shall rest upon the owner and the driver of the offending vehicle, who shall be jointly and severally liable for payment of the compensation awarded to the claimants.

37. However, in view of the principles laid down by the Hon'ble Supreme Court governing the doctrine of pay and recover, the appellant-insurance company cannot, on that ground alone, be permitted to avoid the immediate payment of compensation to the third-party claimants. Accordingly, the appellant-insurance company, namely, National Insurance Company Limited, is directed to pay the compensation awarded to the claimants in the first instance, with liberty to recover the amount so paid from the owner and the driver of the offending vehicle, who shall be jointly and severally liable for the same, in accordance with law.

38. The appellant-National Insurance Company Limited is directed to deposit the compensation amount, as determined upon modification of the impugned award, together with interest at the rate of 6% per annum on the said amount from the date of filing of the claim application until the date of deposit, after giving credit to any amount already paid or deposited, if applicable.

39. The appellant-National Insurance Company Limited shall deposit the aforesaid compensation amount, together with the accrued interest thereon, by account-payee cheques drawn in favour of the claimants before the office of the learned Registrar General, High Court at Calcutta, within one month from the date of this judgment.

40. Upon receipt of the deposited amount and upon due verification of the identities of the claimants, the learned Registrar General, High Court at Calcutta, shall release the compensation amount, together with the accrued interest thereon, in favour of the claimants in equal shares, subject to the adjustment i.e. a sum of Rs. 40,000/- shall be paid to respondent No. 1, being the widow of the deceased, towards spousal consortium, in accordance with the applicable principles governing compensation under conventional heads. The balance amount shall be distributed equally among the claimants.

41. The learned Registrar General shall ensure that the amount is released only upon due satisfaction regarding the identity and entitlement of the respective claimants and after making the aforesaid adjustment.

42. Accordingly, the judgment and award dated 14th August, 2015, passed by the learned Additional District and Sessions Judge-cum-Motor Accident Claims Tribunal in M.A.C. Case No. 48 of 2012 (M.A.C. No. 177 of 2011), stand modified to the extent indicated hereinabove. The direction requiring the appellant-insurance company to satisfy the award in the first instance shall remain subject to its right to recover the amount paid from the owner and the driver of the offending vehicle in accordance with law.

- 43.** With the aforesaid observations and directions, the appeal stands disposed of.
- 44.** There shall be no order as to costs.
- 45.** Consequently, any application filed in connection with this appeal is also disposed of.
- 46.** Let a copy of the judgment along with Tribunal Record be sent down to the Tribunal immediately.
- 47.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)