

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

Present:

The Hon'ble Justice Md. Shabbar Rashidi

FMA 650 of 2009

CAN 2 of 2008 (Old No. CAN 9783 of 2008)

The New India Assurance Co. Ltd.

vs.

Sri Krishna Chandra Rauth & Anr.

With

FMA 651 of 2009

CAN 2 of 2012 (Old No. CAN 9370 of 2012)

Sri Krishna Chandra Rauth

vs.

The New India Assurance Co. Ltd. & Anr.

For the appellant in : Mr. Parimal Kumar Pahari, Adv.
FMA 650 of 2009

For the appellant in : Mr. Rabindranath Mahato, Adv.
FMA 651 of 2009 Mr. Aritra Shankar Ray, Adv.

For the respondent in : Mr. Rabindranath Mahato, Adv.
FMA 650 of 2009 Mr. Aritra Shankar Ray, Adv.

For the respondent in : Mr. Parimal Kumar Pahari, Adv.
FMA 651 of 2009

Heard on : 14.09.2026

Judgment on : 14.09.2026

Uploaded on : 15.09.2026

MD. SHABBAR RASHIDI, J:-

1. Both appeals are taken up together as they have emanated from the self-same judgement and order passed by learned Motor Accident Claims Tribunal (MACT) in MAC Case no. 490 of 2005.

2. By the impugned judgment and order MAC Case filed by the petitioner therein, was allowed as against the owner of the offending vehicle, whereas, it was dismissed as against the Insurance Company i.e., New India Assurance Company. The impugned judgment dated March 5, 2008 directed as follows :-

“that the M.A.C. case be and the same is dismissed on contest without any cost against the Insurance Co. at this stage, but if at any point of time, the applicant can produce the valid Insurance Policy to the extent of present Insurance Co. and Insurance Co. is satisfied that the said Insurance Policy was valid for the date of accident, in that case in connection with this Insurance Co. shall have to pay compensation which is being decreed ex-parte against the owner of the vehicle.

Accordingly, the present case be and the same is allowed ex-parte against the owner of the vehicle and present applicant, Timir Baran Routh, son of Krishna Chandra Routh, is entitled to 3,50,000/- (Rupees three lakhs fifty thousand only) as final compensation from the owner of the offending truck being no. U.P-N/3435 and the owner of the said vehicle shall have to issue a Bank Draft of Rs. 3,50,000/- by issuing it in the name of Timir Baran Routh within two months from the date of this order, but if the

owner of the said vehicle can produce the valid Insurance Policy of the offending truck, in that case the owner of the vehicle must have to deposit the Insurance Policy to the Insurance Co. of the locality, the present Insurance Co. of this case and if Insurance Co. is found that it was valid on the date of accident, in that case the Insurance Co. shall have to issue cheque in favour of Timir Baran Routh, otherwise the Insurance Co. has no liability to pay any compensation when no valid Insurance Policy is proved and when it is not ascertainable from which Office In India such sort of Policy No. was issued, but there are certain norms to search out the Policy, if it is issued from any other State in India, but that was not supplied by the applicant.”

3. The appeal being FMA 650 of 2009 is at the behest of New India Assurance Company Limited. New India Assurance Company Limited is aggrieved by the impugned judgment insofar as it directs New India Assurance Company to pay a sum of Rs. 3,50,000/- to the claimant, if a valid insurance policy issued by such Company is produced by the owner of the offending vehicle.

4. The other appeal being FMA 651 of 2009 is at the behest of the claimant. The claimant is aggrieved that the impugned judgment and order insofar as it directs the owner to pay the amount awarded by the learned Tribunal whereas the Insurance Company has been exonerated from such responsibility of paying the awarded claim of the petitioner.

5. At the time of hearing, learned advocate appearing for the appellant in FMA 650 of 2009 submits that no valid insurance policy was produced and proved at the trial and as such, the learned MACT erred in directing the Insurance Company to pay the awarded amount to the claimant/petitioner, as and when an insurance policy is produced by the owner.

6. Learned advocate appearing in FMA 651 of 2009 submits that the MACT, at the time of passing the impugned judgment and order, erred in not directing the New Indian Assurance Company to pay the awarded amount to the claimants.

7. One Timir Baran Routh filed an application for motor accident compensation of Rs. 8,00,000/- through his father Krishna Chandra Routh. The said Timir Baran Routh met with an accident due to rash and negligent driving of the offending vehicle bearing registration no. U.P.-78-N/3435. The said Timir Baran Routh was walking on the road at Midnapore on May 2, 2005 at about 10 p.m. At that time, the offending vehicle suddenly came and dashed him resulting in severe injuries to him. He lost his senses and was medically treated. After prolonged treatment, he was disabled permanently and had no capacity of stand or walk. It was claimed that the accident took place due to the fault on the part of the driver of the offending vehicle.

8. In the claim application, it was stated that the offending vehicle was insured with the Insurance Company and, therefore, the Insurance Company would liable to pay compensation for the accident. The Insurance Company, i.e., New India Assurance Company contested the said claim application by filing written objection. They denied the very happening of the accident by the offending vehicle. It was specifically stated by the Insurance Company that the accident took place by some other vehicle being registration No. WB-33/6260. It also stated on behalf of the Insurance Company that the alleged offending vehicle was not insured with them and, therefore, the Insurance Company was not liable to pay compensation for the accident to the claimant, Timir Baran Routh.

9. Upon the pleadings put in by the parties, the claim application was taken into consideration and upon consideration of the evidence adduced on behalf of the petitioner/claimant, it was held by the learned MACT that the petitioner/claimant sustained injuries due to road accident. It was also held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. The learned Tribunal also came to conclusion that due to such accident, the injured person sustained severe injuries

and developed permanent incapacity and disablement. In course of appreciation of evident, the learned tribunal held as follows:-

“But the question is whether there was any valid Insurance Policy of the offending vehicle or not. In this regard I have gone through the materials on record. It is found that the owner of the said vehicle has not deposed and Insurance Co. has stated that no such Insurance Policy is filed by the present applicant, so the Insurance Co. is not liable to pay any compensation. In the evidence of the p.w.1 he has stated nothing about the filing of Insurance Policy of the offending vehicle and he has failed to prove any such Insurance Policy and It is admitted fact that M.A.C.C.no.489/05 dated 16.12.05 had been dismissed, i.e. u/s 140 of the M.V.Act and that was no doubt dismissed for non-prosecution.”

10. Taking into consideration the nature of injuries sustained by the claimant as well as his age, income and other parameters, the learned Tribunal held the claim petitioner to be entitled to compensation to the tune of Rs. 3,50,000/-. At the time of hearing of the appeals, no challenge has been raised by either of the parties as to the quantum of compensation awarded in favour of the claimant.

11. At the time of hearing the claim application, the learned Tribunal came to the conclusion that since it was not proved that the offending vehicle was insured under valid insurance policy

under the appeal in FMA 650 of 2009 (New India Assurance Company Limited), the Insurance Company was not liable to pay compensation.

12. Learned Tribunal specifically held that since a valid insurance policy issued by the New India Assurance Company was not produced and proved at the trial, the owner of the offending vehicle was held to be liable to pay the compensation awarded by the Tribunal.

13. Accordingly, by the impugned judgment and order, the MAC Case was allowed as against the owner of the offending vehicle whereas it was dismissed as against the Insurance Company.

14. No doubt, as no valid insurance policy was produced and proved at the trial of MAC Case No. 490 of 2005, the Insurance Company cannot be held responsible for the payment of compensation to the claimant.

15. Although, notice of the proceedings was served upon the owner of the vehicle and initially, the owner appeared in the case before the learned Tribunal, he also submitted his written statement but subsequently, he did not pursue the case and, as such, the order was passed against him ex parte. The owner of the offending vehicle did not produce any valid insurance policy issued by the New India Assurance Company, i.e., the appellant in FMA 650 of

2009, the said Insurance Company cannot be held liable for the payment of the awarded compensation money to the claimants. It is the owner of the offending vehicle who is exclusively liable for payment of compensation to the claimant.

16. By the impugned judgment and order, the Insurance Company has been directed to pay the awarded compensation as and when a valid insurance policy issued by them is produced. In fact, by the impugned judgment and order, it is the owner who still has to pay the awarded compensation to the claimants and a direction to issue the requisite cheque in favour of the claimant has been passed in the impugned judgment and order.

17. Therefore, on the basis of the aforesaid discussions, I find no reason to interfere with the impugned judgment and order passed by learned MACT. Accordingly, the same is hereby affirmed.

18. With the aforesaid directions, both the appeals, being **FMA 650 of 2009** and **FMA 651 of 2009** along with the connected application(s), if any, are disposed of.

19. New India Assurance Company, i.e., appellant of FMA 650 of 2009 is hereby permitted to withdraw the statutory amount of Rs. 25,000/- along with accrued interest lying deposited with learned Registrar General in connection with the present appeal to the credit of FMA 650 of 2009.

20. Learned Registrar General is requested to disburse the said amount as and when applied for by the New India Assurance Company Limited.

21. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

(Md. Shabbar Rashidi, J.)