New India Assurance Co. Ltd. vs Phelishsa Bakai And Ors. on 30 September, 2005

Equivalent citations: 2007ACJ2388

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Bench: I.A. Ansari

JUDGMENT

I.A. Ansari, J.

1. We have heard Mr. V.K. Jindal, learned senior Counsel, for the insurer appellant and Mr. S.P. Mahanta, learned Counsel, appearing on behalf of the claimants-respondents.

2. By this common judgment and order, we propose to dispose of all the appeals enlisted above, for, on the request of the learned Counsel for the parties, all these appeals have been heard together as the appeals involve largely identical facts and common questions of law, the same are capable of being disposed of together and it is conceded by the learned Counsel for the parties that the decision in any of these appeals will have a bearing on the outcome of the remaining appeals.

3. We, first, cull together the material facts and various stages, which have led to the present appeals:

> (i) On 25.10.1999 at about 7 p.m., the bus bearing registration No. ML 05-9275, owned by the respondent No. 1 herein and driven by respondent No. 2 herein, while carrying contrary to the road permit, more than the permissible capacity of 38 passengers, fell into a deep gorge at Peitkynsaw-Sohra Road near Mawpykrong village in the East Khasi Hills district of Meghalaya. Many of the passengers suffered injuries and out of them as many as 34 passengers succumbed to their injuries. In connection with the said accident Sohra Police Station Case No. 31(10) of 1999 under Sections 279/337/338/427/304-A of Indian Penal Code was registered. Altogether 46 claim applications have so far been filed in the Motor Accidents Claims Tribunal, Shillong under Section 166 of the Motor Vehicles Act, 1988 (in short, 'the Act'), seeking compensation. By M.A.C. Case Nos. 3 of 2000, 61 of 1999,48 of 1999, 31 of 2000, 13 of 2001, 30 of 2000, 26 of 2000, 23 of 2001, 46 of 1999, 29 of 2000 and 2 of 2000, claimants made applications seeking compensation for the injuries sustained by them; whereas M.A.C. Case Nos. 64 of 1999,41 of 1999, 16 of 2000, 34 of 1999, 68 of 1999, 32 of 1999, 72 of 1999, 19 of 2000,49 of 2000, 73 of 1999, 44 of 1999, 43 of 1999, 31 of 1999, 47 of 1999, 1 of 2000, 22 of 2000, 75 of 1999, 69 of 1999,

60 of 1999, 50 of 1999, 66 of 1999, 17 of 2000, 35 of 1999, 70 of 1999, 74 of 1999, 15 of 2000, 67 of 1999, 51 of 1999, 42 of 1999, 66 of 1999, 11 of 2000 and 13 of 2000 were instituted by the legal representatives of those injured persons, who had succumbed to their injuries.

(ii) The vehicle involved in accident was, admittedly, insured at the relevant point of time with the present appellants, namely, New India Assurance Co. Ltd. The owner as well as the driver of the said bus were impleaded as party respondents to the claim applications. Though the relevant insurance policy admittedly covered the risk in respect of 34 passengers, neither the owner nor the driver of the said bus appeared and contested the said claim applications. The insurer on the basis of the applications made under Section 170 of the Act, contested the claim applications on all defences available to the owner of the said vehicle.

(iii) During the pendency of the claim applications made under Section 166 of the Act, the learned Tribunal granted, on the strength of the applications made by the claimants under Section 140 of the Act, interim compensation on the basis of no fault liability and claimants-respondents accordingly received the same.

(iv) In course of time learned Tribunal framed issues in the claim applications. Both the contesting parties to the proceedings, namely, the claimants as well as the insurer adduced evidence, insurer having adduced common evidence, by examining two witnesses in support of its case and proved a number of documents including the relevant insurance policy and the driving licence of the driver, who had at the relevant point of time driven the said bus.

(v) By the award dated 21.12.2001, the learned Tribunal disposed of as many as 23 claim applications, covered by M.A.C. Case Nos. 70 of 1999, 72 of 1999, 19 of 2000, 32 of 1999, 73 of 1999,49 of 1999, 68 of 1999, 35 of 1999, 66 of 1999, 33 of 1999, 16 of 2000, 65 of 1999, 50 of 1999, 60 of 1999, 41 of 1999, 64 of 1999, 34 of 1999, 3 of 2000, 61 of 2000, 48 of 1999, 17 of 2000, 12 of 2000 and 13 of 2000, granting diverse sums of money as compensation, in favour of the claimants and directed the insurer appellant to make the payment of the said suras with interest at the rate of 10 per cent per annum from the date of institution of the respective claim cases until realisation of the entire awarded amount. Aggrieved by the award so passed on 21.12.2001, the insurer preferred appeals under Section 173 of the Act, which came to be registered as R.F.A. Nos. 1 (SH), 2 (SH), 3 (SH), 4 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 10 (SH), 11 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH), 17 (SH), 18 (SH), 19 (SH), 20 (SH), 21 (SH), 22 (SH), 22 (SH), 23 (SH) and 24 (SH) of 2002. While these appeals were pending the remaining 23 numbers of claim applications too were disposed of by the learned Tribunal by a common award dated 22.11.2002, granting in M.A.C. Case Nos. 26 of 2000, 22 of 2000, 74 of 1999, 44 of 1999, 15 of 1999, 14 of 1999, 46 of 1999, 29 of 2000, 2 of 2000, 31 of 2000, 13 of 2001, 30 of 2000, 75 of 1999, 47 of 1999, 1 of 2000, 43 of 1999, 31 of 1999, 67 of 1999, 51 of 1999 and 69 of

> 1999, different amounts of money as compensation in favour of the claimants. Aggrieved by this award too, the insurer preferred appeals, which have given rise to R.F.A. Nos. 3 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 9 (SH), 10 (SH), 11 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH), 17 (SH), 18 (SH), 19 (SH), 20 (SH), 21 (SH), 23 (SH) and 24 (SH) of 2003.

4. Broadly speaking, as these appeals have arisen out of the two sets of awards, we have divided the impugned appeals into two groups, R.F.A. Nos. 1 (SH), 2 (SH), 3 (SH), 4 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 10 (SH), 11 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH), 17 (SH), 18 (SH), 19 (SH), 20 (SH), 21 (SH), 22 (SH), 23 (SH) and 24 (SH) of 2002 having been grouped together as Group A and R.F.A. Nos. 3 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 9 (SH), 10 (SH), 11 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH), 17 (SH), 18 (SH), 19 (SH), 20 (SH), 21 (SH), 23 (SH) and 24 (SH) of 2003 having been grouped together as Group B.

5. In terms of the directions issued by this court, insurer appellant has deposited with the learned Tribunal 70 per cent of the awarded sum in each case together with interest, which accrued thereon and the claimants-respondents have withdrawn their respective shares from the amounts so deposited.

6. We may, at the very outset, point out that the awards have been impugned on several grounds; but at the time of hearing, all the grounds have not been pressed. The grounds on which the awards were eventually challenged before us, at the time of hearing, are being dealt with by us.

7. It may, however, be pointed out that though it was agitated in the grounds of appeals that the relevant insurance policy was void, the same having been obtained by the owner of the offending vehicle by not disclosing the material facts in the proposal form, this ground has been abandoned at the time of hearing of the appeals inasmuch as it was noticed, during the course of the hearing, that the proposal form does not suffer from non-disclosure of material facts and coupled with this, the clear evidence on record is that it was the duty of the insurer to examine all the relevant papers and documents before insuring the vehicle in question. As the insurer had failed to scrutinise the relevant papers and documents and omitted, in the process, to notice the relevant materials, the owner of the vehicle cannot be said to have obtained the insurance policy by not disclosing the material facts.

8. Out of the two groups of appeals, the moot questions which arise in Group A for consideration may be set out as follows:

> (i) Whether the learned Tribunal could have, on its own, treated the claim applications made under Section 166 of the Motor Vehicles Act as one under Section 163-A thereof and awarded compensation, on the basis of no fault liability, by taking recourse to Section 163-A of the Act, when learned Tribunal's finding was that there was no evidence on the record to show negligence on the part of the driver of the said vehicle?

(ii) Whether at the relevant point of time the person who had driven the bus was duly licensed and whether registered owner of the bus committed breach of the conditions of the relevant insurance policy by allowing the said person to drive the vehicle and whether this breach was, in the facts and attending circumstances of the cases, sufficient to disentitle the owner from being indemnified by the insurer?

(iii) Whether the insurer was liable to pay any amount or amounts as compensation to the claimants and, if so, what were the limit of its liabilities?

(iv) To what relief(s), if any, the parties are entitled?

9. So far as the appeals forming Group B are concerned, the following questions have arisen for determination:

(i) Whether the finding of the learned Tribunal that the accident took place due to rash and negligent driving of the driver of the said bus is sustainable in fact and in law?

(ii) Despite the finding of the learned Tribunal that the accident took place due to rash and negligent driving of the said bus by its driver, whether any of the victims was entitled to be compensated as 'third party'?

(iii) Whether, at the relevant point of time, the person, who had driven the bus, was duly licensed and whether the registered owner of the bus committed breach of the conditions of the relevant insurance policy by allowing the said person to drive the vehicle and whether this breach was, in the facts and attending circumstances of the cases, sufficient to disentitle the owner from being indemnified by the insurer?

(iv) Whether the insurer was liable to pay any amount or amounts as compensation to the claimants and, if so, what were the limits of its liabilities?

(v) To what relief(s), if any, the parties are entitled?

10. In order to enable us to effectively dispose of all these appeals and for doing substantive justice, we formulate the following points for determination:

(i) Whether the finding of the learned Claims Tribunal in M.A.C, Case Nos. 64 of 1999, 41 of 1999, 60 of 1999, 50 of 1999, 65 of 1999, 17 of 2000, 16 of 2000, 34 of 1999, 33 of 1999, 66 of 1999, 35 of 1999, 68 of 1999, 32 of 1999,3 of 2000,72 of 1999,19 of 2000, 61 of 1999, 70 of 1999, 49 of 1999, 12 of 2000, 73 of 1999, 13 of 2000 and 48 of 1999 [which have given rise to R.F.A. Nos. 1 (SH), 2 (SH), 3 (SH), 4 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 10 (SH), 11 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH), 17 (SH), 18 (SH), 19 (SH), 20 (SH), 21 (SH), 22 (SH), 23 (SH) and 24 (SH) of 2002 respectively] that the accident took place due to rash and negligent

driving of the said bus by its driver is sustainable in fact and in law?

(ii) Whether the learned Tribunal was correct in holding, in M.A.C. Case Nos. 44 of 1999, 74 of 1999, 22 of 2000, 15 of 2000, 1 of 2000, 47 of 1999, 44 of 1999,46 of 1999,29 of 2000, 2 of 2000, 31 of 2000, 13 of 2001, 30 of 2000, 75 of 1999, 43 of 1999, 31 of 1999, 67 of 1999,51 of 1999 and 26 of 2000 [which have given rise to R.F.A. Nos. 3 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 9 (SH), 10 (SH), 11 (SH), 19 (SH), 20 (SH), 21 (SH), 23 (SH), 24 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH), 17 (SH) and 18 (SH) of 2003 respectively] that the accident did not take place on account of negligence on the part of the driver of the said bus is sustainable in fact and in law?

(iii) Whether a Tribunal can treat suo motu an application made under Section 166 of the Act as an application made under Section 163-A thereof and award compensation, on the basis of no fault liability, by taking recourse to Section 163-A of the Act if the claimant fails to prove that the accident took place due to the wrongful act, neglect or default on the part of the owners of the vehicle or vehicles concerned or of any other person?

(iv) Whether learned Claims Tribunal could have, on its own, treated the claim applications made under Section 166 of the Motor Vehicles Act, as applications under Section 163-A thereof and awarded interim compensation, on the basis of no fault liability, by taking recourse to Section 163-A of the Act, when the learned Tribunal's finding in M.A.C. Case Nos. 64 of 1999, 41 of 1999, 60 of 1999, 50 of 1999, 65 of 1999, 17 of 2000, 16 of 2000, 34 of 1999, 33 of 1999, 66 of 1999, 35 of 1999, 68 of 1999, 32 of 1999, 3 of 2000, 72 of 1999, 19 of 2000, 61 of 1999, 70 of 1999, 49 of 1999, 12 of 2000, 73 of 1999, 13 of 2000 and 48 of 1999 [which have given rise to R.F.A. Nos. 1 (SH), 2 (SH), 3 (SH), 4 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 10 (SH), 11 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH), 17 (SH), 18 (SH), 19 (SH), 20 (SH), 21 (SH), 22 (SH), 23 (SH) and 24 (SH) of 2002 respectively] was that there was no evidence on record to show negligence on the part of the driver of the said vehicle?

(v) Whether at the relevant point of time, the person who had driven the bus, was duly licensed and whether the registered owner of the bus committed breach of the conditions of the relevant insurance policy by allowing the said person to drive the vehicle and whether this breach was in the facts and attending circumstances of the cases, sufficient to disentitle the owner from being indemnified by the insurer?

(vi) Whether the insurer ought to have been absolved of its liability to indemnify the owner of the bus on the ground that the bus was carrying, at the relevant point of time, more passengers than what was permissible in terms of the relevant road permit?

(vii) Whether a passenger of a public service vehicle can be treated as a third party under the Motor Vehicles Act and whether, in the face of the evidence on record, passengers of the said bus could be awarded compensation by treating all or any of them as third party?

(viii) Despite the finding of the learned Tribunal that the accident took place due to rash and negligent driving of the said bus by its driver, whether the victims were entitled to be compensated as third party?

(ix) Whether the insurer was liable to pay any amount or amounts as compensation to the claimants and, if so, what was the limit of its liabilities?

(x) To what reliefs, if any, the parties are entitled?

11. Before proceeding any further, we may pause here to point out that when an insurer is impleaded by the claimant himself in the claim application made either under Section 166 or under Section 163-A and even when a notice, on being so impleaded by the claimant himself, is issued to the insurer and the insurer appears in the proceeding, its defences will remain limited to the statutory defence available to an insurer, in general, in terms of Sub-section (2) of Section 149. Merely because of the fact that the insurer stands impleaded in such a proceeding, it will not permit the insurer to take any defence beyond what the statute provides by way of provisions contained in Sub-section (2) of Section 149. However, the Tribunal, if satisfied, on its own motion or on the application made in this regard by the insurer, that (a) there is collusion between the person making the claim and the person against whom the claim is made or (b) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer, on being so impleaded, shall have without prejudice to the provisions contained in Sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

12. What also follows from the above discussion is that unless a Tribunal allows, for reasons to be recorded in writing, the insurer cannot contest the claim proceeding on merits or on any grounds other than what statutory defences are available to the insurer in terms of Sub-section (2) of Section 149. These aspects of the matter have been clearly dealt with and the law on the subject has been made explicit by the Apex Court in Shankarayya v. United India Insurance Co. Ltd. , wherein the Apex Court observed and held as follows:

(4) It clearly shows that the insurance company when impleaded as a party by the court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the insurance company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Claims Tribunal. Unless that procedure is followed, insurance company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined the

> respondent No. 1, insurance company in the claim petition but that was done with a view to thrust the statutory liability on the insurance company on account of the contract of insurance. That was not an order of the court itself permitting the insurance company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently, it must be held that on the facts of the present case, the respondent No. 1, insurance company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal.

13. We may also point out that an appeal is nothing but an extension of suit. Viewed from this angle, there remains no room for doubt that when an insurer has not been permitted by the Claims Tribunal to contest the claim on merit in terms of Section 170, the limitations imposed on the insurer continue even when it prefers an appeal under Section 173 and merely on the ground that the award rendered by the Tribunal has not been contested by the person against whom the claim was made or that there is a collusion between the claimant and the person against whom the claim is made, the insurer cannot prefer an appeal on merit or challenge, the quantum of compensation. In other words, when the insurer had not, in terms of the permission accorded under Section 170, contested the claim on merit, i.e., on grounds other than those which are statutorily available to the insurer, the insurer cannot be allowed to prefer appeal against the award and challenge the same on merit, i.e., on grounds other than those which were available to the insurer under Sub-section (2) of Section 149. Clarified the Supreme Court in this regard, the position of law in the case of National Insurance Co. Ltd. v. Nicolletta Rohtagi , in the following words:

> (25) We have earlier noticed that the motor vehicle accident claim is a tortious claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting Section 149 of the Act that the victims of the motor vehicle accidents are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary Clause in the insurance policy except those specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied.
>
> (26) For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made or (b) the person against whom claim has been made has failed to contest the claim, the Tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the Claims Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the

claim on grounds which are available to the insured or to a person against whom a claim has been made. Thus, where conditions precedent embodied in Section 170 are satisfied and the award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one scheme and if we give any different interpretation to Section 170 of the 1988 Act, the same would go contrary to the scheme and object of the Act.

(27) This matter may be examined from another angle. The right of appeal is not an inherent right or common law right, but it is a statutory right. If the law provides that an appeal can be filed on limited grounds, the grounds of challenge cannot be enlarged on the premise that the insured or the persons against whom a claim has been made has not filed any appeal. Section 149(2) of the 1988 Act limits the insurer's appeal on those enumerated grounds and appeal being a product of the statute, it is not open to an insurer to take any plea other than those provided in Section 149(2) of the 1988 Act....

(31) We have already held that unless the conditions precedent specified in Section 170 of the 1988 Act are satisfied, insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on grounds available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits, in that case it is open to insurer to file an appeal against an award on merits, if aggrieved. In any case, where an application for the permission is erroneously rejected the insurer can challenge only that part of the order while filing an appeal on the grounds specified in Sub-section (2) of Section 149 of the 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

(32) For the aforesaid reasons, our answer to the question is that even if no appeal is preferred under Section 173 of the 1988 Act by an insured against the award of a Claims Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings regards negligence or contributory negligence of the offending vehicle.

14. Let us first deal with point No. (i), namely, as to whether the finding of the learned Tribunal in M.A.C. Case Nos. 64 of 1999, 41 of 1999, 60 of 1999, 50 of 1999, 65 of 1999, 17 of 2000, 16 of 2000,

34 of 1999, 33 of 1999, 66 of 1999, 35 of 1999, 68 of 1999, 32 of 1999, 3 of 2000, 72 of 1999, 19 of 2000, 61 of 1999, 70 of 1999, 49 of 1999, 12 of 2000, 73 of 1999, 13 of 2000 and 48 of 1999 [which have given rise to R.F.A. Nos. 1 (SH), 2 (SH), 3 (SH), 4 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 10 (SH), 11 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH), 17 (SH), 18 (SH), 19 (SH), 20 (SH), 21 (SH), 22 (SH), 23 (SH) and 24 (SH) of 2002 respectively] that the accident took place due to rash and negligent driving of the said bus by its driver is sustainable in fact and in law?

15. For the purpose of correctly answering the point in issue, we may, once again point out that in the impugned award dated 22.11.2002, aforementioned, the learned Tribunal has held that the accident took place due to rash and negligent driving of the said bus by its driver.

16. We may also point out that claimants pleaded in their claim applications, consistent with the provisions of Section 166, that the victim met with the accident, which took place due to rash and negligent driving of the said bus by its driver. This assertion was disputed by the appellant insurer and an issue was accordingly got framed for determination by the learned Tribunal.

17. While discussing the above issue, the learned Tribunal has observed that the evidence of the Investigating Officer is that the accident had taken place due to rash and negligent driving of the bus and also on account of the fact that the vehicle was overloaded. This apart, the learned Tribunal also noticed that the Motor Vehicles Inspector had reported that on examination of the wreckage, he had found that the steering, brake and lights were in order. Based on the fact that the insurer appellant had adduced no evidence to show that the accident was not on account of any neglect, wrongful act or default on the part of the driver or the owner of the bus coupled with the fact that the Motor Vehicles Inspector's report indicated that the vehicle had suffered from no mechanical defect, learned Tribunal concluded that accident had taken place due to rash and negligent driving by the driver. It is this finding of the learned Tribunal, which stands disputed in R.F.A. Nos. 1 (SH), 2 (SH), 3 (SH), 4 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 10 (SH), 11 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH), 17 (SH), 18 (SH), 19 (SH), 20 (SH), 21 (SH), 22 (SH), 23 (SH) and 24 (SH) of 2002.

18. In the present case, it is the grievance of the insurer appellant, as expressed by Mr. V.K. Jindal that there was no evidence whatsoever on record to show that the accident was a result of rash and negligent driving of the said bus and the learned Tribunal placing reliance on the evidence of the Investigating Officer for coming to the conclusion that the accident had taken place due to rash and negligent driving is not sustainable, for the same is, according to Mr. V.K. Jindal, hearsay inasmuch as the Investigating Officer was not a witness to the accident. This apart, a mere report of the Motor Vehicles Inspector that the vehicle suffered from no mechanical defect was not, according to Mr. Jindal, sufficient to hold that the accident was a result of negligence or rashness on the part of the driver of the bus.

19. Controverting the above submissions, made on behalf of the insurer appellant, Mr. Mahanta has submitted that the evidence as discussed by learned Tribunal was sufficient to bring any prudent person to the conclusion that the accident was a result of the fault on the part of the driver of the vehicle.

20. Before entering into the merit of the rival submissions made on the above aspect of the matter, what we would like to point out is that an Investigating Officer's evidence, such as the present one, that an accident took place due to the rash and negligent driving and/or overloading of the vehicle is nothing but a conclusion or opinion. Such a conclusion or opinion, in absence of any other materials, particulars or data furnished by Investigating Officer has no value. In fact, even the opinion of an expert under Section 45 of the Evidence Act is not binding on the court. What is relevant and required to be furnished by the expert is the particulars or data which led him to form his opinion. It is the court which has to examine and determine for itself if the conclusion reached or opinion formed on the basis of the data or particulars furnished by the expert is correct and sustainable or not.

21. In the case at hand, the Investigating Officer has given absolutely no materials, no particulars, no data to sustain his conclusion that the accident was a result of rash and negligent driving of the bus or on account of overloading thereof. Hence, there being no evidence given by the Investigating Officer as to why he had so concluded, such piece of evidence given by the Investigating Officer ought to have been kept excluded from consideration both as hearsay and also on the ground that the same was based on no evidence.

22. The question, however, which still awaits our answer is this: whether on the basis of the evidence available on record, the conclusion which the learned Tribunal reached in the impugned award dated 22.11.2002 that the accident had taken place due to rash and negligent driving of the said bus is correct?

23. Our quest for an answer to the above question brings us to the case of N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal 1980 ACJ 435 (SC), wherein the Apex Court, speaking through V.R. Krishna Iyer, J., observed:

> (3) Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Claims Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances, where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by the transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring the owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no fault liability by legislation. A second aspect which pains us is the inadequacy of compensation or undue parsimony practised by Tribunals. We must remember that judicial Tribunals are State organs and Article 41 of the Constitution lays the

> jurisprudential foundation for State relief against the accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in the disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of Tribunals and High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.

24. A microscopic reading of the observations made in N.K.V. Bros. (P) Ltd.'s case (supra) makes it clear that a Tribunal, while determining the question of fault, neglect or default on the part of the driver or owner of the vehicle concerned shall not deter from fixing culpability by succumbing to niceties and mistakes and except in cases which rule out the possibility of rashness or negligence in driving of the vehicle, culpability must be inferred from the circumstances where it is fairly reasonable and that it is not unjust and unfair on the part of the Tribunal to draw, when such a case is presented before it, a presumption of fault based on the doctrine of res ipsa loquitur. We, therefore, hold that when there is some material to arrive at a finding consistent with fault or negligence on the part of the driver, the Tribunal's finding as regards fault will not be interfered with.

25. We may, however, point out that the word 'negligence', in the realm of tortious liability such as the one arising out of motor vehicular accidents connotes that though liable to take care, driver did not take care and committed thereby breach of his legal duty towards the injured or the dead. The test whether a driver was or was not negligent is the inference which a reasonable or prudent man, in the fact situation would draw. The Supreme Court in Union of India v. United India Insurance Co. Ltd. , has stated that test of breach of common law duty is again the test of a reasonable or prudent man in the practical fact situation. In M.S. Grewal v. Deep Chand Sood , the Supreme Court defined 'negligence' thus:

> (14) Negligence in common parlance means and imply 'failure to exercise due care, expected of a reasonable prudent person'. It is a breach of duty and negligence in law ranging from inadvertence to shameful disregard of safety of others. In most instances, it is caused by heedlessness or inadvertence, by which the negligent party is unaware of the results which may follow from his act. Negligence is thus a breach of duty or lack of proper care in doing something, in short, it is want of attention and doing of something which a prudent and reasonable man would not do. [Vide Black's Law Dictionary].

26. The question which now arises for consideration is as to what the doctrine res ipsa loquitur conveys. The maxim res ipsa loquitur is, we may point out, a Latin phrase which signifies nothing more than the fact that 'thing speaks for itself. This Latin phrase is found used in the case of Bryne v. Bedle (1863) 2 H & C 722, wherein it was observed by Pollock, J. that a barrel would not roll out of the warehouse without some negligence and to say that the plaintiff, who got injured by it must call witnesses from the warehouse to prove negligence seem preposterous.

27. The doctrine of res ipsa loquitur is a rule of presumptive evidence, for at times, the circumstances proved on record are such that the court will be willing to draw an inference of negligence against the defendant without having detailed evidence of what he did or did not do.

28. Succinctly explained the Supreme Court, in Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343 (SC), the meaning and import of the doctrine of res ipsa loquitur in the following words:

> (6) The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident 'speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts 15th Edn. at p. 306 states: 'The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused'. In Halsbury's Laws of England, 3rd Edn., Vol. 28, at p. 77, the position is stated thus: 'An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence 'tell its own story' of negligence on the part of defendant, the story so told being clear and unambiguous'. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care....

29. In Pushpabai Purshottam Udeshi's case 1977 ACJ 343 (SC), the owner denied that the vehicle was driven in a rash and negligent manner at the time of the accident. The accident took place as the vehicle had gone to the right extreme of the road, dashed against a tree and moved the same a few inches away. Applying the doctrine of res ipsa loquitur, it was held that the car could not have gone to the right extremity and dashed with such violence against the tree, if the driver had exercised reasonable care and caution. On the facts so revealed, the doctrine of res ipsa loquitur was held applicable and it was further held that in such cases, it is for the opponents to prove that the incident had not taken place due to their negligence.

30. From the observations made and the law laid down in Pushpabai Purshottam Udeshi (supra), what surfaces is that ordinarily, it is the plaintiff who has to prove the negligence; but there may be cases in which the true cause of accident may not be known to the plaintiff and insistence by the court that plaintiff shall prove negligence may cause considerable hardship to such a plaintiff, for the plaintiff may prove the accident, but may not have materials to prove how the accident took place and/or that the accident took place due to fault of the driver. In such a case, when it is the defendant within whose sole knowledge is the cause of the accident, the hardship of the plaintiff is avoided by applying the doctrine of res ipsa loquitur which means that the accident speaks for itself or tells its own story. There are cases in which the accident speaks for itself and in such cases, sufficient it is for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some cause other than his own fault, default or negligence.

31. In short, for attracting the application of the doctrine of res ipsa loquitur, what must be shown is that the vehicle was under the management of defendant and that the accident is such as in the ordinary course of things would not have happened if those who were responsible for management of the vehicle had used proper care. When the doctrine of res ipsa loquitur is applied, the burden shifts to the defendant to show that in fact, he was not negligent or that the accident might more probably have taken place in a manner which did not connote negligence on his part. When on the facts as may be discernible from the record, the Tribunal justifiably applies the doctrine, it is for the opponent to prove that the accident did not take place due to their negligence.

32. In the backdrop of what is projected in N.K.V. Bros. (P) Ltd. (supra), it logically follows in the light of the decision in Pushpabai Purshottam Udeshi (supra), that in an appropriate case when the minimum possible facts have been brought on record by a claimant to show that the vehicle was under the control of the owner or his driver and had the owner or the driver taken due care, the accident, in the ordinary course of things would not have taken place, the doctrine of res ipsa loquitur can or rather must be applied.

33. Though not arising out of a motor vehicular accident, the scope of doctrine of res ipsa loquitur was taken note of and explained by Supreme Court in Municipal Corporation of Delhi v. Subhagwanti 1966 ACJ 57 (SC), wherein the court observed:

> (4) ...It is true that the normal rule is that it is for the plaintiff to prove the negligence and not for the defendant to disprove it. But there is an exception to this rule which applies where the circumstances surrounding the thing which causes the damage are at the material time exclusively under the control or management of the defendant or his servant and the happening is such as does not occur in the ordinary course of things without negligence on defendant's part. The principle has been clearly stated in Halsbury's Laws of England, 2nd Edn., Vol. 23, at p. 671 as follows:
>
> An exception to the general rule that burden of proof of alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that proper and natural inference immediately arising from them is that the injury

> complained of has been caused by defendant's negligence, or where the event charged as negligence "tells its own story" of negligence on the part of the defendant, the story so told being clear and unambiguous. To these cases the maxim res ipsa loquitur applies. Where the doctrine applies, a presumption of fault is raised against the defendant which, if he is to succeed in his defence, must be overcome by contrary evidence, the burden on the defendant being to show how the act complained of could reasonably happen without negligence on his part.

34. Bearing in mind the meaning, scope and ambit of the doctrine of res ipsa loquitur and its permissible use in the cases of motor vehicular accidents, particularly when the manner in which the accident took place is not within the knowledge of the claimant, let us revert to the case at hand and determine as to whether the claimants could establish in the present case, the basic minimum facts required for attracting the application of the principles of res ipsa loquitur.

35. When we look into the materials on record, what attracts our attention most prominently is that the undisputed facts on record are that deceased or the injured in respect of whose death or injury the claim applications have been made were, indeed, passengers in the said bus and this bus was being driven by the driver engaged or employed by the owner of the bus. When the bus was returning from the market with the passengers the vehicle left the road and fell into a deep gorge. The fall into the gorge could have been on account of negligence or for reasons beyond the control of the driver, such as, mechanical failure or the act of God. If the accident was on account of the act of God, it was for the owner or insurer to establish. This apart, there is not even an iota of material on record to suggest that it was an act of God which had led to the accident. The Motor Vehicles Inspector's report, as discussed by the learned Tribunal clearly reveals that the bus was not found to have suffered from any mechanical defect. When the possibility of the act of God having led to the accident or the mechanical failure having caused the accident are excluded, as we must exclude in the present case, it logically follows that it was, in all probability, the negligence on the part of the driver which had led to the said accident, particularly, when there is no evidence on record to show as to why the vehicle left the road and fell into a gorge. When a vehicle, which suffers from no mechanical defect or collides against no vehicle but simply leaves the road while passing on the road and falls into a gorge, the conclusion which becomes inescapable to draw and we do draw is that it is the rashness or negligence on the part of the driver of the bus which made the bus leave the road and fall into the gorge. In a case of present nature, the doctrine of res ipsa loquitur was wholly applicable, for the accident, in the present case, speaks for itself that the accident took place due to fault on the part of the driver of the bus and the owner of the vehicle is vicariously liable for the said act of his employee.

36. Coupled with the above, it is also pertinent to note that though the insurer appellant contested the claim by obtaining permission from learned Tribunal under Section 170 and took all the defences, which could have been availed of by the owner of the bus, it did not discharge the onus cast upon it to prove that the accident had not taken place due to any default, wrongful act or negligence on the part of the driver of the bus.

37. For what have been pointed out above, it is clear and we do hold that the accident in question took place due to rash and negligent driving of the bus and the finding so reached by the learned Tribunal in the impugned award dated 22.11.2002, aforementioned, cannot be said to be incorrect in fact or in law.

38. We, now come to point No. (ii), namely, as to whether the learned Tribunal was correct in holding in M.A.C. Case Nos. 44 of 1999, 74 of 1999, 22 of 2000, 15 of 2000, 1 of 2000, 47 of 1999, 44 of 1999, 46 of 1999, 29 of 2000, 2 of 2000, 31 of 2000, 13 of 2001, 30 of 2001, 75 of 1999, 43 of 1999, 31 of 1999, 67 of 1999, 51 of 1999 and 26 of 2000 [which have given rise to R.F.A. Nos. 3 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 9 (SH), 10 (SH), 11 (SH), 19 (SH), 20 (SH), 21 (SH), 23 (SH), 24 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH), 17 (SH) and 18 (SH) of 2003 respectively] that the accident did not take place on account of negligence on the part of the driver of the said bus is sustainable in fact and in law?

39. While considering the point No. (ii), we may point out that while discussing the point No. (i), we have already concurred with the finding reached by the learned Tribunal in its award dated 22.11.2002, aforementioned, that accident had taken place due to rash and negligent driving of the said bus by its driver. However, in the award dated 21.12.2001, aforementioned, which is the subject-matter of point No. (i), the learned Tribunal, contrary to what it had held in its award dated 22.11.2002, aforementioned, has held that there is no evidence that the accident had taken place on account of negligence on the part of the driver of the said bus. In short, thus the finding of the learned Tribunal in the two sets of awards, namely, the award dated 21.12.2001 and award dated 22.11.2002, aforementioned are contrary to and inconsistent with each other.

40. We have also indicated hereinabove that while supporting even the award dated 21.12.2001, aforementioned Mr. Mahanta, learned Counsel for claimants-respondents submitted, inter alia, that there were sufficient materials on record to show that the accident had taken place due to fault on the part of the driver of the bus but the learned Tribunal has wrongly held in the award dated 21.12.2001, aforementioned, that there is no evidence to show that the accident took place due to rash and negligent driving of the said bus by its driver.

41. Thus, while considering the peculiar situation which has emerged from the two contradictory impugned awards, it is important to keep in mind that a claim proceeding under Section 166 and also Section 163-A, are proceedings which are summary in nature. Though normally the findings in two suits may be different depending upon the evidence on record, for civil suits are inter-party proceedings, what is important to note is that the Motor Vehicles Act is a beneficial legislation and when an application is made under Section 166, a duty is cast on the Tribunal to determine if the accident in question had taken place due to wrongful act, default or neglect on the part of the driver of the vehicle concerned. Though there is no direct evidence, as we have already indicated hereinabove while discussing the point No. (i) to show that the said accident took place due to negligence on the part of the driver, yet the fact remains that a careful scrutiny of the materials on record leave no room for doubt that it was because of negligent driving of the said bus that the accident in question had taken place. This apart, in the impugned award dated 21.12.2001, aforementioned, the learned Tribunal had, we notice, failed to take into account the Motor Vehicles

Inspector's report and also other materials on record which when considered, leave, if we may reiterate, no room for doubt that the accident in question took place due to fault on the part of the driver of the said bus.

42. In view of the fact that learned Tribunal while passing the impugned award dated 21.12.2001, aforementioned, did not take into account the relevant material on record and also in view of the fact that our clear finding, consistent with the finding of the learned Tribunal in the award dated 22.11.2002, aforementioned, leaves us with no doubt in our mind that the finding of Tribunal, in its award dated 21.12.2001, aforementioned is incorrect, the finding so reached by learned Tribunal in its award dated 21.12.2001, cannot be sustained, particularly when one bears in mind the fact that Motor Vehicles Act is a beneficial legislation, the proceedings for determination of compensation prescribed thereunder are summary in nature we have no hesitation in holding that the finding of the learned Tribunal in its award dated 21.12.2001, aforementioned is incorrect and cannot be sustained.

43. The only question, which may arise is as to whether the claimants-respondents can, while seeking to maintain the award dated 21.12.2001, aforementioned (so far as the same grants compensation to them), dispute, at the same time, the correctness of the finding reached by the learned Tribunal that there is no evidence to show that the said bus was driven rashly and negligently leading to the accident though the claimants-respondents have not filed any cross-objection against the finding so reached by learned Tribunal. The answer to this crucial question is not very far to seek. Though the Civil Procedure Code is not applicable in its entirety to a proceeding under the Motor Vehicles Act, yet the spirit thereof does apply to the proceeding under the Motor Vehicles Act. Under the provisions of Order 41, Rule 22, Civil Procedure Code, it is permissible for a respondent in an appeal to attack without filing cross-objection, an adverse finding upon which a decree in part has been passed. A reference in this regard may be made to the case of Ravinder Kumar Sarma v. State of Assam , wherein it has been held as follows:

> (23) ...We hold that the respondent-defendant in an appeal can, without filing cross-objections attack an adverse finding upon which a decree in part has been passed against the respondent, for the purpose of sustaining the decree to the extent the lower court had dismissed the suit against defendant-respondent. The filing of cross-objections, after the 1976 Amendment is purely optional and not mandatory. In other words, the law as stated in Venkata Rao's case AIR 1943 Mad 698, by Madras Full Bench and Chandre Prabhuji's case , by this Court is merely clarified by the 1976 Amendment and there is no change in the law after the amendment.

44. In the case at hand, though against the impugned award dated 21.12.2001, aforementioned, granting compensation in favour of the claimants-respondents in M.A.C. Case Nos. 64 of 1999,41 of 1999, 60 of 1999, 50 of 1999, 65 of 1999, 17 of 2000, 16 of 2000, 34 of 1999, 33 of 1999, 66 of 1999, 35 of 1999, 68 of 1999, 32 of 1999, 3 of 2000, 72 of 1999, 19 of 2000, 61 of 1999, 70 of 1999, 49 of 1999, 12 of 2000, 73 of 1999, 13 of 2000 and 48 of 1999 [which have given rise to R.F.A. Nos. 1 (SH), 2 (SH), 3 (SH), 4 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 10 (SH), 11 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH), 17 (SH), 18 (SH), 19 (SH), 20 (SH), 21 (SH), 22 (SH), 23 (SH) and 24 (SH) of 2002

respectively], no cross-objection has been filed by the claimants-respondents, yet the claimants-respondents can indeed contend before this Court that the award may still be maintained, for there was enough material for the learned Tribunal to hold that the accident had taken place due to fault on the part of the driver of the said bus and that an award could have been passed under Section 166 rather than Section 163-A in favour of the claimants on the ground that the said accident had taken place due to fault on the part of the driver of bus leading to the death of, or causing injuries to the claimants.

45. What crystallises from the above discussion is that in the face of the materials on record, the findings recorded by learned Tribunal in the impugned award dated 21.12.2001, aforementioned, to the effect that there is no evidence that the accident took place due to the fault on the part of the driver of the said bus is, in the face of the materials on record, incorrect and that without even treating the applications which the claimants had filed under Section 166 as applications made under Section 163-A, the learned Tribunal could have still awarded compensation on the basis of fault under Section 166 provided, of course, that there was no other legal or factual impediment on the part of the learned Tribunal in granting compensation in favour of the claimants-respondents.

46. For what have been observed, we hold and clarify that the finding of learned Tribunal that there was no evidence that the accident took place due to the fault on the part of the driver of the bus is not sustainable in fact and in law and that learned Tribunal could have awarded compensation in favour of the claimants-respondents on the basis of fault without treating the claim applications made by the claimants as applications under Section 163-A provided, of course, that there was, as already indicated hereinabove, no legal or factual impediment on the part of learned Tribunal in granting compensation to claimants-respondents.

47. Let us now come to and deal with point Nos. (iii) and (iv) formulated above. For the purpose of convenience, we reproduce hereinbelow point Nos. (iii) and (iv):

> (iii) Whether a Tribunal can treat suo motu an application made under Section 166 of the Act as an application made under Section 163-A thereof and award compensation, on the basis of no fault liability by taking recourse to Section 163-A of the Act if the claimant fails to prove that the accident took place due to wrongful act, neglect or default on the part of the owners of the vehicle or vehicles concerned or of any other person?
>
> (iv) Whether the learned Tribunal could have on its own treated the claim applications made under Section 166 of the M.V. Act as applications under Section 163-A thereof and awarded compensation on the basis of no fault liability by taking recourse to Section 163-A of the Act when the learned Tribunal's finding in M.A.C. Case Nos. 44 of 1999, 74 of 1999,22 of 2000,15 of 2000,1 of 2000, 47 of 1999, 44 of 1999, 46 of 1999, 29 of 2000, 2 of 2000, 31 of 2000, 13 of 2001, 30 of 2000, 75 of 1999, 43 of 1999, 31 of 1999, 67 of 1999, 51 of 1999 and 26 of 2000 [which have given rise to R.F.A. Nos. 3 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 9 (SH), 10 (SH), 11 (SH), 19 (SH), 20 (SH), 21 (SH), 23 (SH), 24 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH),

17 (SH) and 18 (SH) of 2003 respectively], was that there was no evidence on record to show negligence on the part of the driver of the said vehicle?

48. Since both these questions are interlinked, we take up both these questions together for discussion and decision.

49. Assailing the impugned awards, Mr. Jindal has pointed out that all the claim applications have been made under Section 166 of the Act and when an application is made under Section 166 of the Act seeking compensation, it is, contends Mr. Jindal, the onus of the claimant to satisfy the Tribunal that the accident which has given rise to the claim for compensation, took place due to rash and negligent driving of the vehicle by its driver. In support of this submission, Mr. Jindal places reliance on Minu B. Mehta v. Balkrishna Ramchandra Nayan 1977 ACJ 118 (SC).

50. Mr. Jindal submits that since the claimants-respondents sought compensation on the basis of the applications made under Section 166 of the Act, they, consistent with the provisions of the Section 166 alleged, inter alia, in their respective claim applications that the accident had taken place due to rash and negligent driving of the said bus and since the insurer appellant denied that the accident took place due to any fault on the part of the driver of the bus, the learned Tribunal framed an issue to the effect as to whether the accident had taken place due to rash and negligent driving of the bus. In terms of the issue so framed, points out Mr. Jindal, claimants as well as the insurer adduced evidence.

51. The learned Tribunal, points out Mr. Jindal, concluded while dealing with the said issue in M.A.C. Case Nos. 44 of 1999, 74 of 1999, 22 of 2000, 15 of 2000, 1 of 2000, 47 of 1999, 44 of 1999, 46 of 1999, 29 of 2000, 2 of 2000, 31 of 2000, 13 of 2001, 30 of 2000, 75 of 1999, 43 of 1999, 31 of 1999, 67 of 1999, 51 of 1999 and 26 of 2000 [which have given rise to R.F.A. Nos. 3 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 9 (SH), 10 (SH), 11 (SH), 19 (SH), 20 (SH), 21 (SH), 23 (SH), 24 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH), 17 (SH) and 18 (SH) of 2003 respectively], that there was no evidence on record to show that the accident had taken place due to rash and negligent driving of the said bus by its driver; but having held so, further points out Mr. Jindal, the learned Tribunal has still awarded compensation in favour of the claimants by treating the claim applications made under Section 166 of the Act as applications under Section 163-A. For treating the application made under Section 166 as application under Section 163-A, the learned Tribunal relied, points out Mr. Jindal, on Rita Devi v. New India Assurance Co. Ltd. . The decision in Rita Devi's case (supra) referred to and relied upon by the learned Tribunal is, according to Mr. Jindal, not applicable to the facts of the present case inasmuch as the present claim cases had arisen out of applications made under Section 166 of the Act which makes it obligatory for the claimants to prove that the accident took place due to rash and negligent driving, whereas the case of Rita Devi (supra) arose out of an application made under Section 163-A.

52. In the present case, submits Mr. Jindal, there is no evidence to show that the accident took place as a result of rash and negligent driving of the said bus by its driver. In such circumstances, submits Mr. Jindal, the claim applications made by the claimants under Section 166 of the Act was not maintainable and based on such applications, learned Tribunal could not have, in the absence of any

evidence disclosing that the accident was the result of rash and negligent driving, held the claimants entitled to compensation.

53. It is also pointed out by Mr. Jindal that in all the claim applications made under Section 166 of the Act, the learned Tribunal, pending disposal of these applications, granted interim compensation in terms of the provisions of Section 140 of the Act on the principle of no fault liability and having accepted the amounts under Section 140 of the Act, it was not open to the claimants, contends Mr. Jindal, to ask for the compensation under Section 163-A when they had failed to adduce any evidence showing any fault on the part of the owner of the vehicle concerned. This apart, at no point of time, points out Mr. Jindal, the claimants prayed for conversion of the proceeding from one under Section 166 to one under Section 163-A. By awarding the compensation in favour of the claimants, despite clear absence of evidence to show that the accident was a result of rash and negligent driving, the learned Tribunal has, according to Mr. Jindal, virtually converted the claim applications made under Section 166 to applications under Section 163-A. Such an approach is, contends Mr. Jindal, impermissible in law. Mr. Jindal seeks to derive strength for this submission from the cases of Deepal Girishbhai Soni v. United India Insurance Co. Ltd. 2004 ACJ 934 (SC) and Narshiji Nagaji Majirana v. Mangilal Amturam Bishnoi .

54. Controverting the above submissions made on behalf of insurer appellant, Mr. S.P. Mahanta, learned Counsel for the claimants-respondents, has submitted that since the Act is essentially a beneficial legislation with the object of providing compensation to the victims of motor vehicular accidents, the Motor Accidents Claims Tribunal can, if necessary, convert a proceeding under Section 166 to one under Section 163-A. In the case at hand, the learned Tribunal, according to Mr. S.P. Mahanta, committed no error in eventually granting compensation to the claimants by treating the applications made under Section 166 as one under Section 163-A. Mr. Mahanta further submits that in the case at hand, even without converting the proceeding from one under Section 166 to one under Section 163-A, and/or without treating the applications made under Section 166 as applications under Section 163-A, the learned Tribunal could have awarded compensation, for there was according to Mr. S.P. Mahanta, sufficient materials on record to show that the accident had taken place due to fault on the part of the driver of the bus.

55. Mr. Mahanta in the alternative submits that in view of the fact that the Act is a beneficial legislation meant for providing compensation to the victims of the motor vehicular accidents, the provisions of the Act need to be liberally interpreted and, if so interpreted, the learned Tribunal was, in the facts and circumstances of the cases, within the ambit of its powers in awarding compensation to the claimants with or without evidence being there that accident had taken place due to rash and negligent driving of the said bus.

56. While considering the above aspect of the matter, it is pertinent to bear in mind that the source forming legal basis for payment of compensation can be traced to the law of Torts. Subject to statutory modifications to the rules of common law, a right to claim compensation for tortious act arises under the common law only when the person proceeded against or against whom the claim is made is proved to have failed to perform a legal obligation causing injury to any other person or to have committed an act of omission or commission causing a legal injury to the person lodging the

claim.

57. As a precursor to the present Motor Vehicles Act, 1988, the Motor Vehicles Act, 1939, provided a statutory mechanism for enforcing the rights and obligations flowing under the common law. Notwithstanding such statutory support provided to a person claiming compensation, what is, however, crucial to note is that if a person was not legally liable to pay any compensation, the statutory mechanism conceived under and provided by Motor Vehicles Act, 1939, did not make the person proceeded against liable to pay compensation except in situations and to the extent to which the statute made a specific departure, in this regard, from the principles governing tortious liability under the common law.

58. The question as to whether proof of fault was a condition precedent for sustaining a claim for compensation under Motor Vehicles Act, 1939, came to be considered by the Apex Court in Minu B. Mehta v. Balkrishna Ramchandra Nayan 1977 ACJ 118 (SC). In Minu B. Mehta's case (supra), Bombay High Court had taken the view that the fact of an injury resulting from the accident involving the use of a car on the public road, is the basis of liability under the Motor Vehicles Act, 1939 and that it is not necessary to prove any negligence on the part of the driver. Even Andhra Pradesh High Court had held in Haji Zakaria v. Naoshir Cama 1976 ACJ 320 (AP), that the insured and, consequently, the insurer was liable to compensate a third party dying or getting injured on account of the use of the insured vehicle at a public place irrespective of the fact whether the death or injury and disablement had been caused by rash and negligent driving or not.

59. Disagreeing with the above views expressed by Bombay High Court as well as Andhra Pradesh High Court, the Apex Court pointed out in Minu B. Mehta's case (supra) that the liability of the owner of the car to compensate the victim in a car accident due to negligent driving of his servant is based on the law of Torts and that the concept of owner's liability without any negligence is opposed to the basic principles of law. Held the Apex Court in Minu B. Mehta's case (supra), that no legal right arose under the Motor Vehicles Act, 1939, to claim compensation against the insured or the insurer unless the person who sought award of compensation proved that the accident leading to the injury or death was caused due to the wrongful act, default or neglect on the part of the insured or his servant.

60. Before a person can be made liable to pay compensation for any injuries and damage, which have been caused by his action, it is necessary, noted the Supreme Court in Minu B. Mehta's case (supra), that the person suffering damage or injury should be able to establish that he has some cause of action against the party responsible. Examining as to when a cause of action may arise out of actions for wrongs under the common law or for breaches of duties laid down by statutes, the Supreme Court in Minu B. Mehta's case (supra), observed that in order to succeed in an action for negligence, the plaintiff must prove (1) that the defendant had, in the circumstances, a duty to take care and that duty was owed by him to the plaintiff and that (2) there was a breach of that duty and that as a result of the breach, damage was suffered by the plaintiff.

61. Clarifying further, the Apex Court in Minu B. Mehta's case (supra), held that the owner's liability arises out of his failure to discharge a duty cast on him by law and that the right to receive

compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation and that when a person is not liable legally, he is under no duty to compensate anyone. Pointed out the Apex Court in Minu B. Mehta 's case (supra), that Claims Tribunal is a Tribunal constituted by the State Government for expeditious disposal of the motor vehicular claims, but the general law applicable was still the common law and the law of Torts and if, under the law a person becomes legally liable, then only the person who suffers injuries is entitled to be compensated and the Tribunal is authorized to determine the amount of compensation which appears to it to be just and reasonable. The plea, concluded the Apex Court in Minu B. Mehta's case (supra), that a Claims Tribunal is entitled to award compensation which appears to it to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle in a public place without proof of negligence, if accepted, would lead to strange results.

62. Apex Court made it clear in Minu B. Mehta's case (supra), in no uncertain words, thus: "The concept of owner's liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury arising out of the use of vehicle in a public place cannot justify fastening the liability on the owner. It may be that a person bent upon committing suicide may jump before a car in motion and thus get himself killed. We cannot perceive by what reasoning the owner of the car could be made liable. The proof of negligence remains the lynchpin to recover compensation".

63. From a careful reading of what was observed and laid down in Minu B. Mehta's case (supra), it becomes abundantly clear that the Apex Court in Minu B. Mehta's case (supra), rejected the view that for sustaining a claim for compensation under the Motor Vehicles Act, 1939, it was enough to prove that the person concerned had received injury or had died in an accident arising out of use of the vehicle at a public place and that proof of negligence was not necessary. In no uncertain words, the law laid down in Minu B. Mehta 's case (supra), was that notwithstanding the fact that the provisions for insurance of motor vehicles had been made in the Motor Vehicles Act, 1939, the owner can be made liable to pay compensation only if there was proof of fault on his part either on account of the fact that he had driven the vehicle rashly or negligently or that he had allowed the vehicle to be driven by a person, who had driven the same rashly or negligently.

64. The above prominently pronounced position of law continued to govern the field till Motor Vehicles Act, 1939, came to be amended by the Amendment Act 47 of 1982 incorporating therein Section 92-A, which reads as follows:

> 92-A. Liability to pay compensation in certain cases on the principle of no fault.- (1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle, shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.
>
> (2) The amount of compensation which shall be payable under Sub-section (1) in respect of death of any person shall be a fixed sum of fifteen thousand rupees and the

> amount of compensation payable under that Sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.
>
> (3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.
>
> (4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

65. It may be carefully noted that it was Section 92-A which introduced for the first time the concept of payment of compensation without proof of fault or negligence on the part of the owner or driver of the vehicle, for Sub-section (3) of Section 92-A laid down in clear terms that the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. The object and reasons for such noticeable shift in the settled legal position were summarized by the amended Act 47 of 1982 as follows:

> 10. ...Having regard to the nature of circumstances in which road accidents take place, in a number of cases it is difficult to secure adequate evidence to prove negligence. Further, in what are known as 'hit-and-run' accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act suitably to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions, first, for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle, and secondly for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown.

66. It was, in fact, in the case of Gujarat State Road Trans. Corporation v. Ramanbhai Prabhatbhai 1987 ACJ 561 (SC), that the Apex Court taking note of the fact that under Sub-section (3) of Section 92-A the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim had been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person, recognized for the first time in unequivocal terms that the provisions of Section 92-A of Motor Vehicles Act, 1939, introduced a clear departure from the common law that a claimant must establish negligence on the part of owner or driver of the vehicle in order to enable him to receive compensation for the death or permanent disablement caused on account of use of the vehicle.

67. In Gujarat State Road Transport Corporation's case (supra), the court held a pedestrian entitled to recover the damages regardless of the fact as to whether he could prove negligence on the part of the owner or driver of the vehicle involved in the accident or not. Observed the court in Gujarat State Road Trans. Corporation (supra), in this regard: "Where a pedestrian without negligence on his part is injured or killed by a motorist, whether negligently or not, he or his legal representatives, as the case may be, should be entitled to recover damages if the principle of social justice should have any meaning at all".

68. Taking note of the language of Sub-section (3) of Section 92-A, clarified the Supreme Court, as indicated hereinabove in Gujarat State Road Trans. Corporation's case (supra), thus:

> This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death of or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified.

69. We may pause here to point out that the Indian Motor Vehicles Act, 1914, which was the first enactment relating to motor vehicles in India, was replaced by the Motor Vehicles Act, 1939, which consolidated and amended the laws relating to the motor vehicles in India. We may also point out that the Motor Vehicles Act, 1939, which was based on the Fatal Accidents Act, 1855, still recognized award of compensation solely based on the law of Torts. The year 1956 saw for the first time establishment of Motor Accidents Claims Tribunals in India, which were established to expedite the process of determination of cases for compensation arising out of motor vehicular accidents. However, the proof of negligence remained embodied as a condition precedent for grant of compensation under the Motor Vehicles Act, 1939. It was Section 92-A of the Motor Vehicles Act, 1939, which introduced in the year 1982, the first departure from the usual common law principle that a claimant should establish negligence on the part of owner or the driver of the motor vehicle before claiming any compensation for the death or permanent disability caused on account of a motor vehicular accident.

70. It is worth noticing that Section 92-A of the Motor Vehicles Act, 1939, stood replaced by Section 140 of the Motor Vehicles Act, 1988, when the latter statute came into force. Since Section 92-A is replaced by Section 140 and Sub-section (3) of Section 140 embodies the same provisions as were contained in Sub-section (3) of Section 92-A, it logically follows that even after coming into force of the Motor Vehicles Act, 1988, the Supreme Court's decision in Gujarat State Road Transport Corporation (supra) still holds the field and the effect is that for receiving compensation on the basis of no fault liability under Section 140 of Motor Vehicles Act, 1988, the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. In other words, regardless of the fact as to whether the victim, as injured or as legal representative of the person, who died in a motor vehicular accident, pleads and/or establishes or not that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the

vehicle or vehicles concerned or of any other person, the victim can maintain his application under Section 140 of the Motor Vehicles Act, 1988.

71. Turning to Section 163-A, which is the real subject-matter of controversy at hand, it may be pointed out that no provision, such as, the one that we have now in the form of Section 163-A, existed in the Motor Vehicles Act, 1939. No such provision existed even in the Motor Vehicles Act, 1988, when this Act initially came into force. As a matter of fact, Section 163-A has been introduced by amendment Act 54 of 1994 with effect from 14.11.1994 as against the fixed minimum interim compensation awardable on the principle of no fault under Section 140, which merges in terms of Section 141 in the final award to be made on the basis of 'fault liability' under Section 166.

72. Section 163-A allows a victim of a motor vehicular accident to obtain a final award of compensation based on the structured formula contained in the Second Schedule to the Act and such compensation may be obtained without the claimant being required to plead or establish that the injuries sustained or death caused was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other persons. The compensation finally payable under Section 163-A is, however, materially different from the minimum prescribed compensation payable under Section 140, though both these provisions dispense with the proof of negligence on the part of owner of the vehicle or vehicles concerned or of any other persons.

73. In fact, the present Motor Vehicles Act, 1988, provides an option to the claimant to obtain interim compensation under Section 140 being the minimum prescribed compensation until final adjudication of his claim under Section 166 on the basis of 'fault liability'. In the final award, which may be so reached, would get merged the interim compensation, if any, already received by the claimant under Section 140 on the basis of 'no fault liability'. The other course which the claimant can opt for is to obtain a final award of compensation on the basis of structured formula as depicted in the Second Schedule under Section 163-A. The provisions embodied in Section 166 as well as under Section 163-A have both advantages as well as disadvantages appended thereto. For instance, while Section 166 requires proof of fault as a condition precedent for granting of compensation, there is no ceiling in the amount of compensation, which can be granted under Section 166 and, further, Section 166 can be resorted to irrespective of the income of the person who has sustained injuries or met with death. As against this, while Section 163-A dispenses with the proof of fault, this Section (i.e., Section 163-A) can be resorted to only when the annual income of the deceased does not exceed Rs. 40,000. Similarly, while in Section 166, as already indicated hereinbefore, there is no limit to which expenses for treatment incurred by the injured can be awarded, the total medical expenses to be awarded cannot, in a proceeding under Section 163-A exceed Rs. 15,000. There are several other such limitations if one takes recourse to Section 163-A for obtaining compensation. For instance, the loss of consortium under Section 163-A is limited to Rs. 5,000; whereas in the light of the decision in Lata Wadhwa v. State of Bihar , loss of consortium can, in an appropriate case, be as high as Rs. 50,000 in a proceeding for compensation under Section 166. Yet another advantage of taking recourse to Section 163-A is that it reduces the delay which ordinarily occurs due to the fact that the claimant is required to prove fault. Noticing some of these prominently distinguishing features of Section 163-A, the Supreme Court in Deepal Girishbhai Soni v. United India Insurance Co. Ltd. 2004 ACJ 934 (SC), observed as follows:

(41) Section 140 of the Act dealt with interim compensation but by inserting Section 163-A, Parliament intended to provide for making of an award consisting of a predetermined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident. The amendment was, thus, a deviation from the common law liability under the law of Torts and was also in derogation of the provisions of the Fatal Accidents Act. The Act and the Rules framed by the State in no uncertain terms suggest that a new device was sought to be evolved so as to grant a quick and efficacious relief to the victims falling within the specified category. The heirs of the deceased or the victim in terms of the said provisions were assured of a speedy and effective remedy which was not available to the claimants under Section 166 of the Act.

(42) Chapter XI (sic Section 163-A) was, thus, enacted for the grant of immediate relief to a Section of people whose annual income is not more than Rs. 40,000 having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto; compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature...

(43) ...Payment of the amount in terms of Section 140 of the Act is ad hoc in nature. A claim made thereunder, as has been noticed hereinbefore, is in addition to any other claim which may be made under any other law for the time being in force. Section 163-A of the Act does not contain any such provision.

xxx xxx xxx (63) ...If no amount is payable under the fault liability or the compensation which may be received from any other law, no refund of the amount received by the claimant under Section 140 is postulated in the scheme. Section 163-A, on the other hand, nowhere provides that the payment of compensation of no fault liability in terms of the structured formula is in addition to the liability to pay compensation in accordance with the right to get compensation on the principle of fault liability....

74. That one is required to prove fault to become entitled to receive compensation under Section 166 and that recourse to Section 140 can be had as an interim measure subject to final determination under Section 166 can be easily discerned from the observation made in Deepal Girishbhai Soni's case (supra), which run as follows:

(51) The scheme as envisaged under Section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section 140.

> In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000 or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society.
>
> (52) It may be true that Section 163-B provides for an option to a claimant to either go for a claim under Section 140 or Section 163-A of the Act, as the case may be, but the same was inserted ex abundanti cautela so as to remove any misconception in the mind of the parties to the lis having regard to the fact that both relate to the claim on the basis of no fault liability. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims either under Section 163-A or Section 166 does not arise. If the submission of the learned Counsel is accepted the same would lead to an incongruity.

75. From what have been pointed out above, it becomes abundantly clear that the present Motor Vehicles Act, 1988, lays down two comprehensive and independent, but complete in itself mechanisms for receiving compensation for injuries sustained or death caused in motor vehicular accidents. Both the schemes for compensation, one conceived under Section 166 and the other perceived by Section 163-A are mutually exclusive and independent of each other and it is for a person who wants to claim compensation, to decide as to which procedure or mechanism he or she would opt for.

76. In the face of clearly laid down schemes for obtaining compensation under the two sections, namely, Section 166 and Section 163-A and when it is left with the claimant to choose the course of action, no one can maintain a claim both under Section 166 as well as Section 163-A. Motor Vehicles Act, 1988, also does not conceive of a situation when based on an application made under Section 166, the Tribunal on its own on the failure of the claimant to prove fault can award compensation by taking recourse to Section 163-A. When a claimant makes an application for compensation under Section 166 and also receives interim compensation under Section 140, he shall, so long as his application for compensation remains pending under Section 166, prove as a condition precedent for obtaining compensation under Section 166, that the accident took place due to fault or negligence or default of the owner or owners of the vehicle or vehicles concerned or of any other persons.

77. The above aspect of law has been succinctly explained by the Apex Court in Deepal Girishbhai Soni's case (supra), in the following words:

> (59) The question may be considered from different angles. As for example, if in the proceedings under Section 166 of the Act, after obtaining compensation under Section 163-A, the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefor as a consequence whereto the Tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of

the structured formula? Furthermore, if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under Section 166 of the Act, would it be at liberty to award compensation in terms of Section 163-A thereof.

(60) The answer to both the aforementioned questions must be rendered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings under Section 163-A of the Act is interim in nature.

78. Embedded thus in the scheme of Section 166 is the requirement for the Tribunal to frame an issue or for the claimant to at least bring on record materials as regards fault or neglect or default, as indicated hereinbefore, in order to sustain his claim under Section 166. If the claimant, in a proceeding under Section 166, obtain interim compensation under Section 140, but adduces no evidence to prove fault or negligence or default, his application under Section 166 cannot succeed and the Tribunal cannot award compensation on the basis of the structured formula by taking recourse to Section 163-A, for it is for the claimant really to decide which course of action he or she shall opt for. Whether it is on the basis of the application for amendment made by the claimant, permissible to amend a proceeding under Section 166 to one under Section 163-A is a question which has not arisen in the present set of appeals and we are not inclined to make any comment on this aspect of matter.

79. In the case at hand, the claimants made applications under Section 140 of the Motor Vehicles Act, 1988 and also received from the appellants amount(s) of compensation as 'no fault liability'.

80. In other words, in the face of what has been pointed out hereinabove, there can be no escape from conclusion that the claimants could not have succeeded in obtaining compensation without proving fault on the part of the driver of the bus aforementioned and thereby making the owner of the said bus vicariously liable for the tortious act of the driver of the said vehicle.

81. What crystallises from the discussion held above, as a whole, is that the claimants having made the applications for compensation under Section 166 and having obtained on the basis of applications made under Section 140 diverse sums of money as compensation on the basis of no fault liability, had the onus to prove in order to succeed in their applications made under Section 166, that the said bus met with the accident on account of rash and negligent driving of the driver of the said bus and in the absence of any such evidence, the claimants-respondents could not have been granted any compensation whatsoever except what they had received in terms of Section 140 and the question of treating the applications made by the claimants-respondents under Section 166 as applications under Section 163-A did not arise at all.

82. We may also point out that the case of Rita Devi 2000 ACJ 801 (SC), which the learned Tribunal relied upon, is a case which was based on a claim made under Section 163-A and it is not a case in which Apex Court laid down as to whether it was possible for a claimant to obtain compensation on the basis of the structured formula under Section 163-A, when the claimant, having filed

applications for compensation under Section 166, fails to prove fault on the part of the owner(s) of the vehicle(s) concerned. The reliance, therefore, placed by the learned Tribunal, while delivering the impugned award dated 21.12.2001, aforementioned, on the law laid down in Rita Devi's case (supra) was wholly misconceived. This does not mean, we must hasten to add, that claimants-respondents were, in the opinion of this court, not entitled to receive compensation under Section 166.

83. In short, thus, if a claimant makes an application under Section 166 seeking compensation, obtains compensation on the basis of no fault in terms of Section 140, it is not permissible for the Tribunal to treat the application made under Section 166 as an application under Section 163-A and award compensation to such a claim if the claimant fails to prove fault on the part of the owner(s) of the vehicle concerned.

84. The question as to whether the claimants-respondents were entitled to compensation even on the basis of applications filed under Section 166 in M.A.C. Case Nos. 44 of 1999, 74 of 1999, 22 of 2000, 15 of 2000, 1 of 2000, 47 of 1999, 44 of 1999, 46 of 1999, 29 of 2000, 2 of 2000, 31 of 2000, 13 of 2001, 30 of 2000, 75 of 1999, 43 of 1999, 31 of 1999, 67 of 1999, 51 of 1999 and 26 of 2000 [which have given rise to R.F.A. Nos. 3 (SH), 10 (SH), 5 (SH), 6 (SH), 7 (SH), 8 (SH), 9 (SH), 11 (SH), 19 (SH), 20 (SH), 21 (SH), 23 (SH), 24 (SH), 12 (SH), 13 (SH), 14 (SH), 15 (SH), 16 (SH), 17 (SH) and 18 (SH) of 2003 respectively], is a question which we have already dealt with and decided while discussing the point No. (ii). We, however, reiterate that since in the case at hand, the accident took place due to rash and negligent driving of the said bus by its driver, the claimants-respondents' applications' made under Section 166 were maintainable in law and notwithstanding what we have pointed out while answering the point Nos. (iii) and (iv), the claimants-respondents would be entitled to compensation unless held otherwise in succeeding paras of this judgment.

85. We now take up point Nos. (vii) and (viii) for determination. Since both these points are closely inter-woven, we take up both the points together for discussion and decision.

86. For the sake of convenience we reproduce hereinbelow the point Nos. (vii) and (viii), which run as follows:

> (vii) Whether a passenger of a public service vehicle can be treated as a third party under the Motor Vehicles Act and whether in the face of the evidence on record, the passengers of the said bus could have been awarded compensation by treating all or any of them as third party?
>
> (viii) Despite the finding of the learned Tribunal that the accident took place due to rash and negligent driving of the said bus by its driver, whether the victims were entitled to be compensated as third party?

87. The question posed above invites this Court to basically decide as to what the expressions 'any person' and 'third party', appearing in Section 147 of Motor Vehicles Act, 1988, mean and convey. This, in turn, requires this Court to determine the scope and ambit of the compulsory insurance

conceived and embodied under the Motor Vehicles Act, 1988.

88. The concept of compulsory insurance in respect of the vehicles was mooted in England and has been the subject of many a legislation. The question as to who are covered by the scheme of compulsory insurance have formed the subject of controversy in many a judicial decisions. With the passage of time and the changes which the legislature have in their wisdom introduced from time to time, expanding at times, even reducing and/or elucidating the scope and ambit of compulsory insurance, there have been several judicial pronouncements looking into this aspect of the law from different angles and in consequence thereof, the subject has ceased to be a wholly obscured one and has, of late, become fairly settled.

89. For a proper appreciation of what the expressions 'any person' and 'third party' mean, a peep into the legislative history of the concept of compulsory insurance is indispensable. With the Industrial Revolution in England and surfacing of motor vehicles on the roads and the movement of railway trains, the risk to the lives of pedestrians or passerby increased manifold. Users of roads, very often, became and still become the victim of the motor vehicular accidents. They could be and still are injured, get maimed or even killed.

90. Though it sounds illogical, well-known it is that under the common law of England, no action could be laid by the dependants or heirs of a person whose death-was caused by the tortious act of another, on the strength of the maxim actio personalis moritur cum persona, although a person injured by a similar tortious act could validly claim compensation for the injury caused to him if he survived. It was, therefore, commonly commented that it was cheaper to kill than to maim. Even though the common law provided for compensation to a person injured in a motor vehicular accident on the principle of the tortious liability, experience showed that many a times the owners of the vehicles had no means to pay compensation and the orders of the courts directing the payment of compensation remained on paper. The result was that despite orders of the courts directing payment of compensation, the claimants were not sure if they would actually get compensation awarded to them, for obtaining of compensation eventually depended on the financial condition of the owner of the vehicle. This gave rise to a storming debate on the demand to enact a law providing for some amount of assurance to a victim of a motor vehicular accident that the compensation awarded by a judicial process would be made available to him.

91. In order to meet the public demand to ensure that a victim of motor vehicular accident receives compensation awarded to him, the idea of compulsory third party insurance was mooted in England and it took a definite shape for the first time in the year 1930, with the passing of the Third Parties (Rights Against Insurers) Act, 1930. At a later stage, the Road Traffic Act, 1930, was enacted which provided for compulsory insurance of motor vehicles making it obligatory for every person to obtain a policy of insurance before using or allowing any other person to use a motor vehicle in a public place. The Road Traffic Act, 1930, was subsequently replaced by the Road Traffic Act, 1960. However, none of the said two Acts, namely, the Road Traffic Act, 1930 and the Road Traffic Act, 1960, required users of the motor vehicles to be insured in respect of liabilities which may be incurred by them for the death of, or bodily injury caused to the passengers of the vehicle.

92. Thus there was no legislation covering compulsory insurance for passengers of the vehicle. Provisions of compulsory insurance were really meant to cover the risk of third party. It was, in fact, Motor Vehicles (Passenger Insurance) Act, 1971, which provided for compulsory insurance in respect of the liability which might be incurred by the owner of a motor vehicle for payment of compensation to the passengers of the vehicle. In short, it was the Motor Vehicles (Passenger Insurance) Act, 1971, which introduced the concept of compulsory insurance coverage for passengers. The provisions of the English Road Traffic Act, 1960, were adopted in Section 95 of (Indian) Motor Vehicles Act, 1939.

93. Before, however, the scope of Section 95 of the Indian Motor Vehicles Act, 1939 (in short, '1939 Act'), is discussed, desirable it is to bear in mind that the 1939 Act sought to take into account not only the case of compulsory coverage of insurance in respect of the 'third party', but also, to the extent possible, provide for compulsory insurance of passengers. It is also important to bear in mind that the expression 'third party', loosely spoken, may appear to include within its sweep any one other than the insurer and the insured. This is, of course, another aspect of the matter which we shall shortly deal with in order to ascertain as to what the expression 'third party' conveys under the Motor Vehicles Act, 1988 (in short, '1988 Act'). Suffice it is at this stage to point out as to what Section 95 of the 1939 Act, initially embodied and what changes Section 95 underwent with the passage of time. Section 95 as it stood originally reads as follows:

> 95. Requirements of policies and limits of liability.-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-
>
> (a) is issued by a person who is an authorized insurer or by a co-operative society allowed under Section 108 to transact the business of an insurer, and
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place;

Provided that a policy shall not except as may be otherwise provided under Sub-section (3) be required-

> (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee-
>
> (a) engaged in driving the vehicle, or
>
> (b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reasons of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

94. Before proceeding further, it is pertinent to note that the definitions of the 'goods vehicle', 'public service vehicle', 'stage carriage' and 'transport vehicle', occurring in Sections 2(8), 2(25), 2(29) and 2(33) respectively of 1939 Act were as under:

2 (8) 'goods vehicle' means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers;

2 (25) 'public service vehicle' means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage;

2 (29) 'stage carriage' means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

2 (33) 'transport vehicle' means a public service vehicle or a goods vehicle;

95. A careful reading of the definition of 'goods vehicle', as contained in Section 2(8) of the 1939 Act, shows that under the 1939 Act, the 'goods vehicle' could be used not only for carrying goods but could also carry at times, even passengers. So far as the 'public service vehicle' was concerned, the definition of the 'public service vehicle' occurring in Section 2(25), meant a vehicle which carried passengers for hire or reward. The meaning of the expression 'goods vehicle' and 'public service vehicle' contained in the 1939 Act, will be of great value in appreciating the subsequent changes in the provisions contained in Section 95.

96. It may, however, be noted that although Section 95(1)(b) provided for compulsory insurance in widest terms to include 'any person' and every vehicle within its sweep, it carved out at the same time, an exception by adding a proviso to Clause (b) of Sub-section (1) of Section 95. By proviso (ii), appended to Section 95(1)(b), it restricted by generality of the main provision by confining the requirement of compulsory insurance from 'any person' in any vehicle to only those cases where "the vehicle is a vehicle in which the passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment". Therefore, under Section 95, a policy of insurance was not

required to cover risk to the passengers who were gratuitous or who were not carried for hire or reward. As a corollary it follows that the expression 'third party' did not cover under the 1939 Act, all persons other than the insurer and the insured. That is to say compulsory insurance coverage was not intended for all passengers or occupants of the public service vehicle. The compulsory insurance coverage was required only in respect of those passengers or occupants who were "carried for hire or reward or by reason of or in pursuance of a contract of employment".

97. It may also be noted that Section 95(1)(b) did not use the expression 'third party'; rather Section 95(1)(b) originally provided for compulsory insurance against the liability which may be incurred by the owner in respect of the death of, or bodily injury to, 'any person' caused by or arising out of the vehicle in a public place. On the first blush, it appears as if Section 95(1)(b) included by using the expression 'any person' any one, be he a traveller inside the vehicle or a person outside the vehicle, such as a pedestrian.

98. A careful analysis of Section 95(1)(b) and particularly the proviso appended thereto, however shows, as already indicated hereinabove, that the legislature in their own wisdom and conscious of the fact that the use of the expression 'any person' occurring in Section 95(1)(b), may be interpreted as an expression of widest amplitude, restricted by adding the proviso (ii) thereto and this proviso (as it stood then) conveyed that apart from an employee of the owner of vehicle in respect of whom a liability could arise under the Workmen's Compensation Act, 1923, compulsory insurance was also required in respect of passengers who were carried for hire or reward or by reason of or in pursuance of a contract of employment. In view of the definition of the 'goods vehicle', given in Section 2(8) of 1939 Act, read with the provisions of Section 95(1)(b) and the proviso thereto, it becomes transparent that the compulsory insurance was required not only in respect of passengers who were carried in public service vehicles, but also those persons who were carried in goods vehicles, for goods vehicles were, in terms of definition of goods vehicle contained in Section 2(8) of the 1939 Act, permitted to carry as already indicated hereinabove, passengers too. So far as an employee of the owner engaged as a driver or in a public service vehicle, engaged as a conductor or examiner of tickets or an employee, in a goods vehicle, are concerned, the proviso (i) to Section 95(1)(b) made insurance coverage compulsory for the liabilities arising under Workmen's Compensation Act in respect of bodily injury sustained by such employees. In short, apart from the employees aforementioned, Section 95 created provisions for compulsory insurance in respect of those persons who were carried for hire or reward or by reason of or in pursuance of a contract of employment irrespective of the fact whether the vehicle involved was a public service vehicle or a goods vehicle.

99. Section 95 was amended by Act 56 of 1969, whereby Section 95(1)(b) was bifurcated as follows:

> 95 (1)(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

100. The proviso (ii), aforementioned was, however, left as it was. The object of the amendment appears to be twofold. While Section 95(1)(b)(ii) made a special provision covering risk in respect of passengers of public service vehicle, the amendment introduced specifically under Section 95(1)(b), compulsory insurance in respect of the risk of liability which may be incurred by the owner of the vehicle in respect of death, or bodily injury to any person or damage to any property of a third party.

101. It was for the first time in the amendment so made as indicated hereinabove, that the expression 'third party' was incorporated in Section 95(1)(b)(ii). To put it differently, the twin object of Section 95 was to provide for compulsory insurance coverage not only in respect of the liability which may be incurred by the owner of the vehicle in respect of death of or bodily injury to any person or damage to property of a third party, but also the death of or bodily injury to any passenger of a public service vehicle. The impression that the expression 'any person' used in Section 95(1)(b) did not really include everyone other than the insured and the insurer gets strengthened from the fact that had the legislative intent been to include within the expression 'any person' everyone--third party as well as passengers--section 95(1)(b) would not have made specific provisions for compulsory insurance coverage in respect of passengers of public service vehicles. In other words, by making specific provisions for compulsory insurance coverage in respect of passengers in public service vehicles, the legislature made its intention clear that the words, 'any person', occurring in Section 95(1)(b) did not include passengers nor were the passengers as a class, covered by the expression 'third party'. Even earlier also the passengers of public service vehicles as well as goods vehicles were required to be covered compulsorily as they answered the description of "passengers carried for hire or reward".

102. The effect of making a special provision for insurance coverage in respect of passengers of public service vehicles was that the proviso (ii) aforementioned, thereafter, ceased to be applicable to public service vehicles, but remained applicable to vehicles other than public service vehicles such as 'goods vehicles', for as we have already indicated above, a 'goods vehicle' could have carried even passengers for hire or reward in terms of the definition of 'goods vehicle' contained in Section 2(8) read with proviso (ii) to Section 95(1)(b). This in turn means that the proviso (ii) could have now been applied to only goods vehicle, which could carry passengers and if such passengers were carried for hire or reward, insurance coverage was compulsory for them too. Insurance coverage also remained compulsory under the proviso (ii) in respect of persons who were carried in a public service vehicle or in a goods vehicle by reasons of or in pursuance of a contract of employment. Another fallout of the amendment of Section 95 was that when a passenger was carried in a public service vehicle, it was implied that such a passenger was being carried for hire or reward, for a public service vehicle meant in terms of the definition of public service vehicle, occurring in Section 2(25), a vehicle which carried passengers for hire or reward. In other words, if bodily injury to, or death of, any person travelling as a passenger in a public service vehicle was caused, it was to be presumed that the passenger was carried for hire or reward. However, even in such a case, if an enquiry conducted by the Tribunal revealed that the persons carried as a passenger in the public service vehicle was a gratuitous passenger or that he was not carried in consideration of hire or

reward, benefit of compulsory insurance could not have been extended to such a person; but as long as a person was carried as a passenger in a public service vehicle the liability of the owner against the death of, or bodily injury to, such a person was required to be compulsorily insured and the insurer was bound to indemnify the insured for the death of or injury caused to such a passenger except when the passenger was a gratuitous passenger.

103. Now, turning to the question once again, namely, as to whether the expression 'any person' occurring in Section 95(1)(b) includes everyone other than the insurer and the insured, it is of some significance to note that loosely spoken, the expression 'third party' would mean everyone other than the insurer and insured. In Stroud's Judicial Dictionary, the expression 'third party risk' has been described thus: "Third party risks" Road Traffic Act, 1930, connotes that the insurer is one party to the contract, that the policyholder is another party and that claims made by others in respect of the negligent use of the car, may be naturally described as claims by third parties.

104. While interpreting the words 'third party risk', the Privy Council in Degoy v. General Accidents Wire Assurance Corporation (1943) AC 121, attributed same meaning to the expression 'third party risk' as occurs in Stroud's Judicial Dictionary.

105. The meaning of the expression 'third party' came up for consideration in Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 AC J 343 (SC). The strenuous argument that the expression 'third party' is wide enough to cover all persons except the insurer and the insured was negatived in Pushpabai Purshottam Udeshi (supra), particularly on the ground that the insurance coverage is not available to the passengers except in respect of those passengers for whom proviso to Section 95(1)(b) made it compulsory to provide for insurance coverage. Explaining the position of law in this regard, the Apex Court in Pushpabai Purshottam Udeshi's case (supra) held as follows:

> (21) Section 95(a) and 95(b)(i) of the Motor Vehicles Act, adopted the provisions of the English Road Traffic Act, 1960 and excluded the liability of the insurance company regarding the risk to the passengers. Section 95 provides that a policy of insurance must be a policy which insures the persons against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The plea that the words 'third party' are wide enough to cover all persons except the person and the insurer is negatived as the insurance cover is not available to the passengers is made clear by the proviso to Sub-section which provides that a policy shall not be required:
>
> (ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises.

> (22) Therefore, it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured, the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act.
>
> (23) The insurer can always take policies covering risks which are not covered by the requirements of Section 95....

106. In view of the law as laid down in Pushpabai Purshottam Udeshi's case (supra), it is clear that the expression 'third party', occurring in Section 95 under the 1939 Act did not include everyone other than the insurer and the insured. At any rate, the expression 'third party' did not include the occupant of a vehicle, for as regards the occupants of the vehicle, specific provisions had been made under the proviso to Section 95(1)(b).

107. In all, therefore, the insurance coverage, under the amended Section 95 of the 1939 Act, was required specifically in respect of (1) a person carried as a passenger in a public service vehicle for hire or reward, or (2) a person carried as a passenger for hire or reward in a goods vehicle, or (3) an employee carried in a goods or public service vehicle by reasons or in pursuance of a contract of employment, or (4) an employee who was engaged in driving the vehicle or if it was a public service vehicle, engaged as a conductor or ticket examiner in the vehicle or an employee, who was carried in a goods vehicle. Under Section 95(1)(b), compulsory insurance coverage was also required against the liability, which might have been incurred by the owner of the vehicle for the death of, or bodily injury to, any person or damage to property of a third party. The expression 'any person', occurring in Section 95(1)(b)(i), obviously did not include those persons for whom insurance coverage was already provided under Section 95 (1)(b)(ii) and the proviso appended thereto. In short, thus, passengers of a public service vehicle were not included with the meaning of the expressions 'any person' or 'third party', which occurred in Section 95(1)(b)(i).

108. Section 147 of the Motor Vehicles Act, 1988, before its amendment in 1994, was a replica of Section 95 of Motor Vehicles Act, 1939, except that the proviso (ii) to Section 95(1)(b) was omitted. Section 147 as it originally stood, reads as follows:

> 147. Requirements of policies and limits of liability.-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-
>
> (a) is issued by a person who is an authorized insurer; and
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-
>
> (i) against any liability which may be incurred by him in respect of the death of, or bodily injury to any person or damage to any property of a third party caused by or

arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

109. The effect of the omission of the proviso (ii) to Section 95, while enacting Section 147, was that even if a person was carried for hire or reward in a vehicle other than public service vehicle, such a person's risk was not required to be compulsorily covered by insurance. In other words, unless specifically proved that an insurance coverage was available to a person who was carried in a goods vehicle or any vehicle other than the public service vehicle, no compulsory insurance in respect of such a person was necessary.

110. In fact, with the coming into force of the 1988 Act the 'goods carriage', as defined in Section 2(14) of the 1988 Act, no longer permitted (unlike what the 1939 Act did), carrying of any passenger in a 'goods carriage' for a 'goods carriage' according to Section 2(14) under the 1988 Act [which replaced the expression 'goods vehicle' defined under Section 2(8) of the 1939 Act] means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. In other words, while a goods vehicle, under the 1939 Act, could carry even passengers, but the 'goods carriage' under the 1988 Act cannot carry passengers. These aspects of the matter have been succinctly highlighted in New India Assurance Co. Ltd. v. Asha Rani , wherein S.B. Sinha, J., in his concurring judgment observed as follows:

(23) ...Section 2(35) of 1988 Act does not include passengers in goods carriage whereas Section 2(25) of 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of the 'goods vehicle' in 1939 Act and 'goods carriage' in 1988 Act is significant. By reason of the change in the definitions of the

terminology, the legislature intended that a goods vehicle could not carry any passenger, as the words 'in addition to passengers' occurring in the definition of goods vehicle in 1939 Act were omitted. Furthermore, it categorically states that 'goods carriage' would mean a motor vehicle constructed or adapted for use 'solely for the carriage of goods'. Carrying of passengers in a 'goods carriage', thus, is not contemplated under the 1988 Act.

xxx xxx xxx (25) Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of 'public service vehicle'. The proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'.

(26) In view of the changes in the relevant provisions in 1988 Act vis-a-vis 1939 Act, we are of the opinion that the meaning of the words 'any person' must also be attributed having regard to the context in which they have been used, i.e., a 'third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

(27) Furthermore, the Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas Sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

(28) An owner of a passenger carrying vehicle must pay premium for covering the risk of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this court's decision in New India Assurance Co. Ltd. v. Satpal Singh (SC), is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid.

(29) We may consider the matter from another angle. Section 149(2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of Clause (a)(i)(c) of Sub-section (2) of Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence

> available to the insurer would be obliterated in view of the decision of this Court in Satpal Singh's case .
>
> (30) For the foregoing reasons, I am in respectful agreement with My Lord the Chief Justice of India that the decision of this Court in New India Assurance Co. Ltd. v. Satpal Singh , has not laid down the law correctly and should be overruled.

111. The question, therefore, which now arises for consideration is this: whether a person, who was carried in a goods vehicle in any capacity whatsoever, was covered by the expression 'any person' occurring in Section 147(1)(b)(i). That the expression 'any person', occurring in Section 147(1)(b)(i) did not include anyone who was carried in a goods vehicle or, in fact, in any vehicle is amply clear from the fact that Section 147(1)(b)(i) had to undergo an amendment in the year 1994 and the words 'any person' came to be substituted by the words, 'any person including owner of the goods or its authorized representative carried in the vehicle'. This amendment is not really clarificatory or amplificatory in nature. The expression 'any person' did not include, as already pointed out above, an occupant or a passenger of a vehicle and it was, for this reason, that the legislature in their own wisdom thought it proper to make specific provisions for compulsory insurance in respect of a person, who happens to be the owner of the goods or authorized representative of such owner of the goods carried in the vehicle.

112. The above aspects of the matter are clearly discernible from the observations made in Asha Rani (supra), which run as follows:

> (9) In Satpal's case , the court assumed that the provisions of Section 95(1) of the Motor Vehicles Act, 1939, are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death of or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles (Amendment) Act of 1994 is examined, particularly Section 46 of Act 54 of 1994 by which expression 'injury to any person' in the original Act stood substituted by the expression 'injury to any person, including owner of the goods or his authorized representative carried in the vehicle' the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if widest interpretation is given to the expression 'to any person' it will not cover either the owner of the goods or his authorized representative being carried in the vehicle. The objects and reasons of Section 46 also states that it seeks to amend Section 147 to include the owner of the goods or his authorized representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the

> statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression 'including owner of the goods or his authorised representative carried in the vehicle' which was added to the pre-existing expression 'injury to any person' is either clarificatory or amplificatory of the preexisting statute. On the other hand, it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorized representative being carried in the goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal's case , therefore, must be held to have not been correctly decided and the impugned judgment of Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorized representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury.

113. For historic reasons, which we have indicated hereinabove, the legislature has deemed it fit to have statutory provisions making it compulsory for the owner of the vehicle to insure his vehicle against the 'third party risk' before he places the vehicle in a public place. With this object in mind, Section 94 of 1939 Act and Section 146 of 1988 Act have been incorporated. The legislature has, however, carved out some exceptions with regard to compulsory insurance of vehicles, one of the exceptions being that compulsory insurance is not required in respect of persons, who are not carried for hire or reward in motor vehicle. If the vehicle is a public service vehicle, it implies that it carries passengers for hire or reward. If the vehicle is goods carrier, it cannot as indicated hereinabove, carry passengers. In respect of a vehicle which does not carry passengers for hire or reward, no compulsory insurance is required to be obtained covering the risk of such occupants of the vehicle unless the vehicle is a public service vehicle.

114. In short, thus, the expression 'third party' does not within its sweep include anybody or everybody involved in an accident, wherein the vehicle is involved. In short, in the light of the exposition of law by the Apex Court in Pushpabai Purshottam Udeshi's case 1977 ACJ 343 (SC) and Asha Rani's case , the insurer has no liability in respect of the gratuitous passengers in goods vehicle or in respect of passengers carried in private vehicle or a vehicle other than the public service vehicle. In a situation where no compulsory statutory insurance is required, the terms of the relevant insurance policy will determine the question of liability of the insurer, for there is no limitation on the part of an insurer to enter into an agreement providing for insurance in respect of persons not required to be compulsorily insured. Whether such an insurance coverage is available or not is a question of fact which will depend on terms and conditions embodied in the relevant insurance policy. It is the duty of the insurance company to produce, in the Tribunal itself, the insurance policy if the insurer wishes to avoid its responsibility under the agreement of insurance. We may also carefully note that an agreement of insurance is one of indemnification for a consideration, commonly known as a premium. The insurer undertakes in consideration of

premium to indemnify the liability assured by it and pay whatever an insured is bound or liable to pay on account of an accident caused by a vehicle in respect of which the policy of insurance is taken.

115. At any rate, the expression 'third party' does not include the passengers inside the vehicle. The words 'any person' have been referred to really mean a 'third party' and does not refer to a passenger or an occupant of a vehicle. This is amply clear from what has been laid down in Asha Rani's case (supra), thus in view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words 'any person' must also be attributed having regard to the context in which they have been used, i.e., 'a third party'. Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

116. In the definition given in Section 145 of the 1988 Act, third party is defined to include the government. Thus, a policy covering risk of third party will really cover the liabilities for death or injury in respect of a third person or damage caused to the property of a third party arising out of use of a motor vehicle. The expression 'third party', however, in Section 147 will not include, as already indicated hereinabove, everyone other than the insurer or the insured, for had it been so, the legislature, as indicated hereinbefore, would not have been required to include within the expression 'any person' the owner of the goods or his authorized representative carried in the vehicle.

117. It may be pointed out that in Asha Rani's case (supra), the Supreme Court was required to determine as to whether a passenger travelling in a goods vehicle is required to be compulsorily insured and whether the expression 'any person' will include even the persons travelling in a goods vehicle.

118. The correctness of the decision rendered in Asha Rani's case (supra) came up for consideration before a three-Judge Bench in National Insurance Co. Ltd. v. Baljit Kaur . In the case of Asha Rani (supra), it was held that the previous decision in Satpal Singh's case , was incorrectly rendered and that the words 'any person', as used in Section 147 of Motor Vehicles Act, 1988, would not include passengers in the goods vehicle, but would rather be confined to the legislative intent to provide for third party risk.

119. Agreeing with the law laid down in Asha Rani's case (supra), the court in Baljit Kaur's case (supra) observed and held as follows:

> (11) Admittedly, it is incumbent upon a court of law to eschew that interpretation of a statute that would serve to negate its true import, or to render the words of any provision as superfluous. Nonetheless, we find no merit in the above submissions proffered by learned Counsel for the respondent. The effect of the 1994 amendment on Section 147 is unambiguous. Where earlier the words 'any person' could be held as not to include the owner of the goods or his authorised representative travelling in the goods vehicle, Parliament has now made it clear that such a construction is no

longer possible. The scope of this rationale does not, however, extend to cover the class of cases where gratuitous passengers for whom no insurance policy was envisaged, and for whom no insurance premium was paid, employ the goods vehicle as a medium of conveyance.

(12) We find ourselves unable, furthermore, to countenance the contention of respondents that the words 'any person' as used in Section 147 of the Motor Vehicles Act, would be rendered otiose by an interpretation that removed gratuitous passengers from the ambit of the same. It was observed by this Court in the case concerning New India Assurance Co. Ltd. v. Asha Rani , that true purport of the words 'any person' is to be found in the liability of the insurer for third party risk, which was sought to be provided for by the enactment.

(13) It is pertinent to note that a statutory liability enjoined upon an owner of the vehicle to compulsorily insure it so as to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment in terms of proviso (ii) appended to Section 95 of the 1939 Act does not occur in Section 147 of the 1988 Act. The changes effected in 1988 Act vis-a-vis the 1939 Act as regard to definitions of 'goods vehicle', 'public service vehicle' and 'stage carriage' have also a bearing on the subject inasmuch as the concept of goods carriage carrying passengers or any other person was not contemplated.

(14) In a situation of this nature, the doctrine of suppression of mischief rule as adumbrated in Hey don's case 3 Co Rep 7a, 76 ER 637, shall apply. Such an amendment was made by Parliament consciously. Having regard to the definition of 'goods carriage' vis-a-vis 'public service vehicle', it is clear that whereas the goods carriage carrying any passenger is not contemplated under the 1988 Act as the same must be used solely for carrying the goods.

(17) By reason of the 1994 amendment what was added is 'including owner of the goods or his authorised representative carried in the vehicle'. The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of goods or his authorised representative carried in the vehicle besides the third parties. The intention of Parliament, therefore, could not have been that the words 'any person' occurring in Section 147 would cover all the persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of Parliament to carry out an amendment inasmuch as expression 'any person' contained in Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

(18) The observations made in this connection by the court in Asha Rani's case , to which one of us, Sinha, J., was a party, however, bear repetition:

(26) In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words 'any person' must also be attributed having regard to the context in which they have been used, i.e., 'third party'. Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

(19) In Asha Rani's case , it has been noticed that Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of vehicle in a public place. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risk of the passengers travelling in the vehicle. The premium in view of the 1994 amendment would only cover a third party as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

(20) It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorised representative, remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, not any premium was paid to the extent of the benefit of insurance to such category of people.

(21) The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree....

120. It may be noted in National Insurance Co. Ltd. v. Bommithi Subbhayamma , the Supreme Court relying upon the decision in Asha Rani's case (supra) and Baljit Kaur's case (supra) and also taking into account its decisions in National Insurance Co. Ltd. v. Challa Bharathamma ; Pramod Kumar Agrawal v. Mushtari Begum and also in National Insurance Co. Ltd. v. V. Chinnamma , confirmed the views taken by the court in National Insurance Co. Ltd. v. Bommithi Subbhayamma (supra).

121. Bearing in mind the changes which Section 95 of 1939 Act underwent under the 1939 Act itself, the changes which were further brought in and introduced under Section 147 under the 1988 Act and the amendment which Section 147 underwent in the year 1994, when we consider the provisions of Section 147 of the 1988 Act, as the same stand after the amendment undergone in the year 1994, it becomes abundantly clear that Section 147(1)(b) provides for compulsory insurance of two different sets of risks. While Section 147(1)(b)(ii) makes it compulsory for the owner of every public

service vehicle to ensure that before the vehicle is placed on the road for use, the vehicle must be insured in respect of passengers to be carried in the vehicle, Section 147(1)(b)(i) makes it compulsory for the owner of every vehicle be it public service vehicle or goods carriage to obtain insurance coverage in respect of 'third party' besides the owner of the goods carried in the vehicle or the authorised representative of such an owner of the goods carried in the vehicle. No matter as to whether a public service vehicle carries a passenger for hire or reward or gratuitously, as long as a passenger is carried in a public service vehicle, the definition of public service vehicle being what it is, insurance coverage for such a passenger is mandatory. As regards Section 147(1)(b)(i), the insurance coverage has been provided in respect of 'third party' indicating thereby that expression 'any person' occurring in Section 147(1)(b)(i) would mean, as Asha Rani's case (supra) lays down, a 'third party'. Thus, 'third party' would not include a passenger or occupant of any vehicle, for those occupants of the vehicle for whom compulsory insurance is required have already been covered under proviso (ii) to Clause (b) of Sub-section (1) of Section 147.

122. For the conclusions reached above we hold that the passengers of the ill-fated bus in question, could not have been treated as a third party and no compensation could have been made available to them as third party. This does not, however, mean, we must add, that the claimants were not entitled to any compensation at all. As to what relief(s) the claimants were entitled to is a question which we shall be dealing with at appropriate stage of this judgment.

123. The above discussions bring us to the point No. (v), namely, as to whether at the relevant point of time the person who had driven the bus was duly licensed and whether the registered owner of the bus committed breach of the conditions of the relevant insurance policy by allowing the said person to drive the vehicle and whether this breach was in the facts and attending circumstances of the case sufficient to disentitle the owner from being indemnified by the insurer?

124. While considering the above question, let us first determine the facts which emerge from the materials on record. The driving licence of the driver of the bus in question stands marked as Exh. A, which shows that this driving licence was issued on 25.4.1988, but the said driving licence expired on 19.8.1999 and was renewed only on 9.11.1999.

125. In view of the fact that the accident admittedly took place on 25.10.1999, it clearly follows that on the day of the accident, the driver did not have a valid driving licence and that the licence was renewed after 2 weeks of the said accident.

126. In the face of the above facts, we are now required to determine, as has been agitated on behalf of the insurer appellant, as to whether the owner of the said bus violated the conditions of the relevant insurance policy by allowing a person, who had no valid driving licence, to drive the vehicle at the relevant point of time and thereby committed breach of the insurance policy and whether this breach provided the insurer appellant with unassailable and inviolable defence in terms of Section 149(2) of the 1988 Act.

127. Controverting the above submissions made on behalf of the insurer appellant, it has been contended on behalf of the claimants-respondents that though driver did not have a valid driving

licence at the relevant point of time the fact remains that the licence was eventually renewed and since the driver had not been disqualified from driving the vehicle, the mere fact that on the date of the accident there was no effective driving licence is immaterial and the same cannot be made a ground for sustaining the objection raised by the insurer appellant that the owner of the vehicle committed a breach of the insurance policy and the insurer appellant is, therefore, in terms of Section 149(2)(a)(ii) of the 1988 Act, not liable at all to indemnify the insured owner.

128. Before dealing with the merit of the above rival submissions, pertinent it is to point out that in the case of Malta Prakasarao v. Malla Janaki (2004) 3 SCC 343, a three-Judge Bench of the Supreme Court in a set of facts similar to the ones that we have at hand, observed and held thus, "It is not disputed that the driving licence of the driver of motor vehicle had expired on 20.11.1982 and the driver did not apply for renewal within 30 days of the expiry of the said licence, as required under Section 11 of Motor Vehicles Act, 1939. It is also not disputed that the driver of the vehicle did not have driving licence when the accident took place. According to the terms of the contract, the insurance company has no liability to pay any compensation where an accident takes place by a vehicle driven by a driver without a driving licence. In that view of the matter, we do not find any merit in the appeal".

129. Though in the face of the decision in Malla Prakasarao (supra), which clearly governs the facts of the present case, the question posed above can be answered in the affirmative, it is to our mind, nevertheless necessary to refer to the decision in National Insurance Co. Ltd. v. Swaran Singh , which is also a decision of a three-Judge Bench delivered on a later date and which has taken into account almost all relevant decisions on the point and considered the same from larger perspective, while arriving at the conclusion as to when an insurer can be absolved of its liability to indemnify the insured.

130. In the above backdrop, it is also necessary to point out that a 'driving licence', according to Section 2(10) of the 1988 Act, means the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class of description.

131. The answer to the question whether a person can drive a motor vehicle, without having driving licence therefor, can be found in Section 3, which reads as follows:

> 3. Necessity for driving licence.-(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or motor cycle hired for his own use or rented under any scheme made under Sub-section (2) of Section 75 unless his driving licence specifically entitles him so to do.

132. The provisions for renewal of driving licence have been made in Section 15, which run as follows:

15. Renewal of driving licences.-(1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry:

Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:

Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in Sub-section (3) of Section 8, and the provisions of Sub-section (4) of Section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence.

(2) An application for the renewal of a driving licence shall be made in such form and accompanied by such documents as may be prescribed by the Central Government.

(3) Where an application for the renewal of a driving licence is made previous to, or not more than thirty days after the date of its expiry, the fee payable for such renewal shall be such as may be prescribed by the Central Government in this behalf.

(4) Where an application for the renewal of a driving licence is made more than thirty days after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central Government:

Provided that the fee referred to in Sub-section (3) may be accepted by the licensing authority in respect of an application for the renewal of a driving licence made under this Sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in Sub-section (3):

Provided further that if the application is made more than five years after the driving licence has ceased to be effective, the licensing authority may refuse to renew the driving licence, unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in Sub-section (3) of Section 9.

(5) Where the application for renewal has been rejected, the fee paid shall be refunded to such extent and in such manner as may be prescribed by the Central Government.

(6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the authority which issued the driving licence.

133. From the reading of the proviso to Sub-section (1) of Section 15, it becomes clear that an application for renewal of a licence if made within 30 days from the date of expiry of the licence, the licence shall be renewed with effect from the date of the expiry thereof meaning thereby that the renewal of the licence would relate back to the date of the expiry; but if the application for renewal is made more than 30 days after the date of the expiry, the renewal of the driving licence would not relate back to the date of the expiry; rather, such a licence would stand renewed with effect from the date of the renewal thereof.

134. In the present case, since the driving licence expired on 19.8.1999 and was renewed only on 9.11.1999, it is clear that even after renewal of the driving licence, the driver did not have any effective driving licence between 19.8.99 and 8.11.1999. Since the renewal did not take place with effect from 19.8.1999 (i.e., from the date of the expiry of the licence) and the licence stood renewed with effect from 9.11.1999 and whereas the accident took place on 25.10.1999, it also logically follows that the vehicle was driven by a person, who was not duly licensed on 25.10.1999 (i.e., the date on which the accident took place). Had the licence been renewed with effect from a date prior to 25.10.1999, it could have, perhaps, been argued that though the driver did not have any effective driving licence on 25.10.1999, subsequent renewal of the driving licence covering the date of the accident shows that the person who drove the bus was duly licensed, though he did not have any effective driving licence on the date of the said accident.

135. In the face of the fact, however, as already indicated hereinbefore, that the renewal of the driving licence did not relate back to and/or covered the date of the accident in question the conclusion which is irresistible to reach is that the present one is not one of those cases wherein the driver did not merely have an effective driving licence on the date of the accident; rather, the case at hand is a case wherein the person who drove the said bus on the day of the said accident was not duly licensed to drive any vehicle on the date of the said accident. Can the act of allowing a person, who was not duly licensed, be sufficient to construe as a breach of the insurance policy and can such a breach absolve the insurer under Section 149(2) from being liable to indemnify the insured?

136. Our quest for an answer to the above question brings us to Section 149(2)f, which incorporates the provisions for the statutory defences made available to the insurer by the 1988 Act. Sub-section (2) of Section 149 reads as follows:

> 149. (2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:
>
> (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular.

137. For considering the scope of Section 149(2), it is of utmost importance to note that while Sub-section (1) of Section 3 debars a person from driving a vehicle in any public place unless he holds an effective driving licence, Sub-section (2) of Section 149 absolves an insurer from the liability of indemnifying the insured if the vehicle is allowed by the insured to be driven by a person, who has been named, under the contract of insurance as a person not entitled to drive or by a person who is not duly licensed or by any person who has been disqualified from holding or obtaining a driving licence during the period of disqualification.

138. The two different expressions--'effective licence' and 'duly licensed', if considered in their proper perspectives, would mean that even when a person who does not have an effective driving licence, drives a vehicle and commits an accident, then insurer would not be absolved from its liability inasmuch as the condition precedent for absolving him from the liability of indemnifying the insured is that the vehicle is driven by a person who has been named under the contract of insurance, as a person not entitled to drive or by a person who is not duly licensed, or by a person who has been disqualified from holding or obtaining a driving licence. We may refer in this regard to the case of National Insurance Co. Ltd. v. Swaran Singh , wherein the court observed:

(36) We may also take note of the fact that whereas in Section 3 the words used are 'effective licence', it has been differently worded in Section 149(2), i.e., 'duly licensed'. If a person does not hold an effective licence as on the date of the accident, he may be liable for prosecution in terms of Section 181 of the Act but Section 149 pertains to

insurance as regards third party risks.

139. It is also of great significance to note that there are altogether three conditions of disjunctive nature in Section 149(2)(a)(ii) and satisfaction of any of these three conditions can in a given case be considered as a breach of the conditions of the insurance policy, these three conditions being (i) that the vehicle has been driven, at the relevant point of time, by a person who was under the contract of insurance specifically named as a person excluded from driving the vehicle, or (ii) by a person who is not duly licensed, or (iii) by a person who has been disqualified from holding or obtaining driving licence on the date of the accident. In any of these three contingencies an insurer may, if the facts and the circumstances of a given case so permit, be absolved from the liability to indemnify the insured. These aspects have been clearly dealt with by the Apex Court in Swaran Singh's case , in the following words:

> (35) However, Clause (a) opens with the words 'that there has been a breach of a specified condition of the policy', implying that the insurer's defence of the action would depend upon the terms of the policy. The said Sub-clause contains three conditions of a disjunctive character, namely, the insurer can get away from liability when (a) a named person drives the vehicle; (b) it was being driven by a person who did not have a duly granted licence; and (c) driver is a person disqualified for holding or obtaining a driving licence.

140. We have already pointed out that the present one is a case in which the driver was not merely a person who did not have an effective driving licence on the day of the accident, rather he was a person who was not even duly licensed on that day to drive a bus. Is this non-compliance with the condition of the insurance policy sufficient to absolve the insurer appellant?

141. While answering the above question, necessary it is to note, as we have already mentioned above, that Chapter XI of the 1988 Act provides for compulsory insurance of vehicles with a view to protect the rights of a third party. While driving of a vehicle by a person whose licence has expired may open him to criminal prosecution under the 1988 Act, such a violation by the driver and/or his prosecution are in themselves not enough to defeat the interests of a third party, for a third party's claim arises when a victim of an accident suffers bodily injury or death or if as a result thereof his properties get damaged. The third party's right cannot be defeated unless in terms of provisions of Sub-section (2) of Section 149 there is breach of a policy condition and the breach is so fundamental that it contributed to the accident. Whether the breach has contributed to the accident is a question, the answer to which will depend on the facts of a given case. Held the Supreme Court in this regard in Swaran Singh's case , thus:

> (37) A provision of a statute which is penal in nature vis-a-vis a provision which is beneficent to a third party must be interpreted differently. It is also well-known that the provisions contained in different expressions are ordinarily construed differently.
>
> (38) The words 'effective licence' used in Section 3, therefore, in our opinion cannot be imported for Sub-section (2) of Section 149 of the Motor Vehicles Act. We must

also notice that the words 'duly licensed' used in Sub-section (2) of Section 149 are used in the past tense.

(39) Thus, a person whose licence is ordinarily renewed in terms of Motor Vehicles Act and the rules framed thereunder despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

(40)Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry.

(41) xxx xxx xxx (42) Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3), a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

(43) Such a breach on the part of the insured must be established by the insurer to show that not only the insured used or caused or permitted the vehicle to be used in breach of the Act but also that the damage he suffered flowed from the breach.

(44) Under the Motor Vehicles Act, holding of a valid driving licence is one of the conditions of contract of insurance. The driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have

> a valid driving licence but would be entitled to recover the same from the owner or driver thereof.

142. Having taken into account the fact that it is not sufficient for the insurer to show that the person driving at the time of the accident was not duly licensed, that the insurer must further establish that there was a breach on the part of the insured, that the breach on the part of the insured was a wilful one and fundamental in nature, that if a person does not hold an effective driving licence, he may be liable to prosecution, but this fact in itself cannot provide an effective defence to the insurer under Section 149(2)(a)(ii) to deny the claim of third party and that in order to enable the insurer to avoid its liability, it is not enough to show that the conditions under Section 149(2)(a) are satisfied but that the insurer must also establish that there has been a breach on the part of the insured and that the damage to the victim suffered flowed from the breach, observed the Apex Court in National Insurance Co. Ltd. v. Swaran Singh :

> (45) It is trite that where the insurers relying upon the violation of provisions of law by the assured takes an exception to pay the assured or a third party, they must prove a wilful violation of the law by the assured. In some cases violation of criminal law, particularly, violation of the provisions of the Motor Vehicles Act may result in absolving the insurers but, the same may not necessarily hold good in the case of a third party. In any event, the exception applies only to acts done intentionally or 'so recklessly as to denote that the assured did not care what the consequences of his act might be'.

143. Observed the Supreme Court in Jitendra Kumar v. Oriental Insurance Co. Ltd. , that there may be a case where an accident takes place without there being fault on the part of the driver. In such a situation, the question as to whether a driver was holding a valid driving licence or not would become redundant.

144. Having taken note of a number of authorities on the point Apex Court summed up in Swaran Singh's case (supra), the law on the subject of driving licence. The salient features of what were summed up in Swaran Singh's case (supra), are as follows (para 102):

> (i) Chapter XI of the Motor Vehicles Act, 1988, providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
>
> (ii) xxx xxx xxx
>
> (iii) The breach of policy conditions, e.g., disqualification of the driver or an invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer.... To avoid its liability towards the insured, the insurer has to prove that the

insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding the use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle, the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. Tribunals in interpreting the policy conditions would apply 'the rule of main purpose' and the concept of 'fundamental breach' to allow defences available to the insurer under Section 149(2) of the Act.

(vii) xxx xxx xxx
(viii) xxx xxx xxx
(ix) xxx xxx xxx

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of the claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance

on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

145. From a careful reading of what has been summed up in Swaran Singh's case (supra), it is clear that in order to avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant time. However, having laid down that if the insurer proves that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy with regard to use of the vehicle by a duly licensed driver, the Supreme Court went further to hold that the proof of such a negligence may, in an appropriate case, would be of no avail to the insurer unless the insurer also proves that the breach with regard to the condition of driving licence is so fundamental as to have contributed to the case of the accident.

146. In short, thus, in order to enable an insurer to avoid its liability towards the insured, the insurer must prove that the insured was guilty of negligence, he failed to exercise reasonable care in respect of fulfilling of the condition of the policy with regard to use of the vehicle by a duly licensed driver and that this breach of the policy condition contributed to the cause of the accident.

147. Bearing in mind the above prominently laid down position of law governing the question as to when an insurer can avoid the liability to indemnify the insured, we revert to the factual matrix of the present case. What attracts our eyes is that on 25.10.99 (i.e., the date of the accident), the driver was not, admittedly, duly licensed. It was the bounden duty of the insured, i.e., the owner of the vehicle not to allow such a person to drive the vehicle. That the insured was wholly negligent and miserably failed to pay any attention towards fulfilling of the condition of the insurance policy that he must not allow the vehicle to be driven by a person, who was not duly licensed, is apparent from the fact that not merely that fact that the driver was not duly licensed on 25.10.1999, but that he had no driving licence at all after 19.8.1999, he had made no application for renewal within a month of the date of expiry of the licence and that he applied for renewal of licence almost after two weeks of the accident. When all these facts combined together are taken into account, there remains no room for doubt that the insured-respondent was wholly negligent, utterly careless and there was thus a breach of the policy condition inasmuch as knowing fully well that the person concerned was not duly licensed, his licence had expired more than 2 months before the date of the said accident and that the driver had not even applied for renewal of licence, the insured-respondent allowed such a person to drive the vehicle on the date of the accident. This apart, as already indicated hereinabove, the accident took place due to fault on the part of the driver himself. In a situation such as this it cannot be said that the present one was a mere case of breach of the conditions of policy, rather, the breach was so fundamental in nature that one has no option but to hold that the law laid down in Swaran Singh's case (supra) squarely applies to the facts of the case at hand and the insurer appellant in the present case had no liability towards the insured-respondent and that the liability, if any, was and still remains that of the insured-respondent. The point No. (v) stands answered accordingly.

148. We now proceed to deal with point No. (vi), namely, as to whether the insurer ought to have been absolved of its liability to indemnify the owner of the bus on the ground that the bus was carrying at the relevant point of time more passengers than what was permissible in terms of the relevant road permit.

149. While considering the point No. (vi), we may once again point that it is Section 149(2) which embodies the statutory defences available to an insurer.

150. While we were discussing above the question with regard to the liability of an insurer as regards violation of the conditions of the insurance policy by allowing a person not duly licensed to drive the vehicle, it also surfaced, if one may emphasise that in order to escape the liability, the insurer must not only prove that the insured was guilty of negligence and failed to exercise reasonable care, but that the insurer must also prove that there was a breach of the policy condition arising out of wilful violation of the policy condition and that the breach was so fundamental in nature that the same had contributed to the cause of the accident.

151. In the case at hand, admitted facts are that the bus was allowed to carry 38 passengers. The facts on record also prove that the bus, when the same met with the accident, was carrying more than 38 persons as against the permissible limit of 38 with insurance coverage in respect of 34 persons. There was, thus, an infraction of the policy condition inasmuch as the vehicle carried persons more than the number, which the vehicle was permitted to carry. This infraction in itself was not sufficient to absolve the insurer appellant from its liability unless the insurer could show that the negligence was wilful and that insured failed to take reasonable care in ensuring that the vehicle did not carry more than 38 passengers.

152. With regard to the above, it is worth noticing that there is not even an iota of material on record to indicate that it was within the knowledge of the insured-respondent that the vehicle was carrying more than the permissible limit of passengers. Situated thus, it cannot be said that the insured allowed the vehicle to be driven with passengers more in number than what was permitted by the road permit or covered by the relevant insurance policy. This apart, Section 149(2)(a)(i)(c) absolves an insurer when it shows, inter alia, that the vehicle was used for a purpose not allowed by the permit. Since the bus was admittedly a public service vehicle which is allowed to carry passengers, it cannot be said that the bus was used for a purpose not allowed by the relevant permit.

153. Coupled with the above, the most fundamental of all the fundamental requirements is that the insurer must prove, in order to escape from its liability, that the breach of the policy condition had contributed to the cause of the accident. In the given facts of the present case, it was the onus of the insurer appellant to prove that the vehicle carried within the knowledge of the insured, more than the permissible limit of passengers and that it was the overloading of the bus or carrying of more passengers than what was permitted, which had contributed to the accident. However, there is absolutely no evidence on record to show that it was on account of excess number of passengers that the said accident had taken place. In such a situation, reliance placed by the learned Tribunal on the decision in B.V. Nagaraju v. Oriental Insurance Co. Ltd. , is not misplaced, for in B.V. Nagaraju's case (supra), the court held that merely by lifting of a person or two, or even three, by the driver or

the cleaner of the vehicle, without the knowledge of the owner cannot be said to be such a fundamental breach that the insured should be denied indemnification, for the vehicle could have carried 6 workmen excluding the driver and if carrying of 6 workmen did not involve any risk, the carrying of a few more persons could not have, in the absence of any other material showing to the contrary, increased the risk. It was further held in B.V. Nagaraju 's case (supra) that the misuse of the vehicle was somewhat irregular but not so fundamental in nature as to put an end to the contract itself in absence of any factum on record showing that it was the excess number of persons carried in the vehicle which had contributed to the cause of the accident.

154. In the case at hand, apart from the fact as already mentioned hereinabove, that there is no material to show that the vehicle carried excess number of passengers within the knowledge of the owner, there is also nothing on record to show that carrying of three or four persons more than the permissible limit had contributed to the cause of the accident. In the absence of any such relevant fact available on record, the learned Tribunal was wholly justified in holding that the insurer cannot, in the facts and circumstances of the present case, escape from liability by taking recourse to the plea that the vehicle was overloaded. We, therefore, answer the point No. (vi) in the negative. The finding so reached by us is, however, subject to the finding already reached by us under point No. (v) and we clarify that notwithstanding what we have concluded under point No. (vi), the insurer appellant had in the present appeals [as already held by us under point No. (v)] no liability towards the insured-respondent and that the liability, if any, was and still remains that of the insured-respondent.

155. The above discussions held, as a whole, on various points fixed for determination and the findings reached by us bring us to point No. (ix), which runs as follows:

> (ix) Whether the insurer was liable to pay any amount(s) as compensation to the claimants and, if so, what were the limits of its liabilities?

156. For the findings that we have reached above, particularly, our finding under point No. (v) leave us with no hesitation in holding that the insurer appellant in the present appeals had no liability including no fault liability.

157. We now come to and deal with the last point fixed for determination in the present set of appeals, namely, point No. (x) which runs as follows:

> (x) To what relief(s), if any, the parties are entitled?

158. While dealing with the question of relief(s) which may be made available to the claimants-respondents, it needs to be noted that the quantum of compensation granted to the claimants-respondents are under dispute; hence, we deal with and determine the quantum of compensation for each of the claimants separately as follows:

> R.F.A. No. 6 (SH) of 2002:

159. This appeal has arisen out of the award dated 21.12.2001 passed in M.A.C. Case No. 66 of 1999, whereby the claimant, who is father of the deceased Dhip Wahlang, aged about two years and four months, has been awarded Rs. 1,52,000 compensation for the death of his said son.

160. In view of the fact that claimant is father of the said deceased, the claimant as the legal representative of the said deceased is undoubtedly entitled to claim compensation under Section 166. The only question which needs to be considered and answered is as to what ought to have been the quantum of compensation for claimant-respondent?

161. Challenging the impugned award dated 21.12.2001 aforementioned, it has been contended on behalf of the insurer appellant that learned Tribunal erroneously took the notional income of the said deceased as Rs. 15,000 per annum and based on this income the learned Tribunal by applying 15 as multiplier, worked out the compensation to the sum of Rs. 1,52,000.

162. While considering the above aspect of the matter it is worth noticing that it is in respect of applications for compensation made under Section 163-A that the Second Schedule framed thereunder has to be resorted to. There is, however, no impediment in making use of the Second Schedule as a guiding factor for determination of compensation under Section 166 too. The Second Schedule makes it clear that the notional income for determining compensation in respect of those persons who had no income prior to the accident, shall be treated to be Rs. 15,000 per annum. Viewed from this angle, it was not improper on the part of learned Tribunal to treat the income of the said deceased as Rs. 15,000 per annum.

163. Coupled with the above, it is not disputed before us that the multiplier normally used in respect of persons who are below the age of 15 years is 15. Thus, when 15 was used as multiplier, the compensation awarded by learned Tribunal to the tune of Rs. 1,52,000 cannot be said to be unreasonable, unjustified and/or illegal.

164. Because of what has been pointed out above, we do not find that the amount of compensation awarded in favour of the claimant needs to be interfered with by this court.

R.F.A. No. 9 (SH) of 2002:

165. This appeal has arisen out of the award dated 21.12.2001 passed in M.A.C. Case No. 11 of 2000, whereby the claimant, who is father of the deceased Deblina Wanchan, aged about 17 years, has been awarded Rs. 1,62,000 as compensation for the death of his said daughter. The fact that claimant could have, as legal representative of the said deceased, made application under Section 166 is not in dispute.

166. Coupled with the above, we may also, to be fair to the insurer appellant, point out that at the time of hearing of this appeal, the correctness of the amount awarded as compensation in favour of the claimant has not been seriously challenged. This apart, when the said deceased was 17 years old, the amount of compensation awarded in favour of the claimant cannot be said to be illogical, unreasonable and/or illegal. Hence, the amount of compensation awarded in favour of the claimant

is not interfered with.

R.F.A. No. 21 (SH) of 2002:

167. This appeal has arisen out of the award dated 21.12.2001 passed in M.A.C. Case No. 12 of 2000, whereby the claimant, who is father of deceased Pyn Hunlan Glin Wanswett, aged about 14 years has been awarded Rs. 1,52,000 as compensation for the death of his said daughter.

168. In view of the fact that the claimant lost his daughter at her prime age of 14 years, it was not improper on the part of the learned Tribunal to treat the income of the said deceased daughter of the claimant as Rs. 15,000 per annum. Thus, when 15 was used as multiplier, the compensation awarded by the learned Tribunal to the tune of Rs. 1,52,000 cannot be said to be unreasonable, unjustified and/or illegal.

169. Because of what has been pointed out above, we do not find that the amount of compensation awarded in favour of the claimant needs to be interfered with by this court.

R.F.A. No. 23 (SH) of 2002:

170. This appeal has arisen out of the award dated 21.12.2001 passed in M.A.C. Case No. 13 of 2000, whereby the claimant, who is father of deceased Dapborlang Dekhar Sawalin, aged about 8 years, has been awarded Rs. 1,62,000 as compensation for the death of his said son.

171. Challenging the impugned award dated 21.12.2001 aforementioned, it has been contended on behalf of the insurer appellant in the present appeal too, that the learned Tribunal erroneously took the notional income of the said deceased as Rs. 15,000 per annum and based on this income, the learned Tribunal by wrongly applying 15 as multiplier, worked out the compensation to the sum of Rs. 1,52,000.

172. While considering the above aspect of the matter, it is worth noticing, if we may reiterate that though it is in respect of the applications for compensation made under Section 163-A that Second Schedule framed thereunder has to be resorted to, there is no impediment in making use of Second Schedule as guidance for determination of compensation under Section 166 too. Makes it clear the Second Schedule that the notional income for determining compensation in respect of those persons who had no income prior to the accident, shall be treated as Rs. 15,000 per annum. Viewed from this angle, it was not improper on the part of the learned Tribunal to treat the income of the said deceased daughter of the claimant as Rs. 15,000 per annum.

173. Coupled with the above, it is not disputed before us that the multiplier normally used in respect of persons who are below the age of 15 years is 15. Thus, by using 15 as multiplier, when the learned Tribunal worked out the compensation to be awarded to the claimant to the tune of Rs. 1,52,000, the amount so calculated cannot be said to be unreasonable, unjustified, illegal and/or untenable.

174. Because of what has been pointed out above, we do not find that the amount of compensation awarded in favour of the claimant needs to be interfered with by this court.

R.F.A. No. 15 (SH) of 2002:

175. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 3 of 2000, learned Tribunal has awarded in favour of the claimant a sum of Rs. 25,000 as compensation for the injuries sustained by him in the said accident.

176. In this case, the victim is aged about 24 years and he has claimed that he was a betel nut seller and that his monthly income was Rs. 25,000. It is also in the evidence of the claimant that he was treated initially at Sohra and then shifted to Civil Hospital, Shillong, where he remained hospitalised for 1 month and 8 days. In support of the evidence so given the claimant has proved the discharge sheet issued by the Civil Hospital, Shillong on 12.11.1999, which shows that he was admitted there on 25.10.1999 for multiple injuries on head and was released on 30.11.1999 and he was also advised to get medical check-up done for his eye treatment.

177. In the face of the nature of injuries sustained, the period of hospitalisation and the income of the injured, we do not find that the amount awarded in favour of the claimant needs any interference by this court.

R.F.A. No. 18 (SH) of 2002:

178. In this case the learned Tribunal by the impugned award dated 21.12.2001 passed in M.A.C. Case No. 61 of 1999, awarded Rs. 25,000 as compensation in favour of the claimant for the injuries sustained by her.

179. It could not be disputed before us that the claimant remained hospitalised for 9 days and that at the time of her discharge from the hospital she was advised to take complete rest for 30 days for the multiple lacerated wounds and injury to the spine, which she had sustained. In such a situation the amount of Rs. 25,000 awarded to the claimant cannot be said to be excessive and/or untenable in law. The amount so awarded, therefore, needs no interference.

R.F.A. No. 24 (SH) of 2002:

180. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 48 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 25,000 as compensation for the injuries sustained by him.

181. In this case the claimant, who is aged about 25 years, remained hospitalised from 25.10.1999 to 4.11.1999 for the injuries sustained on various parts of his body including his face and even stitches had to be applied on his face. Claimant asserted that he used to earn Rs. 8,000 per month from his business.

182. In view of the length of the period for which the claimant remained hospitalised coupled with the nature of the injuries suffered by him, the award of Rs. 25,000 cannot be said to be incompatible with the injuries sustained by the claimant. Viewed from this angle, the amount awarded to the claimant calls for no interference by this court.

R.F.A. No. 34 (SH) of 2002:

183. So far as this claim case is concerned, it may be pointed out at the very outset that this claim application has been disposed of by the award dated 7.12.2001 which has been passed in the same manner as the ones, which are covered by the award dated 21.12.2001 aforementioned. The decision, therefore, in respect of the appeals which arose out of awards dated 21.12.2001, aforementioned, which cover the present case too except the question as to what shall be the amount of compensation, if any, payable to the respondents.

184. In this case the person who died in the said accident was 43 years old at the time of his death and being a U.D.A. in the office of Director General, Assam Rifles, Shillong, he used to draw Rs. 7,618 per month as salary. The annual income of the said deceased was, thus Rs. 91,416. If 1/3rd of the said annual income is kept excluded as personal expenses of the said deceased, the total amount coming to the hands of the claimant, who is widow of the said deceased would be Rs. 60,944.

185. In view of the fact that the said deceased was 43 years old, 15 was the appropriate multiplier. So multiplied the compensation, works out to the tune of Rs. 9,14,160. The learned Tribunal has also reached the conclusion that the compensation for the loss of income shall be to the tune of Rs. 9,14,160. To this amount the learned Tribunal has added Rs. 2,000 as the funeral expenses and deducted from the whole amount so awarded a sum of Rs. 50,000 which already stood paid to the claimant-respondent as the amount of no fault liability. Situated thus, the amount of Rs. 8,66,160 awarded by learned Tribunal needs no interference.

186. Coupled with the above, the learned Tribunal has directed that a sum of Rs. 3,00,000 be kept in the post office or in any nationalised bank in the name of the minor son of the said deceased to be draw-able on attainment of his majority. The directions so given are also for the benefit of the recipient of the said compensation and hence, this part of the award too called for no interference.

187. We, therefore, hold that amount awarded to the claimant-respondent is not high or excessive and the award needs no interference.

R.F.A. No. 12 (SH) of 2003:

188. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 31 of 2000 the learned Tribunal has awarded in favour of the claimant Rs. 1,00,000 as compensation for the injuries sustained by him.

189. In this case, claimant, aged about 21 years, has been awarded Rs. 1,00,000 as compensation for the injuries sustained on his right hand. The claimant has asserted in his evidence that he sustained

injuries on his right hand, remained hospitalised for about 1 1/2 months and even after his discharge from the hospital, he could not attend his classes, for he could not write properly with his right hand. It is also in the evidence of the claimant that at the time of accident, he was a student of 2nd year at St. Anthony's College, Shillong, but due to the accident, he had to stop his studies. The discharge certificate shows that the claimant was admitted to the Civil Hospital, Shillong on 25.10.1999 and had remained hospitalised till 1.12.1999, i.e., almost for about five weeks for the injuries on his right elbow.

190. In view of the nature of injuries which claimant had sustained, the period for which he had to remain hospitalised coupled with the fact that his studies were adversely affected as a student of Bachelor of Arts, the amount of compensation awarded in favour of the claimant to the tune of Rs. 1,00,000 cannot be said to be unreasonable and/or illegal.

191. For what have been pointed out above, we are of the firm view that the amount of compensation awarded to the claimant needs no interference.

R.F.A. No. 13 (SH) of 2003:

192. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 13 of 2001, the learned Tribunal has awarded in favour of the claimant Rs. 1,50,000 as compensation for the injuries sustained by her.

193. In this case the claimant, a female, who is aged about 18 years, had suffered fracture on her right pubic ramus and for the injuries so sustained by her she had to remain hospitalised for about 23 days and on her discharge, she was advised rest for three weeks. However, for the expenses incurred by her, the claimant could not produce any cash memo or voucher to show that she had spent, as claimed by her, a sum of Rs. 70,000. Viewed from this angle, we are of the view that in the facts and circumstances of the present case, the claimant was, in all, entitled to receive not more than Rs. 1,00,000 as compensation.

194. We, therefore, hold the claimant entitled to receive Rs. 1,00,000 as compensation.

R.F.A. No. 15 (SH) of 2003:

195. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 30 of 2000, the learned Tribunal has awarded in favour of the claimant Rs. 50,000 as compensation for the injuries sustained by him.

196. In this case the injured is a 5 years old person and he remained hospitalised for 13 days for fracture on right humerus. The claimant also suffered injuries on his right eye.

197. Considering the age of the victim, the length of period for which he remained hospitalised and the nature of the injuries sustained by him, the amount of Rs. 50,000 awarded as compensation in favour of the claimant, is wholly reasonable and the same does not call for any interference by this

court.

R.F.A. No. 19 (SH) of 2003:

198. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 23 of 2001 the learned Tribunal has awarded in favour of the claimant Rs. 85,000 as compensation for the injuries sustained by him.

199. In this case, the claimant is aged about 25 years and he has claimed that he remained hospitalised at Civil Hospital, Shillong for about 38 days for the injuries on his head and neck and that he cannot carry heavy load as he had been doing prior to the accident. In his cross-examination, however, the claimant has admitted that he has no document to substantiate that he had remained in the hospital for about 38 days. This apart, the claimant could not also produce any cash memo or voucher to show his expenses. In the face of these facts, the grievance of the insurer appellant that the claimant could not prove that he remained hospitalised for about 38 days cannot be said to be unfounded.

200. Coupled with the above, the nature of the injuries sustained by the claimant has not been proved by production of any prescription or medical certificate. Considered thus, it is clear that in the facts and circumstances of the present case the claimant was not entitled to receive more than Rs. 25,000 as compensation. We, therefore, hold that the claimant was entitled to receive, in all, a sum of Rs. 25,000 as compensation.

R.F.A. No. 20 (SH) of 2003:

201. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 46 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 65,000 as compensation for the injuries sustained by her.

202.The injured in the present case is a 14 years old girl. She admittedly received injuries on her scalp for which she remained hospitalised for about 5 days and was advised check-up after two weeks. There is no evidence to show that the injuries on the scalp were serious in nature. In such circumstances and particularly when there is absolutely no evidence with regard to the expenses incurred, amount of Rs. 65,000 awarded as compensation to the victim for the injuries sustained by her is highly unreasonable and excessive. In the facts and circumstances of the present case, we are of the firm view that the claimant was not entitled to receive more than Rs. 25,000, in all, as compensation.

R.F.A. No. 23 (SH) of 2003:

203. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 29 of 2000, learned Tribunal has awarded in favour of claimant Rs. 50,000 as compensation for injuries sustained by him.

204. The claimant, in this case, is a 23 years old person, who remained hospitalised at Civil Hospital, Shillong for about 5 days and had suffered soft tissue injuries.

205. In view of the nature of the injuries sustained by the claimant and in view also of the fact that the claimant produced no document to substantiate the medical expenses incurred by him, the claimant was, in our considered view, not entitled to receive more than Rs. 25,000, in all, as compensation.

206. In the above view of the matter, we hold the claimant entitled to receive, in all, Rs. 25,000 as compensation.

R.F.A. No. 24 (SH) of 2003:

207. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 2 of 2000, the learned Tribunal has awarded in favour of the claimant Rs. 1,80,000 as compensation for the injuries sustained by him.

208. In this case the claimant, who is 38 years old and a cultivator suffered minor injuries. There is no discharge certificate from the hospital in this case nor is there any evidence on record with regard to the expenses incurred by the claimant. In such circumstances, the claimant could not have been awarded more than Rs. 10,000.

209. In view of the above, we hold that the claimant was entitled in the present case to receive, in all, Rs. 10,000 only as compensation.

R.F.A. No. 1 (SH) of 2002:

210. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 64 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 1,62,000 as compensation for the death of her daughter, Merlin Bakai. The claimant's 18 years old daughter was a student. The claimant's age was 50 years. The learned Tribunal has used 16 as multiplier in the present case treating the notional income of the said deceased at Rs. 15,000 per annum.

211. While considering the present case it is of utmost importance to note that the age of the claimant, who is mother of the said deceased, is about 50 years. In such cases, it is the age of the claimant which is relevant for the purpose of fixing the multiplier. Since the age of the claimant was 50 years, the multiplier used should have been 13 and in this view of the matter, the loss of dependency of the claimant works out to the tune of Rs. 15,000 × 13 = Rs. 1,95,000. From the amount, so calculated, 1/3rd amount needs to be reduced in consideration of the personal expenses of the said deceased, which she would have incurred had she remained alive. So worked out the said amount gets reduced to Rs. 1,30,000. To the amount so calculated, needs to be added Rs. 2,000 as the funeral expenses and Rs. 2,500 as loss to estate. The total compensation, therefore, comes to the tune of Rs. 1,34,500.

212. We, therefore, hold that claimant was, in all, entitled to receive Rs. 1,34,500 as compensation.

R.F.A. No. 2 (SH) of 2002:

213. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 41 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 1,72,000 as compensation for the death of deceased Kmen Khylep.

214. The deceased in the present case was claimant's 32 years old daughter. The claimant's age is about 58 years. The learned Tribunal has used 17 as multiplier in the present case, treating the notional income of the said deceased at Rs. 15,000 per annum.

215. While considering the present case it is of utmost importance to note that the age of the claimant, who is mother of the said deceased, is about 58 years. In such cases, it is the age of the claimant which is relevant for the purpose of fixing the multiplier. Since the age of the claimant is 58 years, the multiplier used should have been 8 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 15,000 × 8 = Rs. 1,20,000. From the amount so calculated, 1/3rd amount needs to be reduced in consideration of the personal expenses of the said deceased, which she would have incurred, had she remained alive. So worked out, the said amount gets reduced to Rs. 80,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 84,500.

216. We, therefore, hold that claimant was, in all, entitled to receive Rs. 84,500 as compensation.

R.F.A. No. 7 (SH) of 2002:

217. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 64 of 2000, the learned Tribunal has awarded in favour of the claimant Rs. 1,72,000 as compensation for the death of deceased Shining Swett. The deceased in the present case was claimant's 38 years old son. The claimant's age is about 75 years. The learned Tribunal has used 17 as multiplier, in the present case, treating the notional income of the said deceased at Rs. 15,000 per annum.

218. While considering the present case it is of utmost importance to note that the age of the claimant, who is mother of the deceased, is about 75 years. In such cases, it is the age of the claimant, which is relevant for the purpose of fixing the multiplier. Since the age of the claimant is 75 years, the multiplier used should have been 5 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 15,000 × 5 = Rs. 75,000. From the amount so calculated, 1/3rd amount needs to be reduced in consideration of the personal expenses of the said deceased which he would have incurred had he remained alive. So worked out, the said amount gets reduced to Rs. 50,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 54,500.

219. We, therefore, hold that claimant was, in all, entitled to receive Rs. 54,500 as compensation.

R.F.A. No. 8 (SH) of 2002:

220. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 34 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 1,72,000 as compensation for the death of deceased Rially Langrai. The deceased in the present case was claimant's 32 years old nephew. The claimant's age is about 60 years. The learned Tribunal has used 12 as multiplier in the present case treating the notional income of the said deceased at Rs. 15,000 per annum.

221. While considering the present case it is of utmost importance to note that the age of claimant is about 60 years. In such cases, it is the age of the claimant which is relevant for the purpose of fixing the multiplier. This apart, there is nothing on record to show that claimant was dependent on the income of the said deceased. At any rate, since the age of the claimant is 60 years, the multiplier used should have been 8 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 15,000 × 8 = Rs. 1,20,000. From the amount so calculated, 1/3rd amount needs to be reduced in consideration of the personal expenses of the said deceased which he would have incurred had he remained alive. So worked out the said amount gets reduced to Rs. 80,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 84,500.

222. We, therefore, hold that claimant was, in all, entitled to receive Rs. 84,500 as compensation.

R.F.A. No. 10 (SH) of 2002:

223. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 33 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 1,72,000 as compensation for the death of deceased Magrita Shati. The deceased in the present case was claimant's 32 years old daughter. The claimant's age is about 66 years. The learned Tribunal has used 17 as multiplier in the present case treating the notional income of the said deceased as Rs. 15,000 per annum.

224. While considering the present case it is of utmost importance to note that the age of the claimant, who is mother of the deceased, is about 66 years. In such cases, it is the age of claimant which is relevant for the purpose of fixing the multiplier. Since the age of the claimant is 66 years, the multiplier used should have been 5 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 15,000 × 5 = Rs. 75,000. From the amount so calculated, 1/3rd amount needs to be reduced in consideration of the personal expenses of the said deceased which she would have incurred, had she remained alive. So worked out, the said amount gets reduced to Rs. 50,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 54,500.

225. We, therefore, hold that claimant was, in all, entitled to receive Rs. 54,500 as compensation.

R.F.A. No. 13 (SH) of 2002:

226. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 68 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 1,62,000 as compensation for the death of deceased Pesoroy Wanswett. The deceased in the present case was claimant's 20 years old son. The claimant's age is about 50 years. Learned Tribunal has used 17 as multiplier in the present case treating the notional income of the said deceased as Rs. 15,000 per annum.

227. While considering the present case it is of utmost importance to note that the age of the claimant, who is mother of the deceased, is about 50 years. In such cases, it is the age of claimant which is relevant for the purpose of fixing the multiplier. Since the age of the claimant is 50 years, the multiplier used should have been 13 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 15,000 × 13 = Rs. 1,95,000. From the amount so calculated, 1/3rd amount needs to be reduced in consideration of the personal expenses of the said deceased which she would have incurred, had she remained alive. So worked out, the said amount gets reduced to Rs. 1,30,000. To the amount so calculated needs to be added Rs. 2,000 towards funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 1,34,500.

228. We, therefore, hold that claimant was, in all, entitled to receive Rs. 1,34,500 as compensation.

R.F.A. No. 14 (SH) of 2002:

229. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 32 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 1,12,000 as compensation for the death of deceased Rikaldus Shati. The deceased in the present case was claimant's 37 years old son. The claimant's age is about 66 years. The learned Tribunal has used 16 as multiplier in the present case treating the notional income of the said deceased as Rs. 15,000 per annum.

230. While considering the present case it is of utmost importance to note that the age of the claimant, who is father of the deceased, is about 66 years. In such cases, it is the age of claimant which is relevant for the purpose of fixing the multiplier. Since the age of the claimant is 66 years, the multiplier used should have been 5 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 15,000 × 5 = Rs. 75,000. From the amount so calculated, 1/3rd amount needs to be reduced in consideration of the personal expenses of the said deceased which he would have incurred, had he remained alive. So worked out, the said amount gets reduced to Rs. 50,000. To the amount so calculated needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 54,500.

231. We, therefore, hold that claimant was, in all, entitled to receive Rs. 54,500 as compensation.

R.F.A. No. 16 (SH) of 2002:

232. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 72 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 1,12,000 as compensation for the death of deceased Kyntiewbor Mangling. The deceased, in the present case, was claimant's 20 years old son.

The claimant's age is about 55 years. The learned Tribunal has used 16 as multiplier in the present case treating the notional income of the said deceased as Rs. 15,000 per annum.

233. While considering the present case it is of utmost importance to note that the age of the claimant, who is father of the deceased, is about 55 years. In such cases it is the age of claimant which is relevant for the purpose of fixing the multiplier. Since the age of the claimant is 55 years, the multiplier used should have been 11 and in this view of the matter, the loss of dependency of claimant was to the tune of Rs. 15,000. From the amount so calculated, V3rd amount needs to be reduced in consideration of the personal expenses of the said deceased which he would have incurred, had he remained alive. So worked out, the said amount gets reduced to Rs. 1,10,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 1,14,500.

234. We, therefore, hold that claimant was, in all, entitled to receive Rs. 1,14,500 as compensation.

R.F.A. No. 17 (SH) of 2002:

235. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 19 of 2000, the learned Tribunal has awarded in favour of the claimant Rs. 1,72,000 as compensation for the death of deceased Rimilda Wahlang. The deceased, in the present case, was claimant's 25 years old daughter. The claimant's age is about 45 years. The learned Tribunal has used 17 as multiplier in the present case treating the notional income of the said deceased as Rs. 15,000 per annum.

236. While considering the present case it is of utmost importance to note that the age of the claimant, who is mother of the deceased, is about 45 years. In such cases, it is the age of claimant which is relevant for the purpose of fixing the multiplier. Since the age of the claimant is 45 years, the multiplier used should have been 11 and in this view of the matter the loss of dependency of claimant was to the tune of Rs. 15,000 × 11 = Rs. 1,65,000. From the amount so calculated, 1/3rd amount needs to be reduced in consideration of the personal expenses of the said deceased which she would have incurred, had she remained alive. So worked out, the said amount gets reduced to Rs. 1,10,000. To the amount so calculated, needs be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 1,14,500.

237. We, therefore, hold that claimant was, in all, entitled to receive Rs. 1,14,500 as compensation.

R.F.A. No. 20 (SH) of 2002:

238. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 49 of 2000, the learned Tribunal has awarded in favour of the claimant Rs. 1,52,000 as compensation for the death of deceased Rially Langrai. The deceased in the present case was claimant's 45 years old daughter. The claimant's age is about 60 years. The learned Tribunal has used 15 as multiplier in the present case treating the notional income of the said deceased as Rs. 15,000 per annum.

239. While considering the present case it is of utmost importance to note that the age of the claimant is about 60 years. In such cases, it is the age of claimant which is relevant for the purpose of fixing the multiplier. Since the age of claimant is 60 years, the multiplier used should have been 8 and in this view of the matter, the loss of dependency of claimant was to the tune of Rs. 15,000 × 8 = Rs. 1,20,000. From the amount so calculated, 1/3rd amount needs to be reduced in consideration of the personal expenses of the said deceased which she would have incurred, had she remained alive. So worked out, the said amount gets reduced to Rs. 80,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 84,500.

240. We, therefore, hold that claimant was, in all, entitled to receive Rs. 84,500 as compensation.

R.F.A. No. 22 (SH) of 2002:

241. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 73 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 1,12,000 as compensation for the death of deceased Yerda Chyne. The deceased in the present case was claimant's 55 years old mother. The claimant's age is about 30 years. The learned Tribunal has used 11 as multiplier in the present case treating the notional income of the said deceased as Rs. 15,000 per annum.

242. While considering the present case it is of utmost importance to note that the age of the claimant is about 30 years. In such cases, it is the age of claimant which is relevant for the purpose of fixing the multiplier. Since the age of claimant is 30 years, the multiplier used should have been 18 and in this view of the matter the loss of dependency of claimant was to the tune of Rs. 15,000 × 18 = Rs. 2,70,000. From the amount so calculated, 1/3rd amount needs to be reduced in consideration of the personal expenses of the said deceased which she would have incurred, had she remained alive. So worked out, the said amount gets reduced to Rs. 1,80,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 1,84,500.

243. As the learned Tribunal has awarded Rs. 1,12,000 as compensation, we do not find that the amount so awarded to the claimant is high or excessive or needs any interference.

R.F.A. No. 3 (SH) of 2003:

244. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 44 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 4,00,000 as compensation for the death of deceased Berodwen Diengdoh. The deceased in the present case was claimant's 30 years old son. The claimant's age is about 62 years. The learned Tribunal has used 12 as multiplier in the present case treating the income of the said deceased as Rs. 60,000 per annum.

245. While considering the present case it is of utmost importance to note that there was no cogent evidence as regards the income of the said deceased. In such a situation, when the deceased was a teacher, the learned Tribunal could have assumed the income of the said deceased at Rs. 2,000 per

month. Thus the annual income of the deceased comes to the tune of Rs. 24,000 per annum. Out of this amount, if 1/3rd is reduced in consideration of the personal expenses of the said deceased which he would have incurred had he remained alive, the income coming into the hands of the claimant, as mother of the said deceased would have been Rs. 16,000 per annum. Since the age of the claimant is 60 years, the multiplier used should have been 5 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 16,000 × 5 = Rs. 80,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 84,500.

246. We, therefore, hold that claimant was, in all, entitled to receive Rs. 84,500 as compensation.

R.F.A. No. 8 (SH) of 2003:

247. By the impugned award dated 22.1.2002, passed in M.A.C. Case No. 43 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 2,16,000 as compensation for the death of deceased Keldamon Rajee. Deceased, in the present case, was claimant's 25 years old daughter who was a student. The claimant's age is about 60 years. The learned Tribunal has used 12 as multiplier in the present case treating the notional income of the said deceased as Rs. 15,000 per annum.

248. While considering the present case it is of utmost importance to note that the age of the claimant is about 60 years. In such cases, it is the age of claimant which is relevant of the purpose of fixing the multiplier. Since the age of claimant is 60 years, the multiplier used should have been 8 and in this view of the matter, the loss of dependency of claimant was to the tune of Rs. 15,000 × 8 = Rs. 1,20,000. From the amount so calculated, 1/3rd amount needs to be reduced in consideration of the personal expenses of the said deceased which she would have incurred, had she remained alive. So worked out, the said amount gets reduced to Rs. 80,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 84,500.

249. We, therefore, hold that claimant was, in all, entitled to receive Rs. 84,500 as compensation.

R.F.A. No. 9 (SH) of 2003:

250. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 31 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 24,000 as compensation for the death of deceased Brossila Dkhar. The deceased in the present case was claimant's 18 years old sister who was a student. The claimant's age is about 31 years. The learned Tribunal has used 18 as multiplier in the present case, treating the income of the said deceased at Rs. 36,000 per annum.

251. While considering the present case it is of utmost importance to note that the claimant, being the elder brother of the said deceased cannot ordinarily be treated to be dependent on the income of his sister. However, the claimant, being legal representative of the said deceased, could have maintained an application under Section 166 seeking compensation for the death of his said deceased sister. Be that as it may, the said deceased, a sister of the claimant was a student and

though her income was claimed to be Rs. 3,000 per month, no cogent and convincing evidence was adduced in this regard by claimant. In a situation, such as the present the notional income of the said deceased ought to have been treated as Rs. 15,000 per annum. Out of this amount, at least V3rd amount ought to have been reduced in consideration of the personal expenses of the deceased which the deceased would have incurred, had she remained alive. Thus, the total amount of money coming into the hands of claimant could have been, at the most, Rs. 10,000 annually. Since the age of the claimant is about 31 years, the multiplier applicable will be 17 and in this view of the matter, the loss of dependency of claimant was to the tune of Rs. 10,000 × 17 = Rs. 1,70,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 1,74,500.

252. We, therefore, hold that claimant was, in all, entitled to receive Rs. 1,74,500 as compensation.

R.F.A. No. 18 (SH) of 2003:

253. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 47 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 2,16,000 as compensation for the death of deceased Kamenlang Wahlang. The deceased in the present case was claimant's 18 years old daughter who was a student. The claimant's age is about 52 years. The learned Tribunal has used 12 as multiplier in the present case, treating the income of the said deceased at Rs. 18,000 per annum.

254. While considering the present case it is of utmost importance to note that in the present case, the said deceased was a student and though her income was claimed to be Rs. 5,500 per month, no cogent and convincing evidence was adduced in this regard by claimant. In a situation such as the present, the notional income of the said deceased would have to be treated as Rs. 15,000 per annum. Out of this amount, at least 1/3rd amount ought to have been reduced in consideration of the personal expenses of deceased which the deceased would have incurred had she remained alive. Thus total amount of money coming into the hands of the claimant could have been at the most, Rs. 10,000 annually. Since the age of the claimant is about 52 years, the multiplier applicable will be 11 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 10,000 x 11 = Rs. 1,10,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 1,14,500.

255. We, therefore, hold that claimant was, in all, entitled to receive Rs. 1,14,500 as compensation.

R.F.A. No. 17 (SH) of 2003:

256. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 1 of 2000, the learned Tribunal has awarded in favour of the claimant Rs. 3,24,000 as compensation for the death of deceased Wanjop Fancon. The deceased in the present case was claimant's 19 years old son who was a student. The claimant's age is about 35 years. The learned Tribunal has used 18 as multiplier in the present case, treating the income of the said deceased at Rs. 30,000 per annum.

257. While considering the present case it is of utmost importance to note that in the present case, the said deceased was a student and though his income was claimed to be Rs. 5,000 per month, no cogent and convincing evidence was adduced in this regard by claimant. In a situation such as the present one, the notional income of the said deceased ought to have been treated as Rs. 15,000 per annum. Out of this amount, at least 1/3rd amount ought to be reduced in consideration of personal expenses of the deceased which deceased would have incurred, had he remained alive. Thus, the total amount of money coming into the hands of the claimant could have been, at the most, Rs. 10,000 annually. Since the age of the claimant is about 35 years, the multiplier applicable will be 17 and in this view of the matter, loss of dependency of the claimant was to the tune of Rs. 10,000 × 17 = Rs. 1,70,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to estate. The total compensation, therefore, comes to the tune of Rs. 1,74,500.

258. We, therefore, hold that claimant was, in all, entitled to receive Rs. 1,74,500 as compensation.

R.F.A. No. 6 (SH) of 2002:

259. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 22 of 2000, the learned Tribunal has awarded in favour of the claimant Rs. 3,60,000 as compensation for the death of deceased Diskita Nongrum. The deceased, in the present case, was claimant's 24 years old daughter, who was a nurse. The claimant's age is about 48 years. Learned Tribunal has used 12 as multiplier in the present case treating the income of the said deceased at Rs. 48,000 per annum.

260. While considering the present case it is of utmost importance to note that there was no cogent evidence as regards the income of the said deceased. In such a situation, when the deceased was a nurse, the learned Tribunal could have assumed the income of the said deceased at Rs. 2,000 per month. Thus, the annual income of the deceased comes to the tune of Rs. 24,000. Out of this amount, if 1/3rd is reduced in consideration of the personal expenses of the said deceased which she could have incurred, had she remained alive, the income coming into the hands of the claimant as mother of the said deceased would have been Rs. 16,000 per annum. Since the age of the claimant is 48 years, the multiplier used should have been 13 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 16,000 × 13 = Rs. 2,08,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 2,12,500.

261. We, therefore, hold that claimant was, in all, entitled to receive Rs. 2,12,500 as compensation.

R.F.A. No. 14 (SH) of 2003:

262. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 75 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 1,80,000 as compensation for the death of deceased K. Wahlang. The deceased, in the present case, was claimant's 35 years old brother. The claimant's age is about 38 years. The learned Tribunal has used 10 as multiplier in the present case treating the income of the said deceased at Rs. 18,000 per annum.

263. While considering the present case it is of utmost importance to note that the claimant being the married sister of the deceased, cannot ordinarily be treated to be dependent on the income of her brother. However, the claimant being legal representative of the said deceased could have maintained an application under Section 166 seeking compensation for the death of her said brother. Be that as it may, the said deceased, a brother of the claimant was a cultivator and though his income was claimed to be Rs. 6,000 per month, no cogent and convincing evidence was adduced in this regard by the claimant. In a situation such as the present one, the annual income of the said deceased ought to have been treated as Rs. 24,000. Out of this amount, at least 1/3rd amount ought to have been reduced in consideration of the personal expenses of deceased which the deceased would have incurred, had he remained alive. Thus, the total amount coming into the hands of the claimant would have been, at the most, Rs. 16,000 per annum. Since the age of the claimant is about 38 years, the multiplier applicable will be 16 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 16,000 x 16 = Rs. 2,56,000. To amount so calculated, needs be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 2,60,500.

264. As the learned Tribunal has awarded Rs. 1,80,000 as compensation, we do not find that the amount so awarded to the claimant is high or excessive or needs interference.

R.F.A. No. 21 (SH) of 2003:

265. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 69 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 2,40,000 as compensation for the death of deceased K. Roywan. The deceased in the present case was claimant's 57 years old father. The claimant's age is about 38 years. The learned Tribunal has used 5 as multiplier, in the present case, treating the income of the said deceased at Rs. 72,000 per annum.

266. While considering the present case it is of utmost importance to note that the claimant, being the married daughter of the said deceased, cannot ordinarily be treated to be dependent on the income of her father. However, the claimant, being legal representative of the said deceased could have maintained claim application under Section 166 seeking compensation for the death of her father. Be that as it may, the said deceased, father of claimant, was a farmer and though his income was claimed to be Rs. 6,000 per month, no cogent and convincing evidence was adduced in this regard by claimant. In a situation such as the present one, the annual income of the said deceased ought to have been treated as Rs. 24,000. Out of this amount, at least 1/3rd amount ought to have been reduced in consideration of the personal expenses of the deceased which the deceased would have incurred had he remained alive. Thus, the total amount of money coming into the hands of the claimant would have been, at the most, Rs. 16,000 annually. Since the age of the said deceased was about 57 years, the multiplier applicable was 18 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 16,000 × 18 = Rs. 2,88,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 2,92,500.

267. As the learned Tribunal has awarded Rs. 2,40,000 as compensation, we do not find that the amount so awarded to the claimant is high or excessive or needs interference.

R.F.A. No. 3 (SH) of 2002:

268. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 60 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 1,72,000 as compensation for the death of deceased Shondro Bakai. The deceased in the present case was the husband of the claimant, was aged about 31 years. The learned Tribunal has used 17 as multiplier in the present case treating the income of the said deceased at Rs. 15,000 per annum.

269. While considering the present case it is of utmost importance to note that the said deceased was a cultivator and his income has been accepted to be Rs. 15,000 per annum. Out of this amount if 1/3rd is reduced in consideration of the personal expenses of the said deceased which he could have incurred had he remained alive, the income coming into the hands of the claimant, as wife of the said deceased, would have been Rs. 10,000. Since the age of the said deceased was 31 years, the multiplier applicable was 17 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 10,000 × 17 = Rs. 1,70,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 1,74,500.

270. As the learned Tribunal has awarded Rs. 1,72,000 as compensation, we do not find that the amount so awarded to the claimant is high or excessive or needs interference.

R.F.A. No. 4 (SH) of 2002:

271. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 50 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 8,24,392 as compensation for the death of deceased Latan Khongwieng. The deceased in the present case was the husband of the claimant, he was aged about 32 years and was a teacher. Learned Tribunal has used 17 as multiplier in the present case, treating the income of the said deceased at Rs. 72,564 per annum.

272. While considering the present case it is of utmost importance to note that the said deceased was a teacher and though his income was claimed to be Rs. 6,047 per month, no cogent and convincing evidence was adduced in this regard by the claimant. In such a situation, when the deceased was a teacher, the learned Tribunal could have assumed the income of the said deceased at Rs. 2,000 per month. Thus, the annual income of the deceased comes to the tune of Rs. 24,000. Out of this amount, if 1/3rd is reduced in consideration of the personal expenses of the said deceased, which he could have incurred had he remained alive, the income coming into the hands of the claimant, as wife of the said deceased, would have been Rs. 18,000. Since the age of the said deceased was 32 years, the multiplier applicable is 17 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 18,000 × 17 = Rs. 3,06,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 3,10,500.

273. We, therefore, hold that claimant was, in all, entitled to receive Rs. 3,10,500 as compensation.

R.F.A. No. 5 (SH) of 2002:

274. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 66 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 1,72,000 as compensation for the death of deceased Matrina Khyllaid. The deceased in the present case was the husband of the claimant. The learned Tribunal has used 17 as multiplier in the present case, treating the income of the said deceased at Rs. 15,000 per annum.

275. While considering the present case it is of utmost importance to note that since the age of the said deceased was about 35 years and 17 has been used as multiplier, we do not find that compensation awarded to the claimant is high or excessive or needs interference.

R.F.A. No. 11 (SH) of 2002:

276. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 1 of 2000, the learned Tribunal has awarded in favour of the claimant Rs. 1,82,000 as compensation for the death of deceased Hemilda Wahlang. The deceased in the present case was the 26 years old wife of the claimant. The claimant's age is about 38 years. The learned Tribunal has used 18 as multiplier in the present case treating the notional income of the said deceased at Rs. 15,000 per annum.

277. While considering the present case it is of utmost importance to note that the said deceased was a betel nut seller and the learned Tribunal has treated her notional income at Rs. 15,000 per annum. Out of this amount if 1/3rd is reduced in consideration of the personal expenses of the said deceased which she could have incurred had she remained alive, the income coming into the hands of the claimant as husband of deceased, would have been Rs. 10,000. Since the age of claimant is 38 years, the multiplier applicable will be 16 and in this view of the matter the loss of dependency of claimant was to the tune of Rs. 10,000 × 16 = Rs. 1,60,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 1,64,500.

278. We, therefore, hold that claimant was, in all, entitled to receive Rs. 1,64,500 as compensation.

R.F.A. No. 12 (SH) of 2002:

279. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 35 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 1,72,000 as compensation for the death of deceased Bitscoland Khyllaid. The deceased, in the present case, was the 25 years old husband of the claimant. The claimant's age is about 34 years. The learned Tribunal has used 17 as multiplier in the present case treating the notional income of the said deceased at Rs. 15,000 per annum.

280. While considering the present case it is of utmost importance to note that the said deceased was a businessman and the learned Tribunal has treated his notional income at Rs. 15,000 per

annum. Out of this amount if 1/3rd is reduced in consideration of the personal expenses of the said deceased which he could have incurred had he remained alive, the income coming into the hands of claimant as wife of the said deceased, would have been Rs. 10,000 annually. Since the age of the claimant is 34 years, the multiplier applicable will be 17 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 10,000 × 17 = Rs. 1,70,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 1,74,500.

281. As the learned Tribunal has awarded Rs. 1,72,000 as compensation, we do not find that the amount so awarded to the claimant is high or excessive or needs interference.

R.F.A. No. 19 (SH) of 2002:

282. By the impugned award dated 21.12.2001 passed in M.A.C. Case No. 70 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 1,62,000 as compensation for the death of deceased Manchester Phanbon. The deceased in the present case was the 36 years old husband of the claimant. The claimant's age is about 34 years. The learned Tribunal has used 16 as multiplier in the present case treating the notional income of the said deceased at Rs. 15,000 per annum.

283. While considering the present case it is of utmost importance to note that the said deceased was a businessman and the learned Tribunal has treated his notional income at Rs. 15,000 per annum. Out of this amount if 1/3rd is reduced in consideration of the personal expenses of the said deceased which he could have incurred had he remained alive, the income coming into the hands of the claimant would have been Rs. 10,000 per annum. Since the age of the said deceased was 36 years, the multiplier applicable was 16 and in this view of the matter, the loss of dependency of claimant was to the tune of Rs. 10,000 × 16 = Rs. 1,60,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 1,64,500.

284. As the learned Tribunal has awarded Rs. 1,62,000 as compensation, we do not find that the amount so awarded to the claimant is high or excessive or needs interference.

R.F.A. No. 5 (SH) of 2003:

285. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 74 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 2,00,000 as compensation for the death of deceased Davidson Chyne. Deceased, in the present case, was the 55 years old husband of the claimant. Learned Tribunal has used 12 as multiplier in the present case treating the income of the said deceased at Rs. 60,000 per annum.

286. While considering the present case it is of utmost importance to note that the said deceased was horticulturist and though his income was claimed to be Rs. 5,000 per month, no cogent and convincing evidence was adduced in this regard by the claimant. In such a situation when the deceased was a cultivator, the learned Tribunal could have assumed the income of the said deceased

at Rs. 2,000 per month. Thus, the annual income of the deceased comes to the tune of Rs. 24,000. Out of this amount if 1/3rd is reduced in consideration of the personal expenses of the said deceased which he could have incurred had he remained alive, the income coming into the hands of the claimant as wife of the said deceased would have been Rs. 16,000 per annum. Since the age of the said deceased was 55 years, the multiplier applicable was 11 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 16,000 × 11 = Rs. 1,76,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 1,80,500.

287. We, therefore, hold that claimant was, in all, entitled to receive Rs. 1,80,500 as compensation.

R.F.A. No. 7 (SH) of 2003:

288. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 15 of 2000, the learned Tribunal has awarded in favour of the claimant Rs. 5,12,000 as compensation for the death of deceased On Chyne. Deceased in the present case was the 45 years old husband of the claimant. The learned Tribunal has adopted 16 as multiplier in the present case, treating the income of the said deceased at Rs. 48,000 per annum.

289. While considering the present case it is of utmost importance to note that the said deceased was a carpenter and though his income was claimed to be Rs. 4,000 per month, no cogent and convincing evidence was adduced in this regard by the claimant. In such a situation, when the deceased was a carpenter, learned Tribunal could have assumed the income of the said deceased at Rs. 2,000 per month. Thus, the annual income of the said deceased comes to the tune of Rs. 24,000. Out of this amount if 1/3rd is reduced in consideration of the personal expenses of the said deceased which he could have incurred had he remained alive, the income coming into the hands of the claimant as wife of the said deceased would have been Rs. 16,000 per annum. Since the age of the said deceased was 45 years, the multiplier applicable was 15 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 16,000 × 15 = Rs. 2,40,000. To the amount so calculated needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 2,44,500.

290. We, therefore, hold that claimant was, in all, entitled to receive Rs. 2,44,500 as compensation.

R.F.A. No. 10 (SH) of 2003:

291. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 67 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 7,20,000 as compensation for the death of deceased So Kim Kharsawian. The deceased, in the present case, was the 48 years old husband of the claimant. The learned Tribunal has used 18 as multiplier in the present case, treating the income of the said deceased at Rs. 60,000 per annum.

292. While considering the present case it is of utmost importance to note that said deceased was a businessman and though his income was claimed to be Rs. 5,000 per month, no cogent and

convincing evidence was adduced in this regard by the claimant. In such a situation when the deceased was a businessman the learned Tribunal could have assumed the income of the said deceased at Rs. 2,000 per month. Thus, the annual income of the deceased comes to the tune of Rs. 24,000. Out of this amount if 1/3rd is reduced in consideration of the personal expenses of the said deceased which he could have incurred had he remained alive, the income coming into the hands of the claimant as wife of the said deceased would have been Rs. 16,000 per annum. Since the age of the said deceased was 48 years, the multiplier applicable was 13 and in this view of the matter, the loss of dependency of the claimant was to the tune of Rs. 16,000 × 13 = Rs. 2,08,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 2,12,500.

293. We, therefore, hold that claimant was, in all, entitled to receive Rs. 2,12,500 as compensation.

R.F.A. No. 11 (SH) of 2003:

294. By the impugned award dated 22.11.2002 passed in M.A.C. Case No. 51 of 1999, the learned Tribunal has awarded in favour of the claimant Rs. 7,60,320 as compensation for the death of deceased Soberious Shawkhlet. The deceased in the present case was the 47 years old husband of the claimant. The learned Tribunal has used 18 as multiplier in the present case, treating the income of the said deceased at Rs. 74,400 per annum.

295. While considering the present case it is of utmost importance to note that said deceased was an employee of M.C.C.L. and though his income was claimed to be Rs. 6,200 per month, no cogent and convincing evidence was adduced in this regard by the claimant. In such a situation, when the deceased was an employee of M.C.C.L., the learned Tribunal could have assumed the income of the said deceased at Rs. 2,000 per month. Thus, the annual income of the deceased comes to the tune of Rs. 24,000. Out of this amount if 1/3rd is reduced in consideration of the personal expenses of the said deceased which he could have incurred had he remained alive, the income coming into the hands of claimant as wife of the said deceased would have been Rs. 16,000 per annum. Since the age of the said deceased was 47 years, the multiplier applicable was 13 and in this view of the matter, the loss of dependency of the claim was to the tune of Rs. 16,000 × 13 = Rs. 2,08,000. To the amount so calculated, needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss to the estate. The total compensation, therefore, comes to the tune of Rs. 2,12,500.

296. We, therefore, hold that claimant was, in all, entitled to receive Rs. 2,12,500 as compensation.

297. Subject to the modifications in the impugned awards, which we have indicated hereinabove, the insured-respondent is liable to pay the compensation determined by us hereinabove.

298. In the result, we hold the insurer appellant not liable to pay any amount(s) as compensation to any of the claimants-respondents and whatever amounts have been fixed by us as compensation for the claimants-respondents shall be made available by insured-respondent to claimants-respondents along with the interest already awarded under the impugned awards. We also leave insurer-appellant with liberty to recover from insured-respondent, namely, the owner of the said

bus, various sums of money which the insurer-appellant has paid as compensation to the claimants-respondents before as well as after passing of the impugned awards.

299. With the above observations and direction these appeals shall stand disposed of.

300. No order as to costs.