IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.484 of 2015 & CO No.14 of 2016 a/w FAO Nos.305, 306, 342, 347, 483, 485, 486 of 2015 with CO No.15 of 2016, FAO Nos. 487, 488, 489, 490, 491, 492 of 2015 with CO No.12 of 2016, FAO No. 493 of 2015 with CO No.13 of 2016, FAO Nos. 496 and 512 of 2015, FAO No. 12 of 2016 with CO No.16 of 2016, FAO Nos.13 of 2016, 14, 15 of 2016 with CO No.17 of 2016, FAO Nos. 16, 17, 18, 19, 20, 21, 22, 23 of 2016 with CO No.18 of 2016, FAO Nos. 24, 25, 26 of 2016 with CO No.19 of 2016, FAO Nos.27, 28, 41, 42, 243, 90, 92, 101, 128 146, 169 of 2016 with CO No. 20 of 2016, FAO Nos.118, 129 and 242 of 2016.

Reserved on: 20.05.2016

Date of decision: 27.05.2016

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1. FAO No.484 of 2015

The New India Assurance Company Ltd. .....Appellant

Versus

Smt. Mani & another ..... Respondents

2. FAO No.305 of 2015

Uma Dutt Sharma .....Appellant

Versus

Shri Surender Pal & others ..... Respondents

3. FAO No. 306 of 2015

Uma Dutt Sharma .....Appellant

Versus

Shri Surender Pal & others ..... Respondents

4. FAO No.342 of 2015

Smt. Anita .....Appellant

Versus

Sh. Arun & another ..... Respondents

5. FAO No.347 of 2015

Dhian Singh .....Appellant

Versus

Sh. Arun Sharma & another ..... Respondents

6. FAO No.483 of 2015

The New India Assurance Company Ltd. .....Appellant

Versus

Sh. Naresh Kumar & others ..... Respondents

7. FAO No. 485 of 2015

The New India Assurance Company Ltd. .....Appellant

Versus

Sh. Naresh Kumar & others ..... Respondents

8. FAO No.486 of 2015

The New India Assurance Company Ltd. .....Appellant

Versus

Smt. Churamani & others ..... Respondents

9. FAO No.487 of 2015

The New India Assurance Company Ltd. .....Appellant

Versus

Smt. Tara Chauhan & others ..... Respondents

10. FAO No.488 of 2015

The New India Assurance Company Ltd. .....Appellant

Versus

Smt. Indira & others ..... Respondents

11. FAO No.489 of 2015

The New India Assurance Company Ltd. .....Appellant

Versus

Shri Chander Sain Shyam & others ..... Respondents

12. FAO No.490 of 2015

The New India Assurance Company Ltd. .....Appellant

Versus

Smt. Sanjana & others ..... Respondents

13. FAO No.491 of 2015

The New India Assurance Company Ltd. .....Appellant

Versus

Sh. Sanjay Kumar & others ..... Respondents

14. FAO No.492 of 2015

The New India Assurance Company Ltd. .....Appellant

Versus

Smt. Jotnu & others ..... Respondents

15. FAO No.493 of 2015

The New India Assurance Company Ltd. .....Appellant

Versus

Smt. Subhadra & others ..... Respondents

16. FAO No.496 of 2015

The New India Assurance Company Ltd. .....Appellant

Versus

Smt. Usha Kanwar & others ..... Respondents

17. FAO No.512 of 2015

The New India Assurance Company Ltd. .....Appellant

Versus

Smt. Subhadra Devi & others ..... Respondents

18. FAO No.12 of 2016

The New India Assurance Company Ltd. .....Appellant

Versus

Smt. Sunita & others ..... Respondents

19. FAO No.13 of 2016

The New India Assurance Company Ltd. .....Appellant

Versus

Smt. Tara Devi & others ..... Respondents

20. FAO No.14 of 2016

The New India Assurance Company Ltd. .....Appellant

Versus

Sh. Amar Singh Verma & others ..... Respondents

21. FAO No.15 of 20165

The New India Assurance Company Ltd. .....Appellant

Versus

Smt. Chand Rani & others ..... Respondents

22. FAO No.16 of 2016

The New India Assurance Company Ltd. .....Appellant

Versus

Smt. Sita Devi & others ..... Respondents

23. FAO No.17 of 2016

The New India Assurance Company Ltd. .....Appellant

Versus

Sh. Vasudev Gupta & others ..... Respondents

24. FAO No.18 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Sh. Pramod Kumar & others ..... Respondents

25. FAO No.19 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Sh. Dhian Singh & another ..... Respondents

26. FAO No.20 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Sh. Chander Sain Shyam & others ..... Respondents

27. FAO No.21 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Sh. Gobind Ram & others ..... Respondents

28. FAO No.22 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Sh. Om Jeet & others ..... Respondents

29. FAO No.23 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Smt. Neelam &others ..... Respondents

30. FAO No.24 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Smt. Usha Devi & others ..... Respondents

31. FAO No.25 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Sh. Subhash Chand Bhardwaj & others ..... Respondents

32. FAO No.26 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Smt. Sharda Devi & others ..... Respondents

33. FAO No.27 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Smt. Radha Devi & others ..... Respondents

34. FAO No.28 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Smt. Bali Devi & others ..... Respondents

35. FAO No.41 of 2016

Sh.Surender Pal & another .....Appellants

Versus
Uma Dutt Sharma & another ..... Respondents

36. FAO No.42 of 2016

Sh.Surender Pal & another .....Appellants

Versus
Uma Dutt Sharma & another ..... Respondents

37. FAO No.243 of 2016
Sh.Pramod Kumar & another .....Appellants

Versus
Sh.Arun Sharma & others ..... Respondents

38. FAO No.90 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Smt. Anita & another ..... Respondents

39. FAO No.92 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Sh. Sanjay Kumar & others ..... Respondents

40. FAO No.101 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Sh. Munni Lal & others ..... Respondents

41. FAO No.128 of 2016
Smt. Sita Devi &others .....Appellants

Versus
Sh. Arun Sharma & others ..... Respondents

42. FAO No.146 of 2016

The New India Assurance Company Ltd. .....Appellant

Versus
Smt.Raji alias Kaplana & others ..... Respondents

43. FAO No.169 of 2016
The New India Assurance Company Ltd. .....Appellant

Versus
Smt. Hukmu Devi & others ..... Respondents

44. FAO No.118 of 2016

The New India Assurance Company Ltd. .....Appellant

Versus

Master Abhinav & others ..... Respondents

45. FAO No.129 of 2016

Smt. Sanjana & others .....Appellants

Versus

Sh. Arun Sharma & others ..... Respondents

46. FAO No.242 of 2016

Shri Amar Singh Verma & another .....Appellants

Versus

Shri Uma Dutt Sharma & others ..... Respondents

Coram:

The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice

Whether approved for reporting? Yes.

Presence for the parties:

Mr.B.M. Chauhan, Advocate, for the insurer.

Mr.G.C. Gupta and Mr. I.D. Bali, Senior Advocates with M/s Meera Devi, Virender Bali, H.C. Sharma, Jivesh Sharma and Aruna Chauhan Advocates, for the claimants.

Mr. Satyen Vaidya and Mr. Vinay Kuthiala, Senior Advocates with M/s Vandana Kuthiala, Vir Bahadur Verma, Vivek Sharma and Diwan Singh Negi, Advocates, for the owner.

Mansoor Ahmad Mir, Chief Justice

FAO Nos.484, 483, 485, 486, 487, 488, 489, 490, 491, 492, 493, 496, 512 of 2015, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 90, 92, 101, 146, 169 and 118 of 2016

By the medium of these appeals, the insurer has laid challenge to the awards, passed on different dates by Motor Accident Claims Tribunals, Shimla by four Presiding Officers, (for short, the Tribunal at Shimla), whereby the claim petitions have been granted, compensation was awarded in favour of the claimants and the insurer came to be saddled with the liability.

FAO No.342 & 347 of 2015, 128, 129, 242, and 243 of 2016:

2. These appeals have been filed by the claimants against the impugned awards passed by the Tribunal at Shimla for enhancement of compensation, which are also the subject matter of FAO Nos.90 of 2016, 19 of 2016, 14 of 2016, 490 of 2015, 16 of 2016 and 18 of 2016, filed by the insurer, detailed supra.

Cross Objections Nos.14, 15, 12, 13, 16, 17, 18, 19 and 20 of 2016:

3. The claimants have moved these Cross Objections in the appeals filed by the insurer supra for enhancement of compensation.

FAO Nos.305 and 306 of 2015

4. These two appeals have been filed by the insured against the awards, dated 1st April, 2015, made by Motor Accident Claims Tribunal, Kinnaur at Rampur Bushahr, (for short, the Tribunal at Rampur Bushahr), whereby the claim petitions were allowed and the insured/owner came to be saddled with the liability.

FAO Nos.41 and 42 of 2016

5. These appeals have been filed by the claimants against the awards passed by the Tribunal at Rampur Bushahr for saddling the insurer with the liability instead of owner and also for enhancement of compensation, on the grounds taken in the memos of appeals.

6. All these appeals and the Cross Objections are the outcome of one vehicular accident and questions involved are also similar, therefore, the same are clubbed and are taken up together for final disposal.

Brief facts:

7. On 4th November, 2008, at about 11.00 A.M., bus bearing registration No.HP-63-3774, being driven rashly and negligently by its driver, namely, Joginder Sharma, met with

an accident at Lambidhar near Kufri, District Shimla, in which 46 passengers died and some of the passengers sustained injuries. The legal representatives of the deceased passengers, and the passengers who were injured, filed claim petitions before the Tribunal at Shimla, except two Claim Petitions which came to be filed before the Tribunal at Rampur Bushahr, for grant of compensation, as per the break-ups given in the respective claim petitions.

8. The owner, the driver and the insurer resisted the claim petitions and the Tribunal at Shimla framed almost similar issues in all the claim petitions. In order to avoid repetition, the issues framed in one Claim Petition No.139-S/2 of 2014/09 (subject matter of the lead case i.e. FAO No.484 of 2015), are reproduced below:

> *"1. Whether on account of rash and negligent driving by the driver of bus No.HP-63-3774 on 4.11.2008 caused the death of Ghanshyam? OPP*
>
> *2. If issue No.1 is proved, to what compensation, the petitioners are entitled and from whom? OPP*
>
> *3. Whether the accident was the result of mechanical defect? OPR*

4. Whether ill-fated bus was being driven in violation of terms and conditions of insurance policy i.e. R.C, fitness certificate and route permit? OPR

5. Whether driver of ill-fated bus had no valid and effective driving license at the time of accident? OPR

6. Relief."

9. Similarly, the Tribunal at Rampur Bushahr framed issues in both the Claim Petitions, however, for the sake of brevity, the issues framed in Claim Petition No.0100030 of 2009, (subject matter of FAO No.305 of 2015) are reproduced hereunder:

"1. Whether Sh. Mohan Lal had died on account of injuries sustained by him due to the rash and negligent driving of bus No.HP-63-3774 being driven by its driver at the relevant time, as alleged? OPP.
2. If issued No.1 is proved, to what amount of compensation, the petitioners are entitled to and from whom? OPP.
3. Whether the driver of the offending vehicle was not possessed of a valid and effective driving licence at the relevant time of the accident? OPR-2
4. Whether the offending vehicle was being plied in breach of the terms and conditions of the policy? OPR-2.
5. Relief."

10. Parties led their evidence before the Tribunals below. The Tribunal at Shimla, after scanning the evidence, held that the insurer has failed to prove that the insured had committed any breach, what to speak of willful breach, and accordingly saddled the insurer with the liability. However,

the Tribunal at Rampur Bushahr came to the conclusion that there was breach committed by the insured of the terms and conditions contained in the insurance policy. Therefore, the said Tribunal saddled the owner with the liability.

11. The insurer, feeling aggrieved, with the awards made by the Tribunal at Shimla, filed the appeals, being FAO Nos.484, 483, 485, 486, 487, 488, 489, 490, 491, 492, 493, 496, 512 of 2015, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 90, 92, 101, 146, 169 and 118 of 2016, on the ground that the Tribunal has wrongly saddled it with the liability.

12. On the other hand, the claimants also challenged some of the impugned awards by way of Cross Appeals i.e. FAO No.342 & 347 of 2015, 128, 129, 242 and 243 of 2016, and Cross Objections Nos.14, 15, 12, 13, 16, 17, 18, 19 and 20 of 2016, on the ground of adequacy of compensation.

13. Feeling aggrieved and dissatisfied with the awards passed by the Tribunal at Rampur Bushahr, whereby the owner came to be saddled with the liability and the insurer was exonerated, the owner filed FAO Nos.305 and

306 of 2015, while the claimants challenged the said awards by way of FAO Nos.41 and 42 of 2016.

14. Thus, the appeals can be segregated into two groups. In the first group of appeals, the point for determination is – Whether the insurer or the insured is to be saddled with the liability, and in the second set of appeals and Cross Objections, the quantum of compensation is to be determined.

15. At the first hand, I would like to take up the first group of appeals preferred by the insurer and the insured in which the question of liability has to be decided.

FAO Nos.484, 483, 485, 486, 487, 488, 489, 490, 491, 492, 493, 496, 512 of 2015, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 90, 92, 101, 146, 169 and 118 of 2016, 305 and 306 of 2015:

16. At the very outset, it is worthwhile to place on record that in the given circumstances, the factum of accident and rash and negligent driving on the part of the driver are not in dispute. Thus, I deem it proper not to examine the findings recorded by the Tribunal at Shimla and the Tribunal at Rampur Bushahr on issue No.1.

17. Now, coming to the first set of appeals, the awards passed by the Tribunal at Shimla, were made by four different Presiding Officers, who, on the basis of the evidence and the pleadings of the parties, came to the conclusion that the owner/insured had not committed any willful breach. It was also held that the insurer had failed to discharge the onus on issues No.4 and 5. Therefore, the Tribunal at Shimla saddled the insurer with the liability.

18. The Tribunal at Rampur Bushahr has made discussion in paragraphs 31 to 45 of the impugned awards and held that the insured had committed willful breach of the terms and conditions of the insurance policy and therefore, saddled the insured with the liability.

19. Thus, from the grounds taken by the insurer and the insured in the above appeals, following questions arise for determination:

(i) Whether the insured had committed any willful breach?

(ii) Whether the insurer has discharged the onus by proving that the insured had engaged the driver, namely, Joginder Sharma who, allegedly, was not having valid and effective driving licence, thus, was not competent to drive the offending bus?

(iii) Whether the route permit was valid at the time of accident?

20. The learned counsel for the insurer vehemently argued that at the time of accident, the police had already seized of the driving licence of the driver, namely, Joginder Sharma, who too succumbed to the injuries on the spot. It was submitted on the basis of Ext.RW-3/A (copy of driving licence issued by RLA, Theog) that the driver was competent to drive only Light Motor Non-Transport Vehicles. Since the offending bus was a heavy passenger vehicle, therefore, the driver was not competent to drive the said vehicle.

21. It was further submitted that the driving licence Ext.R-1, obtained from Agra, was managed by the insured, and thus, was fake. An inquiry was conducted by the Additional District Magistrate about the issuance of the driving licence and during such inquiry, the driving licence issued by the Authority at Agra was found to be fake.

22. The learned counsel further argued that the insurer had made all efforts to obtain the verification report, but, when it failed in its attempt, filed applications before the Tribunal at Shimla for appointment of Local Commissioner.

The said applications were rejected by the Tribunal at Shimla constraining the insurer to approach this Court by way of filing appeals, which were allowed, vide order dated 9th December, 2014, and accordingly, Shri Hardeep Roshta, Advocate, was appointed as Local Commissioner. The Commissioner filed the report Ext.R-3/1, which is on the file of Claim Petition No.5-S/2 of 2009, (subject matter of FAO No.493 of 2015) and it was reported that the said copy of the licence was fake. Thus, it was submitted that the insurer has proved that the said driving licence Ext.R-1 was fake and the driving licence issued by the Authority at Theog Ext.RW-3/A was only valid for LMV-NT vehicles. Therefore, it was submitted that the Tribunal at Shimla has fallen into an error in concluding that the owner has not committed any willful breach.

23. The learned counsel for the insured/owner argued that it is not known how the copy of the driving licence Ext.RW-3/A was proved before the Tribunal in the absence of original licence. It was further submitted that the licence issued by the Authority at Agra Ext.R-1 was genuine

and the owner, after perusing the same, engaged the driver, namely, Joginder Sharma, to drive the offending bus.

24. It was further submitted that the insured/owner has taken a specific ground in the replies filed to all the claim petitions that the owner engaged the services of the driver only after examining the driving licence and satisfying himself that the driver, namely, Joginder Sharma, was competent to drive the offending bus. The insurer has failed to prove that the said licence was procured by the owner/insured, as alleged, and the insured has committed any breach.

25. Relying upon the report of the Local Commissioner Ext.R-3/1, the learned counsel for the insured argued that it was reported by the Commissioner appointed in terms of the orders passed by this Court that the concerned clerk had stated that the record pertaining to DL No.4510/AG/2006 was not available.

26. Thus, it was submitted by the learned counsel for the insured/owner that there was no material available on the file to conclude that the licence Ext.R-1 was fake. Further, argued that the insurer has not led any evidence to

prove that the owner has not taken any steps, which were required as per the mandate of Chapter XI, Section 147 to 149 of the Motor Vehicles Act, read with the terms and conditions contained in the insurance policy.

27. The learned counsel for the insured, therefore, submitted that the Tribunal at Shimla has rightly saddled the insurer with the liability and that the Tribunal at Rampur fell into an error while saddling the owner, instead of the insurer, with the liability.

28. A perusal of the record would reveal that the insurer neither pleaded in the replies filed to the Claim petitions nor led any evidence to prove that the licence Ext.R-1 issued by the Authority at Agra was fake. It is not borne out from the records as to from where the learned Tribunal at Rampur Bushahr has made the conclusion that the said licence Ext.R-1 was fake. The Tribunal at Rampur has also wrongly recorded the findings that the owner had not taken precautions while engaging the driver, namely, Joginder Sharma as driver to drive the offending bus and that it was within the knowledge of the owner that the

licence Ext.R-1 was fake. These findings recorded by the Tribunal at Rampur are not borne out from the records.

29. After perusing the impugned awards, I am of the considered view that the Tribunal at Shimla has rightly made the conclusions and the Tribunal at Rampur Bushahr has fallen into an error while saddling the insured with the liability, for the following reasons.

30. The insured/owner, in reply to paragraph 22 of the Claim Petition at Rampur Bushahr, had specifically pleaded that, while engaging the driver, he had verified the correctness of the driving licence of the driver. It is apt to reproduce paragraph 10 of the reply of one of the claim petitions hereunder:

> *"10. Para 22 is denied as incorrect. The accident took place due to pits on the road which is negligence of the State of HP who is responsible for maintenance of the road. The driver while avoiding the pits on road tried to avert the accident but due to bad shape of road on spot the accident occurred and driver was not thus negligent in driving the vehicle. The driver was employed by the replying respondent after verifying the correctness of the driving license and the same used to be kept by him with his relative at Kiarighat where the driver used to stay at night. Driver was never challaned for want of proper driving license as he had proper driving licence and skill to drive the vehicle."*

31. The insurer has not filed any response to the reply filed by the insured and also has not even led any evidence to the contrary.

32. The evidence led before the Tribunal at Shimla, particularly, report of the Local Commissioner is crystal clear that the record pertaining to the driving licence Ext.R-1 was not available with the Authority at Agra. Thus, it is not forthcoming how it can be deduced that the driving licence Ext.R-1 was fake.

33. The owner, as discussed hereinabove, in the replies filed to the Claim Petitions, has taken a clear stand that before engaging the driver, namely, Joginder Sharma, he had examined the licence of the driver and only thereafter he engaged the said Joginder Sharma as driver. Thus, the owner/insured can be said to have exercised due care and caution while engaging the driver.

34. The Apex Court judgment in the case of **National Insurance Co. Ltd. versus Swaran Singh & others,** reported in **AIR 2004 Supreme Court 1531,** held that fake or invalid driving licence is not a defence available to the insurer

against either the insured or the third parties. To avoid its liability towards 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 conditions of the policy regarding use of vehicles by duly licensed driver. It is apt to reproduce relevant portion of para 105 of the judgment hereinbelow:

> *"105. .....*
> *(i) .....*
> *(ii) .....*
> *(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in subsection (2) (a) (ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards 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 vehicles by 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 wherefore would be on them.*
> *(v).....*
> *(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 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. The 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 insured under Section 149 (2) of the Act."*

35. The Apex Court in ***Premkumari & others vs. Prahlad Dev & others, 2008 AIR SCW 682***, has held that even if the driver has a fake licence that is not a ground for the insurer to seek exoneration unless the insurer proves by leading evidence that the owner was aware that the licence was fake and still permitted the driver to drive the vehicle. It is apt to reproduce paragraph 6 of the said decision hereunder:

> *"6.In this appeal, the appellants mainly concerned about the orders of the Tribunal and the High Court exonerating the Insurance Company from its liability. Before considering the relevant decisions of this Court and the issue in question, let us note certain factual details. The first respondent is the owner of the offending vehicle and respondent No.2 is the driver of the said vehicle, who is none other than the brother of the first respondent. Before the Tribunal, the Insurance Company contended that the driver was not having a valid and effective driving licence. Considering the materials in the form of oral and documentary evidence placed by the Insurance Company the Tribunal found that opposite party No.2, namely, driver of the offending vehicle did not have a valid and effective licence on the date of the accident. Based on the said conclusion, it exonerated the Insurance Company from its liability. When this specific finding was challenged by way*

of review application before the High Court, the judgment of this Court in United India Insurance Co. Ltd. vs. Lehru and Others, (2003) 3 SCC 338 was pressed into service. In the said judgment, after considering Section 96(2)(b)(ii) of the old Motor Vehicles Act and similar provision i.e. 149(2)(a)(ii) in the Motor Vehicles Act, 1988, this Court held as under:-

> *"17. xxx xxx xxx Thus under sub-section (1) the insurance company must pay to the person entitled to the benefit of the decree, notwithstanding that it has become "entitled to avoid or cancel or may have avoided or cancelled the policy". The words "subject to the provisions of this section" mean that the insurance company can get out of the liability only on grounds set out in Section 149. Sub-section (7), which has been relied on, does not state anything more or give any higher right to the insurance company. On the contrary, the wording of sub-section (7) viz. "no insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability" indicates that the legislature wanted to clearly indicate that insurance companies must pay unless they are absolved of liability on a ground specified in sub-section (2). This is further clear from sub-section (4) which mandates that conditions, in the insurance policy, which purport to restrict insurance would be of no effect if they are not of the nature specified in sub- section (2). The proviso to sub-section (4) is very illustrative. It shows that the insurance company has to pay to third parties but it may recover from the person who was primarily liable to pay. The liability of the insurance company to pay is further emphasised by sub-section (5). This also shows that the insurance company must first pay, then it can recover. If Section 149 is read as a whole it is clear that sub-section (7) is not giving any additional right to the insurance company. On the contrary it is emphasising that the insurance company cannot avoid liability except on the limited grounds set out in sub-section (2).*
>
> 18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen, in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia (1987) 2 SCC 654 and Sohan Lal Passi (1996) 5 SCC 21 cases the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an

accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of the person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the legislature, in its wisdom, has made insurance, at least third-party insurance, compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the company is insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in the aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured."

"20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia (1987) 2 SCC 654, Sohan Lal Passi

> (1996) 5 SCC 21 and Kamla (2001) 4 SCC 342 cases. We are in full agreement with the views expressed therein and see no reason to take a different view."

It is clear from the above decision when the owner after verification satisfied himself that the driver has a valid licence and driving the vehicle in question competently at the time of the accident there would be no breach of Section 149(2)(a)(ii), in that event, the Insurance Company would not then be absolved of liability. It is also clear that even in the case that the licence was fake, the Insurance Company would continue to remain liable unless they prove that the owner was aware or noticed that the licence was fake and still permitted him to drive."

36. The Apex Court in **National Insurance Co.Ltd. vs. Geeta Bhat & Ors., JT 2008 (4) SC 425,** held that the owner is bound to make reasonable inquiry as to whether the person, whom he engaged as driver, holds a valid and effective licence or not. It was also held that owner is not expected to verify the genuineness of the licence from the transport office. It is apt to reproduce paragraphs 7, 8 and 13 of the said decision hereunder:

> *"7. An owner of the vehicle is bound to make reasonable enquiry as to whether the person who is authorised to drive the vehicle holds a licence or not. Such a licence not only must be an effective one but should also be a valid one. It should be issued for driving a category of vehicle as*

specified in the Motor Vehicles Act and/or Rules framed thereunder.

8. Indisputably, in a case where the terms of the contract of insurance are found to have been violated by the insured, the insurer may not be held to be liable for reimbursing the insured. So far as a driving licence of a professional driver is concerned, the owner of the vehicle, despite taking reasonable care, might have not been able to find out as to whether the licence was a fake one or not. He is not expected to verify the genuineness thereof from the transport offices.

13. We would, therefore, assume that the driving licence possessed by Gopal Singh, respondent No. 6, was a fake one. Only because the same was fake, the same, having regard to the settled legal position, as noticed hereinbefore, would not absolve the insurer to reimburse the owner of a vehicle in respect of the amount awarded in favour of a third party by the Tribunal in exercise of its jurisdiction under section 166 of the Motor Vehicles Act, 1988."

37. The Apex Court in **Pepsu Road Transport Corporation versus National Insurance Company,** reported in **(2013) 10 Supreme Court Cases 217** has again reiterated the same position and held that at the time of hiring a driver, the owner is under obligation to examine whether the driver is competent and has a valid licence to drive the vehicle. In

case the owner is satisfied that the driver is fully competent to drive the vehicle, it can be said that the owner exercised reasonable care and onus is shifted on the insurer to prove to the contrary. It is apt to reproduce paragraph 10 of the said decision hereunder:

> *"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran ingh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."*

38. In the instant case, the insurer has not pleaded and proved that the owner, while engaging the driver, had not taken adequate precaution. On the contrary, the

owner has pleaded in the reply, as discussed hereinabove, that at the time of engaging the driver, he had examined the driving licence of the driver, meaning thereby that before the driver was engaged, the owner was fully satisfied that the driver was having a valid and effective driving licence and was competent to drive the offending bus.

39. It is worthwhile to mention here that during the course of arguments, a certified copy of the judgment dated 29th August, 2014, passed by Additional Chief Judicial Magistrate, Theog, District Shimla in Criminal Case No.94-4 of 2009, titled State of H.P. vs. Uma Dutt Sharma, was filed across the Board, made part of the file. In the said criminal case, the prosecution was launched by the police under Section 180 of the Act on the allegation that the owner, namely, Uma Dutt Sharma had handed over the offending bus to a person who was not competent to drive the same, as a result of which the bus met with the accident. The owner/insured faced the prosecution, which landed in his acquittal and the said judgment passed by the Magistrate has attained finality. The Judicial Magistrate has specifically concluded in paragraphs 17, 18 and 19 of the said judgment

that the accused i.e. the owner of the bus had employed the driver, namely, Joginder Sharma only after examining his driving licence issued by the Licensing Authority. The owner had taken all possible precaution while engaging the driver. Accordingly, after recording such findings, the Judicial Magistrate acquitted the owner of the offence under Section 180 of the Act. It is apt to reproduce paragraph 19 of the said judgment hereunder:-

> *"19. I am of the view that this copy of DL Mark X of deceased Joginder Sharma has been given to Inquiry Officer, PW-9 by accused only and this copy of DL Mark X shows that it is valid for passenger vehicle. I am of the view that when accused had employed deceased Joginder to drive this bus No.HP-63-3774, then he handed over the bus to deceased Joginder by looking to his DL Mark X, which was valid for passenger vehicles. Thus, he had taken all possible precaution to ensure that the deceased Joginder has DL for passenger vehicle and he also retained the copy of the same.Thus, it is clear from such evidence that accused had given the bus No.HP-63-3774 to deceased driver Joginder after looking his DL Mark X. Thus, it is not proved by such evidence that accused handed over the bus to the driver when he was not authorized to drive the same. Though, it is the different case that, that DL was not found to be issued by Licensing Authority, Agra, but the accused had handed over the bus to deceased by looking to his DL*

Mark X and bonafidely believed that deceased was authorized to drive the passenger vehicle."

40. The learned counsel for the insurer raised objection that this judgment cannot be looked into since it was not part of the record. In this regard, a reference may be made to Section 76 of the Indian Evidence Act as under:

"76. Certified copies of public documents.—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section."

41. Thus, any certified copy of the judgment made by any court is admissible at any stage. The judgment passed by the Judicial Magistrate being a public document can be examined and relied upon. The Judicial Magistrate has examined the witnesses and has scanned the evidence, oral as well as documentary, and made the findings mentioned hereinabove, have attained finality. Thus, there is sufficient proof on the basis of which it can be safely held that the owner has not committed any breach, not to speak of willful breach.

42. Having said so, the findings returned by the Tribunal at Shimla are upheld and the findings returned by the Tribunal at Rampur Bushahr saddling the owner with the liability are set aside and the insurer is saddled with the liability in all the cases.

43. Learned counsel for the insurer also argued that the route permit was not valid and had already expired on

2nd October, 2008, whereas the accident had occurred on 4th November, 2008. Therefore, it was submitted that the insured had committed willful breach of the terms and conditions of the insurance policy.

44. The question arises before this Court is – Whether, in the facts and circumstances of the case, plying of the offending bus after the expiry of the route permit can be a ground available to the insurer to seek exoneration?

45. To answer the question, first I may make a reference to Section 81 of the Act, which deals with renewal of permits. It is apt to reproduce Section 81(1) and 81(5) of the Act hereunder:

> "81. Duration and renewal of permits. —
> (1) A permit other than a temporary permit issued under section 87 or a special permit issued under sub-section (8) of section 88 shall be effective from the date of issuance or renewal thereof for a period of five years: Provided that where the permit is countersigned under sub-section (1) of section 88, such counter-signature shall remain effective without renewal for such period so as to synchronise with the validity of the primary permit.
> (5) Where a permit has been renewed under this section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under clause (d) of section 87, and where a temporary permit has been granted, the fee paid in respect of such temporary permit shall be refunded."

46. Sub Section (5) of Section 81 clearly mandates that if a route permit is renewed after its expiry, it shall be deemed to have been renewed from the date it had expired.

47. In the instant case, the route permit has been proved on record before the Tribunal at Rampur Bushahr as Ext.RW-3/A, and was also placed on the record of the Tribunal at Shimla, though not exhibited, which shows that the route permit was renewed on 15th December, 2008 with effect from the date of its expiry i.e. 2nd October, 2008, and was valid upto 2nd October, 2013. Therefore, when the route permit was renewed, though on a subsequent date, but from the date of its expiry, it can be said to be valid at the time of accident and it can safely be held that this argument is not available to the insurer. Even otherwise, onus was on the insurer to prove that the accident had taken place due to the expiry of the route permit, in which the insurer has failed.

48. The Apex Court in **Kamala Mangalal Vayani & Ors. vs. M/s United India Insurance Co. Ltd. & Ors., 2010 AIR SCW 6604,** held that burden of proof lies on the insurer to

prove that the vehicle did not have a valid permit on the date of accident. It is apt to reproduce paragraph 4 of the said decision hereunder:

> *"4. As noticed above, the owner-cum-driver had remained ex parte. Once it was established that the vehicle was comprehensively insured with the insurer to cover the passenger risk, the burden to prove that it was not liable in spite of such a policy, shifted to the insurer. The claimants are not expected to prove that the vehicle had a valid permit, nor prove that the owner of the vehicle did not commit breach of any of the terms of the policy. It is for the insurer who denies its liability under the policy, to establish that in spite of the comprehensive insurance policy issued by it, it is not liable on account of the requirements of the policy not being fulfilled. In this case, the insurer produced a certified copy of the proceedings of the Registering Authority and Assistant Regional Transport Authority, Bangalore, dated 7.7.1990 to show that the application for registration of the vehicle filed by the third respondent, was rejected with an observation that it was open to the applicant to apply for registration in the appropriate class. But that only proved that on 7.7.1990, the vehicle did not have a permit. But that does not prove that the vehicle did not have a permit on 27.7.1990, when the accident occurred. It was open to the insurer to apply to the concerned transport authority for a certificate to show the date on which the permit was granted and that as on the date of the accident, the vehicle did not have a permit,*

and produce the same as evidence. It failed to do so. The High Court committed an error in expecting the claimants to prove that the vehicle possessed a valid permit. We are of the view that there was no justification for the High Court to interfere with the judgment and awards of the Tribunal in the absence of relevant evidence."

49. Learned counsel for the insurer-appellant also argued that the accident was outcome of overloading. The argument was devoid of any force for the reason that this ground was never pressed into service by the insurer before the Tribunals below and no evidence was led by the insurer before the Tribunals below to prove that the accident had taken place due to the overloading in the offending bus. Accordingly, the argument raised by the learned counsel is rejected.

50. It has also been argued by the learned counsel for the insurer that in the event of holding the insurer liable to indemnify, its liability can only be restricted as per the risk covered. The seating capacity of the offending bus, including the driver, as has been mentioned in the insurance policy Ext.RW-6/A, was 43 persons, meaning thereby that the risk of 43 persons, including the driver, was covered.

Presently, there are 46 appeals before this Court out of which 36 appeals have been filed by the insurer, 2 by the insured, 8 by the claimants for enhancement, meaning thereby that 38 appeals are the outcome of 38 claim petitions, which are within the permissible limit, as discussed supra.

51. In view of the above discussion, it is held that there is no merit in the appeals filed by the insurer and the same are dismissed. However, the appeals filed by the insured i.e. FAO Nos.305 and 306 of 2015 are allowed and the insurer is saddled with the liability.

52. Before the second group of appeals and cross objections for enhancement is taken up, I may record herein that the aim and object of providing compensation to the claimants of vehicular accidents is to save them from the sufferings they are compelled to undergo on account of sudden and untimely death of their bread earner, so that they may not fall prey to the social evils. It is also well settled law that the claim petitions, arising out of the vehicular accidents, should not be thrown out and the poor claimants should not be shown the door, on hyper-technicalities. it is

beaten law of the land that the Tribunal or the High Court should not succumb to the procedural wrangles tangles or technicalities and others grounds, as has been held by the Apex Court in ***Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another***, reported in (**2013) 10 Supreme Court Cases 646, N.K.V. Bros. (P.) Ltd. versus M. Karumai Ammal and others etc.,** reported in **AIR 1980 Supreme Court 1354 and Oriental Insurance Co. versus Mst. Zarifa and others,** reported in **AIR 1995 Jammu and Kashmir 81.** Similar principle has been followed by this court in catena of judgments. It is also beaten law of the land that the compensation is not a booty or boon in the disguise. The compensation has to be awarded while keeping in view facts of each case and the loss suffered by the claimants.

53. Having said so, the appeals and cross objections filed by the claimants, for enhancement of compensation, are being disposed of as follows.

FAO No.342 of 2015

54. Through this appeal, the claimant-injured has laid challenge to the impugned award passed by the Tribunal at Shimla, whereby compensation to the tune of Rs.1,39,000/-

with 7.5% per annum interest came to be granted in favour of the claimant. Feeling aggrieved, the claimant-injured has sought enhancement of compensation.

55. I have gone through the impugned award. The claimant-injured had not suffered any permanent disablement. The Tribunal in paragraph 24 of the impugned award has categorically recorded on the basis of certificate Ext.PW-6/A that the claimant-injured sustained 40% temporary disability for one year.

56. The Tribunal made detailed discussion in paragraphs 24 to 30 of the impugned award, and on the basis of the pleadings and the evidence led, held the claimant-injured entitled to Rs.1,39,000/- under the heads 'medical expenses', 'attendant charges', 'transportation charges' and 'pain and suffering and loss of amenities of life', which, in my opinion, is just and appropriate in the facts of the case.

57. Having said so, there is no merit in the appeal and the same is dismissed.

FAO No.347 of 2015:

58. This appeal has been filed by the claimant-injured against the award dated 25th May, 2015, passed by the Tribunal at Shimla, whereby compensation to the tune of Rs.4,93,000/-, with 7.5% per annum interest, came to be awarded, in favour of the claimant-injured.

59. The claimant-injured, feeling aggrieved, filed the instant appeal for enhancement of compensation.

60. I have gone through the record and the impugned award. The claimant remained admitted in the hospital w.e.f. 4th November, 2008 to 25th November, 2008. As per disability certificate Ext.PW-8/A, the claimant suffered 30% permanent disability to the left lower and upper limb.

61. The Tribunal, on the basis of the evidence led by the claimant, assessed the monthly income of the claimant at Rs.5,000/-. Keeping in view the extent of permanent disability suffered by the claimant i.e. 30%, the Tribunal has rightly assessed the loss of income to the tune of Rs.1,500/- per month. Keeping in view the age of the claimant-injured to be 29 years at the time accident, multiplier of 14 was rightly applied.

62. The Tribunal has rightly made discussion in paragraphs 24 to 32 and has rightly awarded compensation under the heads – i) loss of actual income – Rs.3,78,000/-; ii) medical expenses – Rs.50,000/-; iii) pain and sufferings – Rs.25,000/-; iv) loss of amenities of life – Rs.25,000/-; v) Transportation charges – Rs.10,000/-; and vi) attendant charges – Rs.5,000/- (total Rs.4,93,000/-).

63. Having said so, there is no merit in the appeal and the same is dismissed.

FAO No.243 of 2016

64. Claimants-appellants, being the legal representatives of deceased Kamla Devi, approached the Tribunal by the medium of Claim Petition, who died in the accident in question. The Tribunal allowed the claim petition and Rs.1,40,000/-, alongwith interest at the rate of 7.5% per annum, came to be awarded in favour of the claimants.

65. The Tribunal assessed the monthly income of the deceased at Rs.3,000/- per month. Even a labourer, now-a-days, earns not less than Rs.4500/- per month. The deceased was a housewife. Therefore, it appears that the Tribunal has

fallen into an error in assessing the monthly income of the deceased.

66. Viewed thus, the income of the deceased can safely be assessed at Rs.45,00/- per month. In view of the law laid down by the Apex Court in case **Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,** which decision was also upheld by the larger Bench of the Apex Court in **Reshma Kumari and others vs. Madan Mohan and another, 2013 AIR (SCW) 3120,** 1/3rd was to be deducted towards the personal expenses of the deceased. Thus, the monthly loss of source of dependency to the claimants, after deducting 1/3rd, is held to be Rs.3,000/-.

67. The deceased was 60 years of age at the time of accident. Therefore, in view of the dictum of the Apex Court in the case of Sarla Verma (supra) and 2nd Schedule attached to the Act, multiplier of 5 is just and appropriate and has been rightly applied by the Tribunal.

68. In view of the above, the claimants are held entitled to compensation to the tune of Rs.3,000x12x5=Rs.1,80,000/- under the head 'loss of source of

dependency'. In addition, the claimants are also held entitled for Rs.10,000/- each (total Rs.30,000/-) under the heads 'loss of love and affection', ' loss of estate', and ' funeral expenses'.

69. Accordingly, the claimants are held entitled to Rs.1,80,000/- + Rs.30,000/- = Rs.2,10,000/-.

70. Having glance of the above, the appeal is allowed and the compensation is enhanced, as indicated above. The appeal is disposed of accordingly.

FAO No.128 of 2016

71. Vide award, dated 22nd May, 2015, passed by the Tribunal at Shimla, compensation to the tune of Rs.4,26,000/-, with interest @ 7.5% per annum, came to be awarded in favour of the claimants, who approached the Tribunal on account of death of Narinder Kanwar in the accident in question, being his legal representatives.

72. It was claimed in the claim petition that the deceased was a contractor by profession and was earning Rs.50,000/- per month. However, the Tribunal, on the basis of the evidence led by the claimants, held that the deceased

was a carpenter and accordingly, assessed his income at Rs.3,000/- per month.

73. Apparently, the Tribunal has fallen into an error while assessing the monthly income of the deceased, for the simple reason that even a labourer would not be earning less than Rs.4500/- per month. The deceased was a carpenter by profession and therefore, his income, by no stretch of imagination, can be said to be less than Rs.4,500/- per month.

74. The claimants, in the instant case, are five in number. Therefore, in view of the law laid by the Apex Court in the case of **Sarla Verma (supra),** 1/5th was to be deducted towards the personal expenses of the deceased. Thus, the monthly loss of source of dependency to the claimants, after deducting 1/5th, can be said to be Rs.3,600/-.

75. The deceased was 45 years of age at the time of accident. Therefore, in view of the dictum of the Apex Court in the case of Sarla Verma (supra) and 2nd Schedule attached to the Act, multiplier of 14 is just and appropriate and is applied accordingly.

76. In view of the above, the claimants are held entitled to compensation to the tune of Rs.3,600x12x14=Rs.6,04,800/- under the head 'loss of source of dependency'. In addition, the claimants are also held entitled for Rs.10,000/- each (total Rs.40,000/-) under the heads 'loss of love and affection', 'loss of estate', 'loss of consortium' and ' funeral expenses'.

77. Accordingly, the claimants are held entitled to Rs.6,04,800/- + Rs.40,000/- = Rs.6,44,800/-.

78. The appeal is allowed and the compensation is enhanced, as indicated above. The appeal is disposed of accordingly.

FAO No.129 of 2016

79. By the medium of instant appeal, the claimants have challenged the award, dated 25th May, 2015, passed by the Tribunal at Shimla, and have sought enhancement of compensation. Vide the impugned award, Rs.9,64,160/- came to be awarded in favour of the claimants, alongwith interest at the rate of 7.5% per annum. The claimants pleaded that the deceased was earning Rs.10,000/- per

month i.e. Rs.6,000/- as salary and Rs.4,000/- from the tuition work.

80. However, the Tribunal, in the absence of any proof qua income, has rightly assessed the monthly income of the deceased to be Rs.5,000/-. The Tribunal after deducting 1/3rd amount and adding 50% towards future prospects, held monthly loss of source of dependency to the tune of Rs.4,995/-.

81. The deceased was 36 years of age at the time of accident. Therefore, in view of the dictum of the Apex Court in the case of Sarla Verma (supra) and 2nd Schedule attached to the Act, multiplier of 14 has been rightly applied by the Tribunal. Accordingly, the compensation awarded by the Tribunal under different heads is maintained.

82. In view of the facts of the case, I am of the opinion that the Tribunal has rightly awarded compensation, needs no interference. Having said so, there is no merit in the appeal and the same is dismissed.

FAO No.242 of 2016

83. Vide the award, impugned in the instant appeal, the Tribunal has awarded Rs.6,21,000/-, alongwith interest at

the rate of 7.5% per annum. The Tribunal, on the basis of the pleadings and the evidence adduced, has rightly taken the monthly income of the deceased at Rs.6,000/-. Since the deceased was a bachelor, 1/2 rightly came to be deducted from the monthly income of the deceased towards his personal expenses.

84. The deceased was 21 years of age at the time of accident and the Tribunal keeping in view his age, has rightly applied the multiplier of 16.

85. Having said so, no interference is required in the impugned award and the same is upheld. Consequently, the appeal is dismissed.

FAO No.41 of 2016

86. Through this appeal, the claimants have challenged the award, dated 1st April, 2015, passed by the Tribunal at Rampur Bushahr, and have sought enhancement of compensation. Vide the impugned award, Rs.5,73,000/- came to be awarded in favour of the claimants, alongwith interest at the rate of 6% per annum. The claimants pleaded that the deceased was a house wife and was earning Rs.15,000/- per month.

87. However, the Tribunal, in the absence of any reliable evidence qua income, has rightly assessed the monthly income of the deceased to be Rs.4,000/-. The deceased was 42 years of age at the time of accident. In view of the law laid down by the Apex Court in the case of Sarla Verma (supra), the Tribunal has rightly applied the multiplier of 14. Accordingly, in the facts of the case, the compensation awarded by the Tribunal under different heads i.e. Rs.4,48,000/- under the head 'loss of source of dependency', Rs.1,00,000/- under the head 'loss of love and affection' and Rs.25,000/- under the head 'funeral expenses', appears to be adequate and needs no enhancement.

88. In view of the above, there is no merit in the appeal and the same is dismissed.

FAO No.42 of 2016

89. By the medium of this appeal, the claimants have laid challenge to the award, dated 1st April, 2015, passed by the Tribunal at Rampur Bushahr, whereby compensation to the tune of Rs.12,19,000/- came to be awarded in favour of the claimants, alongwith interest at the

rate of 6% per annum. The claimants by the medium of this appeal, has sought enhancement of compensation. It was pleaded in the claim petition that the deceased was a retired Army Officer and his monthly income was Rs.35,000/-. Thus, the claimants approached the Tribunal claiming compensation to the tune of Rs.20,00,000/-.

90. The Tribunal, after making detailed discussion in paragraph 29 of the impugned award, held that the claimants had not placed any material on record to support their claim that the deceased was earning Rs.35,000/- per month. Relying on the statement of PW-1 Surender Pal (claimant No.1), the Tribunal has rightly assessed the income of the deceased as Rs.13,000/- per month, which he was getting as pension. The deceased, at the time of death, was of 55 years. After deducting 1/3rd amount towards the personal expenses of the deceased and rightly applying the multiplier of 11, the Tribunal awarded a sum of Rs.11,44,000/- under the head 'loss of source of dependency', Rs.50,000/- under the head 'love and affection' and Rs.25,000/- under the head 'funeral expenses', i.e. Rs.12,19,000/- in total. The

amount of compensation awarded by the Tribunal appears to be adequate, needs no interference.

91. In view of the above, there is no merit in the appeal and the same is dismissed.

Cross Objections No.15 of 2016 in FAO No.486 of 2015

92. By the medium of these cross objections, the claimants, being the parents and brother of the deceased, have sought enhancement of compensation. The claimants invoked the jurisdiction of the Tribunal at Shimla for grant of compensation on account of the death of Diwan Chand, who died in the accident in question. The Tribunal has taken the monthly income of the deceased at Rs.3,050/-. However, the income of the deceased, if taken at par with the income of a labourer, can be said to be at Rs.4,500/-. The deceased was bachelor, therefore, after deducting 1/2, monthly loss of source of dependency to the claimants can be said to be Rs.2,250/-. The deceased was 27 years of age at the time of death and multiplier of 17 rightly came to be applied.

93. In view of the above, the loss of source of dependency to the claimants can be said to be

Rs.2250x12x17=Rs.4,59,000/-. In addition, Rs.10,000/- each (total Rs.30,000/-) are also to be awarded to the claimants under the heads 'loss of love and affection', 'loss of estate', and ' funeral expenses'. Accordingly, the total compensation can be worked out to be Rs.4,89,000/-, whereas the Tribunal has awarded Rs.6,65,000/- as compensation.

94. Keeping in view the object of granting of compensation and the legislature's wisdom read with the amendment made in the Act in the year 1994, it is for the Tribunal or the Appellate Court to assess the 'just' compensation.

95. The Apex Court in the case of **Nagappa versus Gurudayal Singh and others,** reported in **AIR 2003 Supreme Court 674** held that the law has caste a duty on the Tribunals to award just compensation**.** It is apt to reproduce paras 7, 9 and 10 of the judgment herein:

> *"7. Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than*

claimed, the Tribunal may pass such award. Only embargo is – it should be 'Just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said Section is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act." Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed.

8. .....

9. It appears that due importance is not given to sub-section (4) of Section 166 which provides that the Tribunal shall treat any report of the accidents forwarded to it under sub-section (6) of Section 158, as an application for compensation under this Act.

10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be 'just'. There is no other

limitation or restriction on its power for awarding just compensation."

96. In the case titled as **State of Haryana and another versus Jasbir Kaur and others,** reported in **AIR 2003 Supreme Court 3696,** the Apex Court has discussed the expression 'just'. It is apt to reproduce para 7 of the judgment herein:

> *"7. It has to be kept in view that the Tribunal constituted under the Act as provided in S. 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; nor a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild*

> *guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. (See Helen C. Rebello v. Maharashtra State Road Transport Corporation (AIR 1998 SC 3191).*"

97. The same view has been taken by the Apex Court in a case titled as **The Divisional Controller, K.S.R.T.C. versus Mahadeva Shetty and another**, reported in **AIR 2003 Supreme Court 4172**.

98. The Apex Court in another case titled as **Ningamma & another versus United India Insurance Co. Ltd.,** reported in **2009 AIR SCW 4916,** held that the Court is duty bound to award just compensation to which the claimants are entitled to. It is profitable to reproduce para 25 of the judgment herein:

> *"25. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the Court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of*

> *the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court."*

99. The Apex Court in a latest judgment in the case titled as **Smt. Savita versus Bindar Singh & others,** reported in **2014 AIR SCW 2053,** has laid down the same proposition of law and held that the Tribunal as well as the Appellate Court shall award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. It is apt to reproduce para 6 of the judgment herein:

> *"6. After considering the decisions of this Court in Santosh Devi as well as Rajesh v. Rajbir Singh (supra), we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation."*

100. This Court in a case titled as **United India Insurance Company Ltd. versus Smt. Kulwant Kaur,** reported in **Latest HLJ 2014 (HP) 174,** held that the Appellate Court and the Tribunal have the same powers. It is apt to reproduce paras 41 to 44 of the judgment herein:

> *"41. Before I determine what is the just and adequate compensation in the case in hand, it is also a moot question – whether the Appellate Court can enhance compensation, even though, not prayed by the medium of appeal or by cross-objection.*
>
> *42. The Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") has gone through a sea change in the year 1994 and sub-section (6) has been added to Section 158 of the MV Act, which reads as under:*
>
> *"**158. Production of certain certificates, licence and permit in certain cases. -***
>
> *.....*
>
> *(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."*
>
> *In terms of this provision, the report is to be submitted to the Tribunal having the jurisdiction.*
>
> *43. Also, an amendment has been carried out in Section 166 of the MV Act and sub-section (4) stands*

added. It is apt to reproduce sub-section (4) of Section 166 of the MV Act herein:

*"**166. Application for compensation. -***

.....

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act."

It mandates that a Tribunal has to treat report under Section 158 (6) (supra) of the MV Act as a claim petition. Thus, there is no handicap or restriction in granting compensation in excess of the amount claimed by the claimant in the claim petition.

44. Keeping in view the purpose and object of the said provisions read with the mandate of Section 173 of the MV Act, I am of the view that the Appellate Court is exercising the same powers, which the Tribunal is having. Also, sub-clause (2) of Section 107 of the Code of Civil Procedure (hereinafter referred to as "the CPC") mandates that the Appellate Court is having all those powers, which the trial Court is having. It is apt to reproduce Section 107 sub-clause (2) of the CPC herein:

*"**107. Powers of Appellate Court. -***

.....

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein."

101. This Court in its latest decision in batch of appeals, the lead of which was ***FAO No.203 of 2010, titled Nati Devi and another vs. Maya Devi and others, decided on 20th May, 2016***, has held that the Appellate Court, while

hearing an appeal under Section 173 of the Act, in order to impart complete justice to the parties, can exercise powers similar to that of a Claims Tribunal.

102. Following the law, as discussed hereinabove, the impugned award is modified, the amount of compensation is reduced and the claimants are held entitled to compensation to the tune of Rs.4,89,000/-. Accordingly, the cross objections are dismissed.

Cross objection 12 of 2016 in FAO No.492 of 2015

103. The Tribunal has awarded Rs.3,65,000/- in favour of the claimants. The claimants pleaded in the claim petition that the deceased was earning Rs.13,000/- i.e. Rs.6,000/- from pension and Rs.7,000/- from agriculture works. However, the Tribunal in paragraph 24 of the impugned award, after referring to the evidence led by the claimants, held that the monthly income of the deceased was Rs.6,000/- per month. After deducting 1/3rd amount towards his personal expenses, the monthly loss of source of dependency was rightly held to be Rs.4,000/-. Keeping in view the age of the deceased of 70 years at the time of death, multiplier of 5 was rightly came to be applied.

104. In view of the above, the loss of source of dependency to the claimants can be said to be Rs.4,000x12x5=Rs.2,40,000/-. In addition, Rs.10,000/- each (total Rs.40,000/-) are also to be awarded to the claimants under the heads 'loss of love and affection', 'loss of estate', 'loss of consortium' and ' funeral expenses'.

105. Accordingly, the total compensation can be worked out in favour of the claimants to Rs.2,40,000/- + Rs.40,000/- = Rs.2,80,000/-. However, the Tribunal has awarded Rs.3,65,000/- under different heads, which is higher than the amount worked out above.

106. Following the law laid down by the Apex Court and by this Court, as discussed supra while determining Cross Objections No.15 of 2016 in FAO No.486 of 2015, the compensation awarded by the Tribunal is reduced and the claimants are held entitled to Rs.2,80,000/-. The impugned award is modified and the cross objections are dismissed

Cross Objections No.13 of 2016 in FAO No.493 of 2015

107. Vide the impugned award, the Tribunal awarded compensation to the tune of Rs.8,10,000/- in favour of the claimants. The claimants claimed that the deceased, being

an agriculturist and horticulturist, was earning more than Rs.14,000/- per month. In support of their claim and to prove the income of the deceased, the claimants led oral evidence through which they have established that the deceased was earning more than Rs.10,000/- per month. Therefore, it appears that the Tribunal has fallen in error while assessing monthly income of the deceased at Rs.5,000/-.

108. Accordingly, after exercising the guess work, it can safely be held that the deceased was earning not less than Rs.9,000/- per month, though there is oral evidence that he was earning more than Rs.10,000/- per month. Since the deceased was bachelor, 1/2 has to be deducted from his monthly income. Therefore, the monthly loss of source of dependency to the claimants can be said to be Rs.4500/-.

109. The deceased was 25 years of age at the time of accident. Therefore, multiplier of 17 has been rightly applied by the Tribunal.

110. In view of the above, the claimants are held entitled to Rs.4500x12x17= 9,18,000/- under the head 'loss of source of dependency'. In addition, claimants are also held entitled for Rs.10,000/- each (Rs.30,000/- in total) under the

heads 'loss of love and affection', loss of estate', and ' funeral expenses'.

111. Accordingly, the total compensation, to which the claimants are held entitled to, comes to Rs.9,18,000/- + Rs.30,000/- = Rs.9,48,000/-. Accordingly, the cross objections are allowed and the amount is enhanced and the impugned award is modified.

Cross objections No.16 of 2016 in FAO No.12 of 2016

112. Through these cross objections, the claimants have sought enhancement of compensation awarded by the Tribunal to the tune of Rs.10,84,040/-. It is claimed that the deceased was working as commission agent in Sabzi Mandi, Dhali and was earning more than Rs.10,000/- per month. To prove the said factum, the claimants through oral evidence have proved that the deceased was earning Rs.10,000/- per month. The Tribunal has fallen into an error in not relying the said testimony of the witnesses and in coming to the conclusion that the deceased was earning Rs.5,000/- per month.

113. Keeping in view the evidence led, hypothetically, the monthly income of the deceased can be

said to be Rs.10,000/- . Keeping in view the number of dependents which is three, 1/3rd has to be deducted. Accordingly, the monthly loss of source of dependency to the claimants can be said to be Rs.6,667/-.

114. The deceased was 32 years of age at the time of the accident. Therefore, multiplier of 15 was applicable. The Tribunal again has fallen into an error in applying the multiplier of 16. Accordingly, it is held that the claimants lost source of dependency to the tune of Rs.6,667x12x15=Rs.12,00,060/-. In addition, claimants are also held entitled for Rs.10,000/- each (Rs.40,000/- in total) under the heads 'loss of love and affection', ' loss of estate', loss of consortium and ' funeral expenses'. Thus, total compensation comes to Rs.12,40,060/-. Accordingly, the cross objections are allowed and the impugned award is modified as indicated above.

Cross objections No. 17 of 2016 in FAO No.15 of 2016

115. Vide the impugned award, the Tribunal awarded Rs.5,85,000/- as compensation alongwith interest at the rate of 7.5% per annum. Feeling aggrieved, the claimants have moved the instant cross objections for enhancement of

compensation. It was pleaded in the claim petition that the deceased was an agriculturist and was earning Rs.12,000/- per month. The Tribunal assessed the income of the deceased at Rs.4,500/- per month, which, in the facts of the case and as per the pleadings contained in the claim petition, appears to be on the lower side. Therefore, after exercising guess work I am of the opinion that the income of the deceased was not less than Rs.6,000/- per month. The claimants are five in number, therefore, 1/5th has to be deducted from the monthly income of the deceased in view of the dictum of the Apex Court in the case of Sarla Verma (supra). Accordingly, after deducting 1/5th amount, the monthly loss of source of dependency to the claimants can be said to be Rs.4,800/-.

116. The deceased was 40 years of age at the of accident and keeping in view his age, multiplier of 14 is just and appropriate. The Tribunal has incorrectly applied the multiplier of 15. Thus, the claimants are held entitled to Rs.4,800x12x14=Rs.8,06,400/-. Apart from it, the claimants are also held entitled for Rs.10,000/- each (Rs.40,000/- in total)

under the heads 'loss of love and affection', ' loss of estate', loss of consortium' and ' funeral expenses'.

117. In view of the above, the cross objections are allowed and the claimants are held entitled to Rs.8,46,400/- as compensation. The impugned award is modified accordingly.

Cross Objections No.18 of 2016 in FAO No.23 of 2016

118. Through these cross objections, the claimants have prayed for enhancement of compensation on account of death of Vivek Bali in the accident in question. The claimants pleaded that the deceased was earning Rs.12,000/- per month being expert in pruning and grafting of plants. In order to prove income of the deceased, claimant No.2, namely, Virender stepped into the witness box as PW-1 and stated that the deceased was earning more than Rs.12,000/- per month. PW-5 Shiv Ram has also stated similarly in regard to the income of the deceased. However, the Tribunal has not relied upon the statements of the above witnesses and notionally taken the monthly income of the deceased at Rs.5,000/-, which, in view of the pleadings and the evidence, appears to be on the lower

side. Accordingly, after exercising the guess work, the monthly income of the deceased can be said to be Rs.8,000/- per month.

119. Since the deceased was bachelor, therefore, 1/2 has to be deducted from the monthly income of the deceased in view of the dictum of the Apex Court in the case of Sarla Verma (supra). Accordingly, after deducting 1/2 amount, the monthly loss of source of dependency to the claimants can be said to be Rs.4,000/-.

120. The deceased was 18 years of age at the of accident and keeping in view his age, multiplier of 18 is just and appropriate and has been correctly applied by the Tribunal. Thus, the claimants are held entitled to Rs.4,000x12x18=Rs.8,64,000/-. Apart from it, the claimants are also held entitled for Rs.10,000/- each (Rs.30,000/- in total) under the heads 'loss of love and affection', ' loss of estate' and ' funeral expenses'.

121. In view of the above, the total compensation can be worked out to be Rs.8,64,000 + Rs.30,000 = Rs.8,94,000/-. The Tribunal has awarded Rs.11,23,920/- which is on the higher side from the amount worked out above.

122. Following the law laid down by the Apex Court and by this Court, as discussed supra while determining Cross Objections No.15 of 2016 in FAO No.486 of 2015, the compensation awarded by the Tribunal is reduced and the claimants are held entitled to Rs.8,94,000/-. The impugned award is modified and the cross objections are dismissed accordingly.

Cross objections No.19 of 2016 in FAO No.26 of 2016

123. The claimant, being the mother of the deceased, by the medium of these cross objections, has sought enhancement of compensation awarded by the Tribunal on account of death of Lok Chand in the accident in question. It was claimed that the deceased was earning more than Rs.10,000/- per month. The deceased was 24 years of age and was bachelor. The deceased was claimed to be an agriculturist and horticulturist.

124. The Tribunal, in the absence of any reliable evidence in regard to the income of the deceased, awarded lump sum compensation to the tune of Rs.7,75,000/- under different heads. While awarding compensation, the Tribunal has made detailed discussion in

paragraph 30 of the impugned award, which, in my opinion, is based on the facts of the case. Accordingly, it is held that the compensation awarded by the Tribunal is adequate.

125. In view of the above, there is no merit in the cross objections and the same are dismissed.

Cross Objections No.14 of 2016 in FAO No.484 of 2015

126. Claimants, being the parents of deceased Ghanshyam, filed these cross objections for enhancement of compensation. The Tribunal, after making detailed discussion in paragraph 32 of the impugned award, has awarded Rs.7,38,000/- as compensation in favour of the claimants.

127. The Tribunal has categorically recorded findings in paragraph 32 of the impugned award that the deceased was earning Rs.3,716/- per month as salary, which findings are based on the statement made by PW-4 Shri Summer Jeet Singh and the salary certificate placed on record. Thus, the Tribunal has rightly held that the deceased was earning Rs.3,750/- (rounded off) per month. The Tribunal has again rightly added 30% of the income towards future prospects and rightly worked out monthly loss of source of

dependency to the tune of Rs.4,875/-. Keeping in view the age of the deceased of 26 years, the Tribunal has rightly applied multiplier of 17.

128. In view of the above, the amount of compensation awarded by the Tribunal cannot be said to be inadequate and is accordingly maintained and the cross objections are dismissed.

Cross objections No.20 of 2016 in FAO No.169 of 2016

129. The claimants have filed these cross objections seeking enhancement of compensation awarded by the Tribunal at Shimla, vide award dated 25th May, 2015. Claimants, being the widow and sons of deceased Yoga Nand Bali, filed the claim petition. It was claimed that the deceased, being expert in herbal medicines, was earning Rs.8,000/- per month. The Tribunal, in paragraph 24 of the impugned award, has made detailed discussion and rightly held that the deceased was earning Rs.5,000/- per month and after deducting 1/3rd towards his personal expenses, the Tribunal concluded that the monthly loss of source of dependency to the claimants was Rs.3,330/-. In addition, 15% increase for future prospects was also given.

130. The age of the deceased, at the time of accident, was 60 years. The Tribunal has rightly applied the multiplier of 9. Apart from it, the Tribunal has also awarded Rs.1,00,000/- under the head loss of consortium i.e. spouse and Rs.25,000/- under the head funeral expenses.

131. Keeping in view the discussion made by the Tribunal in paragraph 24 of the impugned award and the pleadings of the parties, the amount of compensation awarded by the tribunal appears to be appropriate and needs no enhancement. Accordingly, the impugned award is upheld and the cross objections are dismissed.

132. As far as interest is concerned, the Tribunal has awarded interest in all the cases, at different rates i.e. 6%, 7.5% and 9% per annum. It is beaten law of land that the rate of interest should be awarded as per the prevailing rates, in view of the judgments rendered by the Apex Court in cases titled as ***United India Insurance Co. Ltd. and others versus Patricia Jean Mahajan and others,*** **reported in** ***(2002) 6 Supreme Court Cases 281****;* ***Santosh Devi versus National Insurance Company Ltd. and others,*** **reported in** ***2012 AIR SCW 2892****;* ***Amrit Bhanu Shali and others versus National***

Insurance Company Limited and others, **reported in** ***(2012) 11 Supreme Court Cases 738; Smt. Savita versus Binder Singh & others,*** **reported in** ***2014 AIR SCW 2053; Kalpanaraj & Ors. versus Tamil Nadu State Transport Corpn.,*** **reported in** ***2014 AIR SCW 2982; Amresh Kumari versus Niranjan Lal Jagdish Pd. Jain and others,*** **reported in** ***(2015) 4 Supreme Court Cases 433,*** **and** ***Mohinder Kaur and others versus Hira Nand Sindhi (Ghoriwala) and another***, reported in ***(2015) 4 Supreme Court Cases 434***, and discussed by this Court in a batch of FAOs, ***FAO No. 256 of 2010, titled as Oriental Insurance Company versus Smt. Indiro and others***, being the lead case, decided on **19.06.2015**.

133. Having said so, it is held that the amount of compensation, awarded in all the cases. shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till the deposit thereof.

134. The insurer is directed to deposit the enhanced amount, in all such cases where the amount is enhanced, within a period of eight weeks from today. The insurer is also directed to deposit the amount of compensation in FAO Nos. 305 of 2015 and 306 of 2015, wherein the Tribunal at

Rampur Bushahr had saddled the owner with the liability, within the same period.

135. On deposit of the amount, as above, the Registry is directed to release the amount of compensation alongwith up-to-date interest, in favour of respective claimants forthwith, through their respective bank accounts, strictly in terms of the impugned award. The statutory amount deposited by the owner-insured in fAO Nos.305 and 306 of 2015 is awarded as costs in favour of the claimants, in addition to the amount of compensation to be deposited by the insurer.

136. Since the rate of interest has been awarded at 7.5%, instead of 9% as awarded by the Tribunal in some cases, and the amount of compensation in three cases has also been reduced, therefore, the excess amount, if any, worked out in favour of the insurer, is directed to be refunded to the insurer through payees' account cheque.

May 27, 2016. **(Mansoor Ahmad Mir)**
(Tilak) **Chief Justice**