Motor Accident Claims Tribunal, Srinagar.

In the Case of:-

(1)

CNR NO: JKSG020017162012
File No: MACP/302/2018
Date of Institution: 09-02-2012
Reserved On: 05-02-2026
Date of Award: 11-03-2026

Mushtaq Ahmad Dar
S/o: Ghulam Rasool Dar
R/o: Bon Mohalla Hakabara near
Jamia Masjid, Tehsil Sumbal, Baramulla.

.....Petitioner

V/s

1- Ghulam Mohammad Makaya
S/o: Abdul Razak Makaya
R/o: Habakadal, Srinagar.
(Owner of vehicle)

2- Mohammad Ayoub Dendu
S/o: SadafullahDendu
R/o: HakanaraHakeembagh
(Driver of vehicle)

3- United India Assurance Company Ltd.,
through Its Divisional Manager,
Divisional Office
Wani Building Commercial complex,
Main Bus stand,
Batmaloo, Srinagar. (Insurer of vehicle)

4- Bilal Ahmad Pandit S/o: Gh. Mohd Pandit
R/o Barbar Shah, Srinagar.

....Respondents

Represented by: Mr. Kamran, adv for the petitioner
Mr. Sajad Ah. Shah, adv for insurance company,
Mr. M.A. Tibetbakal, adv. for other respondents

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(2)

CNR NO: JKSG020017742018
File No: MACP/303/2018
Date of Institution: 13-02-2012
Reserved On: 05-02-2026
Date of Award: 11-03-2026

Raja Begum (Aged 45 years)
W/o: Abdul Rashid Tantray
R/o: HakabaraSonawari,
Kosambagh near Water supply,
Tehsil Sonawri, Bandipora.
Through: Son, Ishfaq Rashid Tantray

.....Petitioner

V/s

1- Ghulam Mohammad Makaya
S/o: Abdul Razak Makaya
R/o: Habakadal, Srinagar.
(Owner of vehicle)

2- Mohammad Ayoub Dendu
S/o: SadafullahDendu
R/o: HakanaraHakeembagh
(Driver of vehicle)

3- United India Assurance Company Ltd.,
through Its Divisional Manager,
Divisional Office
Wani Building Commercial complex,
Main Bus stand,
Batmaloo, Srinagar. (Insurer of vehicle)

4- Bilal Ahmad Pandit S/o: Gh. Mohd Pandit
R/o Barbar Shah, Srinagar.

....Respondents

Represented by: Mr. Kamran, adv for the petitioner
Mr. Sajad Ah. Shah, adv for insurance company,
MrM.A.Tibetbakal,adv for other respondents

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(3)

CNR NO: JKSG020017732018
File No: MACP/305/2018
Date of Institution: 13-02-2012
Reserved On: 05-02-2026
Date of Award: 11-03-2026

Rafiqa Begum (Aged 30 years)
W/o: Ghulam Nabi Dar
R/o: Batagund Rakhi Hajin Sumbal, Sonawari,
Tehsil Sumbal, Distt. Baramulla
Through: Gh. Nabi Dar (husband)

.....Petitioner

V/s

1- Ghulam Mohammad Makaya
S/o: Abdul Razak Makaya
R/o: Habakadal, Srinagar.
(Owner of vehicle)

2- Mohammad Ayoub Dendu
S/o: SadafullahDendu
R/o: HakanaraHakeembagh
(Driver of vehicle)

3- United India Assurance Company Ltd.,
through Its Divisional Manager,
Divisional Office
Wani Building Commercial complex,

Main Bus stand, Batmaloo, Srinagar.
(Insurer of vehicle)

4- Bilal Ahmad Pandit S/o: Gh. Mohd Pandit
R/o Barbar Shah, Srinagar.

....Respondents

Represented by: Mr. Kamran, adv for the petitioner
Mr. Sajad Ah. Shah, adv for insurance company,
MrM.A.Tibetbakal, adv. for other respondents

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(4)

CNR No: JKSG020017632012
File No: MACP/111/2018
Date of Institution: 16-04-2012
Reserved On: 05-02-2026
Date of Award: 11-03-2026

Pervaiz Ganie/Malla
S/o: Ghulam Nabi Ganie
R/o: Dudbugh, Baramulla.

.....Petitioner

V/s

1- Mohammad Ayoub Denthoo (Driver)
S/o: Habibullah Denthoo
R/o: Hajin, Sumbal.

2-Ghulam Mohammad Makaya (Registered owner)
S/o: Abdul Razak Makaya
R/o: Habbakadal, Srinagar.

3-Bilal Ahmad Pandith
S/o: Haji Ghulam Mohd Pandith
R/o Sathoo, Barbarshah, Srinagra.

4- United India Insurance Company Limited
B/O Wani Building Batamaloo, Srinagar.
Under Policy No.111403/31/11/02/00001557
Valid upto: 09-01-2013.

....Respondents

Represented by:
Mr. Muzaffar Bakal Adv for petitioner
Mr. Sajad Ahmad Shah,Adv for the respondent I/C
Mr. Mohd Amin Tibet Bakal, Adv for other respondents.

Claim Petitions U/s 166 of M.V.Act.

Coram: Mr. Fayaz Ahmed Qureshi
JOCode:JK00169

A W A R D

1. In view of the common question of fact and law involved in the above mentioned four claim petitions, a composite award is passed to dispose of the claim petitions.
2. By order dated 26-11-2019 the above titled claim petitions, arising out of the same accident, have been clubbed and as such, the same were listed for disposal by virtue of common Award. As such, all the above titled petitions are considered for disposal and taken up hereinafter.
3. For clarity of facts of the claim petitions, it shall be profitable to give separate description of the claim petitions.
4. ## MACP No. 302/2018

Mushtaq Ahmad Dar V/S Gh Mohammad Makaya & Ors,.

1. The case MACP No. 302/2018 has its genesis in the accident

which took place on 10/01/2012 at Wayil Sumbal. The petitioner boarded the vehicle (Tata Bus) bearing registration number JK01B/0605 which was going from Sadhupora to Srinagar and while reaching near Wayil, the vehicle turned right side of the road and fell down 50 feet deep into the gorge. Eventually, the petitioner suffered multiple injuries to all the parts of body leading to permanent disability of the petitioner which is certified by the medical record of the hospital. It is claimed that the accident was caused due to rash, negligent and careless driving of the respondent No. 2 with respect to which FIR No. 10/2012 stood registered in Police Station Sumbal for the offences under Sections 279, 337, 427 RPC.

2. It is claimed that the petitioner was running the canteen out of which he was earning ₹ 12,000 per month which was source of sustenance of his family and education of his children. The petitioner has accordingly claimed compensation of ₹ 36 lakhs on various grounds mentioned in the petition.
3. After the service of the respondents, they appeared and filed their separate written statements. Meanwhile, the respondent No. 1 died and his legal heirs namely Ghulam Hassan Makaya was impleaded as respondent.
4. The respondents 1, 2 and 4 have filed one written statement while the respondent No. 3 has filed separate written statement. It shall be apposite to first precisely give resume of the objections taken by the respondents 1, 2 and 4 in their

written statement. It is stated therein that the petition is not maintainable for want of territorial jurisdiction as the alleged occurrence took place within the jurisdiction of MACT Bandipora. Further, it is stated that the vehicle admittedly met with an accident on 10/01/2012 at Sumbal Highway due to slippery road conditions caused due to snow and rain-fall. The vehicle rammed into the field and overturned causing injuries to the passengers. It is admitted that the respondent No-2 was the driver of the vehicle employed by respondent No. 4 (Bilal Ahmad) who, after being satisfied that the driver was holding valid and effective driving license, employed the driver. The respondent No. 1 is the registered owner of the vehicle who has sold the said vehicle prior to the date of the accident to respondent No. 4 and respondent No. 4 owns any liability which may accrue upon respondent No. 2 in the capacity of registered owner and the prospective owner undertakes to indemnify the insured against any liability. However, it is submitted that the vehicle stands insured with respondent No. 3 (United India insurance Co Ltd) in the name of respondent No. 1 and the insurance has been effected by the respondent No. 4 (prospective owner). The vehicle in question was insured prior to the date of the accident with ICICI Lombard insurance company which was effective from 07/01/2011 to 06/01/2012. But 7th and 8th January,2012 were public holidays being Saturday and Sunday and so, fresh insurance could not be effected during these two days and on 9th January, 2012 the respondent No. 4 approached the office

of respondent No.3 at Batmalloo who, after receiving the premium through the insurance agent, inspected the vehicle on 09/01/2012 and told the respondent for collection of the policy on the next date. On the next day on 10/01/2012, the vehicle met with an accident in which the vehicle overturned and damaged in Bandipora which is 30-40 km from Srinagar. The vehicle was lifted with cranes and took to police station Sumbal and as such, there was no scope for insuring the vehicle on 10/01/2012 which is the alleged date of accident of the vehicle as the vehicle was lying in police custody in damaged condition. The respondent No-4 has insured the vehicle on 09/01/2012 on which date premium was paid and other formalities were completed and on 10/01/2012, the vehicle, along with documents, was seized by police station and remained in the police custody for a period of more than 15 days.

5. The answering respondents deny negligence on the part of respondent No. 2 who tried his level best to avoid the accident but due to slippery road conditions the vehicle met with the accident. As regards quantum of compensation, the answering respondents submitted that the same is highly exaggerated and excessive and if any compensation is the entitlement of the petitioner, the same is to be paid by the insurance company with whom the vehicle stands insured on the date of the accident and being indemnifier, the insurance company has to pay the compensation to the claimants.
6. The respondent No. 3 (United India insurance Co Ltd) has also

filed written statement but the written statement seems to be an academic book including exhaustive excerpts from the cited judgments although it is settled position of law that only facts and facts have to be pleaded in the pleadings and not the law. In any case, the respondent No. 3 filed an exhaustive written statement running on many pages. The precise contention of the insurance company is that the accident by the offending vehicle bearing registration number JK 01B/0605, as per the police records/FIR No. 10/2012 dated 10/01/2012 of police station Sumbal, took place on 10/01/2012 at 10 AM. Since the offending vehicle was not insured at the time of the accident the owner of the vehicle deceitfully approached the insurance company on the same day i.e 10/01/2012 at 3 PM for insuring the vehicle by concealing the material fact that the vehicle had already met with an accident in the morning at 10AM on 10/01/2012. The answering respondent in *good faith* and *bona fide* manner prepared/signed the Proposal Form at 3PM on 10/01/2012. The vehicle was registered in Break In Insurance Gap Cases Register vide serial No. 898. The respondent insurance company in good faith and bona fide manner insured the offending vehicle categorically mentioning that the risk commences w.e.f. 15:14 hours on 10/01/2012 midnight on 09/01/2013. Therefore, it is crystal clear that at the time of the accident i.e 10 AM on 10/01/2012 the offending vehicle was not insured with the answering respondent and therefore, the answering respondent may be deleted from the array of the

respondents.

7. It is further stated that the owner has approached this Tribunal with *malafide* intention with his defence on the basis of the deceitfully obtained insurance policy which must be viewed seriously and panel action may be taken against the owner of the crime vehicle. It is further explained that the insurance contract becomes effective from the date mentioned in the insurance policy and not from any previous date. For this purpose, various judgments have been cited by the insurance company which have been again cited at the stage of arguments and therefore, the same shall be mentioned at appropriate stage in the later part of this award. Further, it is stated by the insurance company that suppression of the material information of the accident of the vehicle before obtaining the insurance policy, is a fraud which must be dealt with seriously.
8. Therefore, on the basis of the main objection raised by the insurance company it is stated that the insurance company is not liable to pay any compensation in favour of the petitioners and as such, it has been prayed that the claim petition may be dismissed.
9. After considering the respective pleadings of the parties this Tribunal has framed the following issues on 17/04/2013:
    1) Whether on 10/01/2012, a vehicle (Tat Bus) bearing registration No. JK01B/0605 being driven by respondent No. 2 rashly and negligently from Sadhupora to Srinagar and on reaching near Wayil the

vehicle twisted/trembled to right side of the road and fell down into 50 feet deep gorge resulting in the petitioner, who was travelling in the said vehicle, suffered multiple injuries all over the body? OPP

2) Whether the respondent-driver was driving the offending vehicle with invalid and ineffective DL and other vehicular documents like RP, RC on the material date of the accident, if yes, the respondent insured has committed breach of policy stipulations, absolved the respondent No. 3 (company) from its liability on account of petitioner's claim? OPR-3
3) In case the issue No. 1 is proved in affirmative, what amount of compensation the petitioner is entitled to, from whom and in what proportion? OPP
4) Relief?

5. MACP No 303/2018

Mst Raja Begum V/S Gh Mohammad Makaya & Ors.,

1. The case MACP No. 303/2018 is also outcome of the accident which took place on 10/01/2012 at Wayil Sumbal. The petitioner boarded the vehicle (Tata Bus) bearing registration number JK01B/0605 which was going from Sadhupora to Srinagar and while reaching near Wayil, the vehicle turned right side of the road and fell down 50 feet deep into the gorge. Eventually, the petitioner suffered multiple injuries to all the parts of body leading to

permanent disability of the petitioner which is certified by the medical record of the hospital. It is claimed that the accident was caused due to rash, negligent and careless driving of the respondent No. 2 with respect to which FIR No. 10/2012 stood registered in Police Station Sumbal for the offences under Sections 279, 337, 427 RPC.

2. It is claimed that the petitioner was doing labour work out of which she was earning ₹ 12,000 per month and was supporting her family to a great extent. The petitioner is under continuous treatment due to her injury and disability. The disability has affected the daily life of the petitioner. The petitioner has accordingly claimed compensation of ₹ 36 lakhs on various grounds mentioned in the petition.
3. After the service of the respondents, they appeared and filed their written statements. Meanwhile, the respondent No. 1 died and his legal heirs namely Ghulam Hassan Makaya was impleaded as respondent. The reply filed in MACP 302/2018 by the respondents is same in MACP 303/2018 and therefore, it will be useless to reproduce the same here. The issues framed in the above matters are also same and so it will not serve any purpose to recite the issues repeatedly.

6. MACP 305/2018

Rafiq Begum V/S Gh Mohammad Makaya and ors.,

1. The case MACP No. 304/2018 is another case arising out

of the accident which took place on 10/01/2012 at Wayil Sumbal. The petitioner boarded the vehicle (Tata Bus) bearing registration number JK01B/0605 which was going from Sadhupora to Srinagar and while reaching near Wayil, the vehicle turned right side of the road and fell down 50 feet deep into the gorge. Eventually, the petitioner suffered multiple injuries to all the parts of body leading to permanent disability of the petitioner which is certified by the medical record of the hospital. It is claimed that the accident was caused due to rash, negligent and careless driving of the respondent No. 2 with respect to which FIR No. 10/2012 stood registered in Police Station Sumbal for the offences under Sections 279, 337, 427 RPC.

2. It is claimed that the petitioner was doing labour work out of which she was earning ₹ 7,000 per month and was supporting her family to a great extent. The petitioner is under continuous treatment due to her injury and disability. The disability has affected the daily life of the petitioner. The petitioner has accordingly claimed compensation of rupees twenty-six lakhs (Rs.26,00,000) on various grounds mentioned in the petition.
3. After the service of the respondents, they appeared and filed their written statements. Meanwhile, the respondent No. 1 died and his legal heirs namely Ghulam Hassan Makaya was impleaded as respondent.

The reply filed in MACP 302/2018 by the respondents is same in MACP 305/2018 and therefore, it will be useless to reproduce the same here. The issues framed in the above matters are also same and so it will not serve any purpose to recite the issues repeatedly.

7. MACP 111/2018

Parvaiz Ganai V/S Mohammad Ayoub Denthoo and ors.

1. The same occurrence of 10/01/2012 is the basis of filing the instant claim bythe petitioner. It is stated that on 10/01/2012, the petitioner, along with other passengers, was travelling in a vehicle bearing registration number JK01B/0605 and on reaching near Sumbal the driver lost control over the vehicle which landed in a ditch resulting in laceration of left upper abdomen, fracture of both bones of right forearm with multiple injuries over body of the petitioner. The petitioner was rushed to SKIMS Bemina where the petitioner remained admitted for 15 days and during the course of treatment, the patient was operated upon and he is still under the treatment of various doctors. It is claimed that the accident was caused due to rash, negligent and careless driving of the respondent No. 2 with respect to which FIR No. 10/2012 stood registered in Police Station Sumbal for the offences under Sections 279, 337, 427 RPC.
2. After the service of the respondents, they appeared and

filed their written statements. Meanwhile, the respondent No. 2 namely Gh Mohammad Makaya died and his legal heirs namely Ghulam Hassan Makaya was impleaded as respondent. The reply filed in MACP 302/2018 by the respondents is same in MACP 111/2018 and therefore, it will not serve any purpose to reproduce the same here. Since the issues are slightly different in this case in language but same in substance and so, issues framed on 17/04/2013 are quoted below:

1) Whether on 10/01/2012, a vehicle bearing registration No. JK01B/0605 being driven by respondent No. 1 rashly and negligently, and on reaching near Sumbal the driver lost control over the vehicle which landed in a ditch as a consequence of which the petitioner namely Parvaiz Ganai who was travelling in the said vehicle sustained multiple injuries all over his body? OPP
2) Whether the owner of the offending vehicle permitted the driver (respondent No.1) to ply the vehicle with invalid and effective DL on the material date of accident, if yes, the insured has committed breach of policy stipulations, absolved the respondent-company from its liability on account of petitioner's claim? OPR-3
3) In case the issue No. 1 is proved in affirmative, what amount of compensation the petitioner is

entitled to, from whom and in what proportion? OPP

4) Relief?

8. Determination of Issues:

For proper determination of the claim petitions, it shall be appropriate to take up the issues one by one:

Issue No.1

1) Whether on 10/01/2012, a vehicle (Tat Bus) bearing registration No. JK01B/0605 being driven by respondent No. 2 rashly and negligently from Sadhupora to Srinagar and on reaching near Wayil the vehicle twisted/trembled to right side of the road and fell down into 50 feet deep gorge resulting in the petitioner, who was travelling in the said vehicle, suffered multiple injuries all over the body? OPP

9. This is a common issue in all the above petitions as this issue has emerged out of the same occurrence. The evidence led is also common which has been adopted in all the four cases. Moreover, by virtue of award dated 24/04/2017 passed in a separate case, the same issue of negligence of the driver of the offending vehicle has been already decided in affirmative. The onus to prove this Issue is on the petitioners. The petitioners have produced five witnesses to prove Issue No. 1. Their testimonies are precisely recited in the following paragraphs.

10. Gh Nabi Dar S/O: GhMohiudin Dar (hereinafter referred to as PW-1) has appeared on 06/03/2014 before this Tribunal and on questioning by the counsel for the petitioner stated that one

vehicle was going from Sadhunara Sumbal to Srinagar in a very fast speed and the witness was also travelling in the same vehicle. There were many passengers and the vehicle was fully loaded. The witness along with other passengers requested the driver to drive the vehicle slowly due to slippery condition of the road. On reaching near Sumbal bridge, the driver driving the vehicle speedily, got confused and steered the vehicle right side leading to overturning of the vehicle and falling 70 feet deep into the gorge. The passengers went unconscious. The witness gained consciousness after sometime and found that almost all the passengers were injured. The passengers namely Shamima Begum, Mushtaq Ahmad, Raja Begum, Rafiqa Begum wife of the witness, Abdul Majid Dar and Ahjaz Ahmad and others got injured in the accident. The police and CRPF came on the spot. The injured were referred to local hospital and then some of them were referred to JVC Bamina. However, Shmeema Begum W/O: Mohd Altaf Khowaja admitted in the hospital for about 10 days, succumbed to the injuries. The occurrence took place on 10/01/2012. The wife of the witness remained in hospital for 22 days as she had a crush fracture in her spine. The witness got injured in his right eye. The wife of the witness was admitted in JVC hospital where pins were inserted in her spine after performing surgery. The necessary surgery items were purchased from the market. The petitioner incurred an amount of rupees two and half lakhs. The wife of the petitioner has permanent disability of 60% and she is not able to do anything. The certificate has been issued by medical Board Bandipora vide No.

345/09/07/2012. She is under continuous medication and requires weekly consultation with the doctor at JVC.

In cross-examination by the Ld. counsel for respondents 1, 2 and 4, the witness stated that he has studied up to 8th class. On the day of occurrence, he was sitting beside his wife. There were 52 passengers on board in the vehicle. Almost 15 passengers were standing. 20 passengers got injured including the petitioner, his wife and the persons mentioned above apart from other persons. The witness knew the driver as he was regularly plying on the same route. On the day of occurrence, some snow had fallen. Since the driver was driving the vehicle very fast and it slipped from the ice on the road and fell into the gorge. The receipts of the medical expenses incurred on the treatment of wife of the witness are available with the witness which he can produce. The witness has sold his land to his brother to meet the expenses. The witness was not himself injured. In cross-examination by the Ld. counsel for the insurance company, the witness stated that the occurrence took place on 10/01/2012 at about 10 AM. The police also came on the spot.

11. Ishfaq Rashid Tantray S/o: Abdul Rashid Tantrey ((hereinafter referred to as PW-2) has appeared before this Tribunal on 06/03/2014 and stated on questioning by the Counsel for the petitioners that the occurrence is of 10/01/2012 at about 9:30AM which happened at Sudhunara Sumbal. The vehicle was going towards Srinagar. The driver of the vehicle was driving the vehicle very fast and the passengers asked him to drive slowly but he did not pay any heed. There were about 32 passengers travelling in

the vehicle. On reaching near Sumbal bridge, the driver's turned the vehicle fast leading to ramming down of the vehicle hundred feet deep the road. The tyres of the vehicle turned upside in the accident. The passengers got injured and one lady namely Shamima Begum wife of Altaf Ahmad Khowaja died. Almost five of the passengers got seriously injured and almost 15 passengers had normal injury. Amongst the seriously injured passengers, Raja Begum mother of the witness is also included. Rafiqa W/O: Gh Nabi Dar, Abdul Majeed Dar, Parvaiz Ahmad Ganai, Mushtaq Ahmad Dar and Shameema Begum got injured but Shamima died later on. The Army came on the spot who rescued out the passengers from the bus. The injured were referred to local Sumbal hospital wherefrom they were referred to JVC hospital Srinagar for treatment. The mother of the witness remained admitted in JVC for 5/6 days and then she was referred to SKIMS Soura where she was admitted for 12 days. She was again referred to JVC for her surgery and she remained admitted there for 13 days. Almost two to two and half lakhs were spent on her treatment. The mother of the witness cannot walk properly as her spine is wrapped in belt and her arm has plaster. The mother of the witness still requires regular checkup. The witness produced one disability certificate issued vide No. 394 dated 24/7/2012 as per which the mother of the witness has 50% disability.

In cross-examination by the Ld. counsel for respondents 1, 2 and 4, the witness stated that he along with his mother were travelling in the offending vehicle. There were about 40/45 passengers on board. After they boarded the bus and travelled

around 9 kms, the accident took place. On that date, snow was falling but road was not slippery. After 10/20 minutes of the accident, they were removed by the Army from the bus as by that time the police had not arrived. The injured were referred to local hospital in a private sumo. The police came to Sumbal hospital and also to SKIMS. After the accident, the police came to the spot of occurrence. The witness deposed before the police. The police seized the vehicle on the spot. Brother-in-law of the witness of works in police who informed the witness about it. In cross-examination by the Counsel for the insurance company, the witness stated that the occurrence took place on 10/01/2012 at about 9:30 AM. The witness deposed before the police in Soura hospital.

12. Abdul Majeed Dar S/O: Ahad Dar (hereinafter referred to as PW-3) has stated on questioning by the petitioner that the occurrence took place on 10/01/2012. The witness had to go to Srinagar and he boarded the bus from Sadanara to get grocery for his shop. When the vehicle reached Sumbal, the driver was driving the vehicle very fast who lost control over the vehicle and threw the vehicle on the right side of the road into a gorge. The witness lost his consciousness and he regained consciousness in JVC hospital Srinagar. There were so many passengers on the bus who got injured and one passenger succumbed to injuries. Rafiqa and others were injured in the accident. The witness remained admitted in the hospital for about 10 days and he was advised weekly follow-up by the doctors and the witness would book a sumo(vehicle) to go to the hospital and would pay ₹ 2000 per trip.

The witness spent an amount of ₹ 80,000 on his treatment and medicine until the date of statement before the Tribunal. The witness arranged money from sale of his land and grocery items of his shop. Before the accident, the witness would earn an amount of ₹ 10,000 per month. After the accident nothing is done by him and he has dependency of his wife and two minor children for maintenance. The financial condition of the witness has turned worst. The witness got injuries in his right leg. The witness can walk a little. In cross-examination by the Counsel for the insurance company, the witness stated that the occurrence took place at 10 AM and at that time he was sitting on the seat in the bus. However, the bus was not overloaded. The witness deposed after regaining consciousness in JVC hospital. In cross-examination by the Ld. counsel for respondents 1, 2 and 4 the witness stated that he does not know who took the injured to hospital. The witness regained consciousness after 4/5 days of the accident. Dressing of his leg was done in the hospital and some tests were also done. However, the leg of the witness was not fractured. The shop of the witness was on rent basis taken from Mohd Abdullah Dar. The witness knows the injured Rafiqa and Raja from the date of accident.

13. Parvaiz Ahmad Ganai S/o: Gh Nabi Ganai(hereinafter referred to as PW-4) appeared before the Tribunal on 08/05/2014 and stated on questioning by the Counsel for the claimant/himself(in MACP No.111/2018) that on 10/01/2012 he boarded one bus from Hajin towards Srinagar and on reaching near Sumbal bridge, the bus bearing the registration number JK01B 0605 overturned and fell

into a gorge causing injuries to all the passengers including the petitioner/the witness who got severely injured. The witness was taken in injured condition to JVC Hospital where he was operated in emergency because he had sustained some internal injuries. After remaining admitted there for about one month, another surgery was also performed on his right arm. Pins were inserted in his arm. The witness/petitioner was discharged after one and half month from the hospital and he was advised follow-up in JVC hospital where he would visit after every 10 days and this is still continuing. Another surgery is also required to be performed to treat his internal injury. The witness bore his expenses on medicines and other items which were purchased from the market. The witness was working as a baker but after the accident he cannot do anything. The witness would earn an amount of ₹ 8000 per month. The witness would require a private vehicle to visit the hospital for which he would charge ₹ 500 each side of the trip. In cross-examination by the Counsel for the insurance company, the witness stated that the occurrence took place on 10/01/2012 at about 9:30 AM. The bus was not overloaded. There are some receipts of expenses available which he can present before the Tribunal. The witness was an employee at a baker shop of Mohammad Sultan Dar. The witness does not have any receipt of payment made for hiring sumo vehicle. In cross-examination by the Counsel for other respondents, the witness stated that at the time of the accident he was sitting on the seat in the bus accompanied by his wife. On that day, it was snowing but the road was open. The police did not come on the spot in

presence of the witness. It is true that the vehicle turned upside down. The witness was taken to hospital by the locals to whom he does not know. So many passengers got injured in the accident but the witness does not know them. The witness was paid rupees eight thousand per month as salary. JVC hospital is a government hospital. The witness did not get any compensation from the government.

14. Rafiqa Begum W/O: Gh Nabi Dar (hereinafter referred to as PW-5) appeared before the Tribunal on 09/12/2014 and stated on questioning by the Counsel for the petitioner/the witness that she boarded the bus from Sudhnara Hajin would Srinagar. It was winter. The vehicle was driven by one driver residing in Hajin. The road was slippery and the passengers told the driver to drive the vehicle slowly but he did not act upon and on reaching Sumbal, the speedily driven vehicle overturned. The witness got injured and fell unconscious who was taken to hospital. She received injury in her spine. There were other passengers on board in the bus who got injured and one lady died succumbing to the injuries namely Mst Shameema. There were others also but she does not remember their names. The witness was referred to JVC Hospital Bemina where she was admitted for about one month under treatment. She was operated in spine twice in the hospital. The medicines were purchased from the open market. She remained confined to bed at home for about 3 months and during that time,after every week she would visit the hospital for follow-up and then it continued for 6 months. The petitioner cannot do any work due to the accident and she is totally idle. Almost ₹ 2 lakh

has been spent on her treatment. She was doing embroidery work and would earn ₹ 500 to 800 per day but after the accident she cannot do it. One rod was implanted in her spine after performing surgery and that was removed by performing another surgery. In cross-examination by the Counsel for the insurance company, the witness stated that the occurrence took place at about 8 AM. The vehicle was not overloaded. On questioning by the Counsel for the other respondents, the witness stated that she is not illiterate. She was taken to hospital by her husband who was also travelling in the same bus and he too got injured. She was treated by Dr Sohail in the hospital but he did not charge any fee. The medicines were purchased from the market by husband of the witness. The receipts of the same were presented. The witness was sitting on the seat in the bus. She was taken in a sumo vehicle hospital.

15. In addition to it, certified copy of the chargesheet has also been placed on record. Perusal of the chargesheet reveals that on receiving a report from reliable sources, FIR No. 10/2012 came to be registered in Police Station Sumbal for the commission of offences under Sections 279, 337, 427 RPC. It is stated that it was learnt from reliable sources that one bus bearing registration number JK01B/0605 driven by the driver namely Mohd Ayoub Denthoo S/o: Habibullah Denthoo from Saidunara Srinagar fell into 50 feet deep gorge. As a result of that, the passengers travelling in the bus got injured and they were shifted to nearby hospital for treatment. The occurrence took place due to the sheer negligence, carelessness and fast driving of the driver of the offending vehicle. On the basis of the investigation, chargesheet

has also been presented against the same driver before the court of law. However, during the course of treatment of the injured, one Shameema Begum died and offence under Section 304A RPC was added.

16. The chargesheet reveals that injury memos of the passengers show that the above-mentioned persons were injured in the accident with complaint of different injuries. Injury memo pertaining to Mushtaq Ahmad Dar S/O; Gh Rasool Dar, aged 47 years shows that he had simple injury in head and the doctor opined it to be simple injury. Raja Begum W/O; Abdul Rasheed Tantrey, aged 50 years, had injury in head, fracture in right arm and blood oozing in left foot. She has 50% permanent disability proved during inquiry. Rafiqa Begum aged 30 years injured in the accident has 60% permanent disability. Parvaiz Ahmad Ganai had fracture of both bones of right arm which was operated and plating was done.

17. Dr S.D Paljor retired Head of Department, Department of Orthopedics, SKIMS Medical College Bemina has appeared before this Tribunal on 28/08/2018 and stated that on 10/01/2012 he was posted as Head of Department and as per the discharge summary, the patient namely Parvaiz Ahmad Ganai was admitted in Department under MRD No. 120903 and he was discharged on 25/01/2012. The patient was a case of alleged history of RTA with fracture of both bones of right forearm. In addition to that, he had abdominal trauma, which was treated by the general surgeon. The patient was operated upon right forearm on 24/01/2012 and plating was done. The witness further stated that post-surgical

complications can be infection at the operated side and losing of the implants. The patient was advised not to use his affected limb for 3 months and after that he can use the said limb normally. In cross-examination, the witness stated that he has not personally treated the patient but it was pertaining to his department headed by him. The witness further stated that he cannot depose about the present position of the patient. The witness has not issued any permanent disability certificate in favour of the patient. Another medical witness namely Dr Ahjaz Ahmad Rather, HOD (surgery) SKIMS Bemina stated that on 24/03/2016 he was posted as HOD of the surgical Department of SKIMS JVC Bemina. The petitioner has been operated under MRD No. 024500 for para-colostomy hernia and mesh was implanted. As per the photo copy of discharge summary of the patient, he was admitted on 24/03/2016 and discharged on 31/03/2016. As per the history of the patient, he was referred as a case of pain in lower abdomen, had swelling 6 months ago in the same region. The petitioner had to purchase the mesh from the open market for a cost of ₹ 2000. Such type of patients need regular care and follow-up treatment as they have to change the colostomy bags on a regular interval till the operation is reversed. Such a person may need disposal bags on daily or reusable bags on weekly basis. The Patient has to take care while managing his day-to-day routine as the bag is prone to get damaged with heavy strenuous work. The patient has to come to the hospital for regular follow-ups and initially such patients need attendant's assistance for managing day-to-day affairs. In cross-examination by the Counsel for the respondents, the

witness stated that he has not seen any prescription on record issued by the witness. It is true to suggest that there can be many reasons for doing colostomy surgery which was done because the patient had developed hernia which was managed by implanting mesh. There can be no disability and the person came do normal work.

18. In view of the evidence produced by the petitioners including copy of the chargesheet, this Tribunal has come to an inescapable conclusion that the driver of the offending vehicle namely Mohd Ayoub Dendu was driving the vehicle rashly and negligently which fell into a deep gorge near bridge at Sumbal causing injuries to the petitioners of different nature. Otherwise also, there is no denial to the fact that the accident has taken place but only negligence of the driver was denied. The fact is not denied that chargesheet has also been presented after proper investigation against the same driver for the commission of offences under Sections 279, 337, 338,427, 304A RPC culminating investigation of FIR 10/2012 of PS Sumbal. The standard of proof in enquiry under Motor Vehicles Act for determining compensation is not as heavy as in a criminal trial or a civil trial. Even if a person charged for the commission of offences under Sections 279, 337, 338, 427, 304A RPC is acquitted, still the for conclusion of the investigation it(chargesheet or clear FIR) is a sufficient proof to be acted upon unless the same is in conflict with the evidence produced before the Tribunal. The evidence produced before this Tribunal as well as the chargesheet to the extent of negligence, carelessness and fast driving of the driver of the offending vehicle, concur in its

conclusion and as such, the chargesheet can be safely relied upon as the same is in consonance with the evidence adduced before this Tribunal.

19. In view of the above, Issue No. 1 is decided in favour of the petitioners in all the clubbed petitions and against the respondents.

20. Issue No-2

Whether the respondent-driver was driving the offending vehicle with invalid and ineffective DL and other vehicular documents like RP, RC on the material date of the accident, if yes, the respondent insured has committed breach of policy stipulations, absolved the respondent No. 3 (company) from its liability on account of petitioner's claim? OPR-3

The burden to prove this issue is on the insurance company but unfortunately, the insurance company took a lot of time and despite that, did not prove Issue raised. Contrarily, one xerox copy of a document purported to be driving licence bearing 6038/MVD (sick) effective from 08/01/2005 in the name of Mohd Ayoub Dendu*prima facie* shows that the driver was having driving license at the time of the accident and that must have been the reason that the respondent-insurance company did not lead any evidence. Besides that, in the written statement filed by the driver, the driver has claimed that he was having a valid and effective driving license at the time of the accident. Therefore, the respondent No. 3 has failed to prove this Issue and as such, the same is decided against respondent No. 3 and in favour of

the petitioner and private respondents.

21. Issue No-3:

In case the issue No. 1 is proved in affirmative, what amount of compensation the petitioner is entitled to, from whom and in what proportion? OPP

1. This issue has four aspects such as- the amount of just compensation, who is entitled to it, who is liable to pay it and what is the proportion of compensation. The ultimate duty of this Tribunal is to determine just compensation.
2. Both the Issues numbering 1 and 2 have been decided in favour of the petitioners. As a consequence thereof, this Tribunal is mandated upon to the decide the amount of just compensation to which the petitioners are entitled and from whom the same has to be obtained.
3. The prime role of this Tribunal revolves around this Issue for determination of which an enquiry is held in terms of section 168 of the Motor Vehicles Act, 1988. This Issue underlines the role of this Tribunal which is to decide about just compensation and for this purpose, an enquiry is held in which an opportunity of being heard is given to the parties. As far as the question of amount of compensation is concerned, it is apposite to notice that the provisions of the Motor Vehicles Act, 1988 make it clear that the Award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to accident and by now, it is the settled legal position that

the object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. Regarding this point, it is profitable to re-produce the relevant observation of the Hon'ble Supreme Court of India from judgment of case titled: 'Syed Bashir Ahmed and others Vs. Mohd. Jameel and others', reported in 2009 ACJ 690 (SC), which is as under:

> "9. Section 168 of the Act enjoins upon the Tribunal to make an award determining "*the amount of compensation which appears to be just*". However, the objective factors, which may constitute the basis of compensation appearing as just, have not been indicated in the Act. Thus, the expression "*which appears to be just*" vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation. Similarly, although the Act is beneficial legislation, it can neither be allowed to be used as source of profit, nor as windfall to the persons affected nor should it be punitive to the person liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus between

the loss incurred by the dependent of the deceased and the compensation to be awarded to them. In nutshell, the amount of compensation determined to be payable to the claimant(s) has to be fair and reasonable by accepted legal standards".

22. Before adverting to determination of the just compensation, it shall be appropriate to adjudicate upon as to whether these claims are maintainable against the insurance company which has taken a preliminary objection that as on the date of the accident, the risk was not covered because the accident took place in the morning at about 10 AM of 10/01/2012 and by suppression of material facts, insurance has been effected at 15.14 hours of 10/01/2012.

23. For adjudication upon this Issue, another very important and serious point that is required to be decided, is that whether as on the date of accident the offending vehicle was insured or not, and second limb of the same point is that whether by receipt of the premium, the policy will be effective from the date of the premium or from the date of time mentioned in the cover note of the policy. In this regard, exhaustive arguments of learned counsels for the respondents 1, 2 and 3 have been heard. They have also filed detailed written arguments as well.

24. To sum up the arguments, learned counsel for the insurance Company has argued that the accident has admittedly taken place on 10-01-2012 at 10:00AM while the insurance policy has been issued on 10-01-2012 effective from 15:14 hours which means that at the time of the accident which took place at 10:00 hours on the

same day of 10-01-2012 there was no policy. The insured namely Mr. Ghulam Mohammad Makaya misrepresented deceitfully before the insurance company and concealed the accident to obtain insurance policy on the same date. Learned counsel for the insurance company states that since the contract of insurance is a contract of good faith and the insured has played fraud on the insurance company by projecting that the vehicle was stationed outside the office of the insurance company which was not found there and the insured assured the officer of the insurance company that the vehicle was stationed at some different place and so, on his assurance, Proposal Form was handed over to the insured who managed the same and submitted the Proposal Form on 10-01-2012 concealing the material fact that the vehicle had already met with the accident on the same day at 10:00 a.m. As such, departmental action was initiated against the official of the insurance company for dereliction of his duty in issuing the insurance policy without proper satisfaction as to the accident and condition of the insured vehicle before issuance of the policy. However, learned counsel submits that in the policy, the time and date is mentioned and the insurance policy is effective from that date and time and not from the midnight of 10-01-2012 as contended by the other side. Learned counsel has referred to various judgments to make out his point. Further, learned counsel for the insurance company has contended that otherside has raised a claim that premium was paid on 09-01-2012 which he vociferously refutes. He contends that as per record the premium was received on 10-01-2012 at 15:26 hours and not on 09-01-2012

as pleaded by the other side and as such, the contention of the learned counsel for respondents 1 and 2 is without any factual basis and secondly, even if it is assumed that the premium was paid on 09-01-2012 still the terms and conditions have to be settled by the parties and the effect of the policy in view of the settled position of law in various judgments cited by the learned counsel for the insurance company, shall be effective from the date and time given in the policy and so, the insurance company may be exonerated and since there was no contract of insurance at the time of the accident, "pay and recover principle" will not apply as the company is not totally concerned with the damage which arose out of the use of the offending vehicle which was not insured at the time of the accident with the respondent-Insurance Company.

25. Per contra, learned counsel for the respondents 1 and 2 contends that the vehicle was initially insured with ICICI GIC from 07-01-2011 to 06-01-2012 (Midnight). But 7th and 8th January were Saturday and Sunday and as such, due to holidays, the fresh insurance could not be effected on these days and on 09-01-2012, the respondent No.4 approached the office of the respondent No. 3 at Batamalloo who after receiving the premium through insurance agent inspected the vehicle on 09-01-2012 and asked the respondent No. 4 for collection of the policy on the next date i,e., on 10-01-2012. On the next date i,e., on 10-01-2012 the vehicle met with an accident in Bandipora. The vehicle was lifted with crane and taken to police station Sumbal, as such, there was no scope for insuring the vehicle on 10-01-2012 as the vehicle was

lying in police station on that day. Learned counsel contends that actually the vehicle was insured on 09-01-2012 when the premium was received by the agent of the insurance company and other formalities were completed on 10-01-2012. The vehicle along with document was seized by police and it remained in police custody for more than 12 days. As such, learned counsel for the respondents 1,2, and 4 vehemently contends that the insurance policy is deemed to be effective from the date of the premium received and otherwise also if 10-01-2012 mentioned in the cover note of the insurance policy is assumed to be true the policy is to be effective from mid night of 10-01-2012 which is 12:01 hours. The occurrence which took place on the same date at 10:00 a.m, is as such covered under the policy. But to highlight this, learned counsel for the private respondents refers to premium receipt which shows 10-01-2012 as the date of collection of the premium and at the bottom of the same receipt, the time appears to be as " 10-01-2012: 15.26.27-3-3". This time at the bottom of the receipt seems to be the insertion in the receipt which, according to the learned counsel for the private respondents shows that the premium has been received after giving effect to the policy from 15.14 hours on 10-01-2012. Learned counsel refers to the statement of the witness of the insurance company namely Rakesh Wantoo who has been examined before the Tribunal and admits that the procedure adopted for insuring the vehicle is to first inspect the vehicle, trace its chassis and engine number, see the vehicular documents and thereafter the insurance company gets the vehicle insured. Furthermore, the witness admitted that

the insured has to first pay the premium and thereafter the policy is issued and the policy cannot be issued without the payment of the premium. Learned counsel for the private respondents has built his arguments on the point that it is not possible to issue policy without taking premium as is admitted by the branch manager of the insurance company in his statement before this Tribunal and so, learned counsel questions the date and time on the receipt of the premium alleging it to be manipulated insertion at the bottom of the receipt and he says that it is unusual to see insertion as against the contract of the insurance company which are issuing premium receipts in different formats. Another contention of the learned counsel for private respondents is that if assuming that on 10-01-2012 insurance is given effect but the same has to be effective from 12.01 hours (mid night) instead of 15.14 hours mentioned in the insurance policy and for this, he relies upon certain judgments which shall be referred in later part of this award. Further, learned counsel for the private respondents has relied upon testimonies of Gulzar Ahmad Guroo, Mohammad Yousuf Shoda and Bilal Ahmad Pandit to prove the fact that the vehicle was inspected by insurance agent namely Ghulam Nabi Khan on 09-01-2012 and Bilal Ahmad Pandit-the owner of the offending vehicle handed over cash amount to the insurance agent on 09-01-2012 and completed all the formalities. These testimonies are relied upon to establish that all the formalities were completed on 09-01-2012 including payment of premium to the insurance agent and so, the stand of the insurance company that the policy is effective from 10-01-2012 is

bereft of any merit and the same is aimed at avoiding the liability of insurance company which has accrued out of the accident which took place on 10-01-2012 at 10:00 a.m. Besides, statement of inspector Zafar Iqbal, examined by the counsel for the private respondents, has also been relied upon by the learned counsel for the private respondents to make his point that on 10-01-2012 the vehicle was in the custody of the police where it remained for 10-15 days and the witness admitted that the police cannot permit the insurance company to effect insurance without permission of the court after the vehicle is seized and kept in police station. Perusal of the record reveals that a copy of the insurance policy attested by the respondent-insurance company has been placed on record which reveals that policy No. 111403/31/11/02/00041557 has been issued against vehicle No. JK01B-0605 and the policy commences from 15.14 hours on 10-01-2012 to (Midnight) of 09-01-2013 and the name of the insured is Ghulam Mohammad Makaya S/o: Abdul Razaq R/o: Habakadal Srinagar. The attested copy of the receipt of the premium No. 48989 reflected at the top right of the receipt that an amount of Rs. 27769/- has been collected on 10-01-2012 against collection No.111483/87/11/0000002158. In the policy No. 111403/31/11/02/00001557(The policy of the offending vehicle) the premium amount of Rs.27769 is shown to have been collected vide receipt No. 111403/81/11/0000002 on 10/01/2012. During the time the file was reserved for judgment, certain clarification was required with respect to some misprint in the premium receipt bearing No. 48989 at the bottom margin of which date of print and time is mentioned and also with regard to fresh copy of insurance

policy/cover note in which confusion arose with respect to receipt No. of the premium collected from the insured. Accordingly, learned counsel Mr. Sajad Ahmad Shah, representing the insurance company obtained fresh print out of the insurance policy, a schedule of premium/premium details, receipt (duplicate of premium) and certificate of compliance U/s 64 VB of Insurance Act 1938 from the office of respondent-Insurance Company and produced before this Tribunal.

26. After considering the rival arguments of the parties there arise two sharp points for determination by this Tribunal. The first point is totally factual where the private respondents have to establish the date of payment of the premium and the second point is on the basis of proof of the premium on 09-01-2012 what is the time of commencement of the risk covered under the policy. Further, if the premium has been received on 10-01-2012 whether the policy will be effective from Midnight of 10-01-2012 or from 15.14 hours mentioned in the period of insurance in cover note of the insurance policy.

27. For determination of first point, it shall be appropriate to precisely refer to the evidence led by the respective parties. The private respondents have produced the following witnesses:

28. RWP-1 namely, Gulzar Ahmad Guroo has stated that he is associated with transport business for many years and he has been partner of one Bilal Ahmad Pandith for years together and because of that he is aware about the facts of the present case. The vehicle owned by Bilal Ahmad Pandith was previously insured with ICICI Lambard General Insurance Company which was

scheduled to expire on 06-01-2012. On 09-01-2012 at about 10:30 a.m Bilal Ahmad Pandith contacted United India Assurance Company in presence of the witness for effecting insurance of his vehicle bearing registration No. JK01B-0605 and since 7th and 8th January, 2012 were holidays, the insurance could not be procured. On intimation, the insurance company deputed their agent namely Gh. Nabi Khan who visited the premises at 11.15 a.m. at erstwhile General Bus Stand Batmaloo where the bus in question was standing to conduct the inspection of the vehicle. Bilal Ahmad Pandith, the witness and other persons accompanied the said agent to the vehicle who (agent) took the engine traces and chassis number of the vehicle. The vehicle was thoroughly inspected by the agent. Thereafter, they came back to their usual place of meeting where agent asked for the premium. Bilal Ahmad Pandith handed over an amount of Rs. 28,000/= on 09-01-2012 and requested the witness to accompany to insurance agency (Gh. Nabi Khan) to the insurance office situated at Batmaloo. In the office, the said agent asked the witness to sign a document which the witness did and after signing the document he returned. Later on 10-01-2012 at about 12.00 p.m, the witness heard that the vehicle/bus met with an accident somewhere at Sumbal. In cross-examination by the counsel for the insurance company conducted on 03-10-2018, the witness stated that he has no relation with Bilal Ahmad Pandith who is respondent No.4. The occurrence took place on 10th at 10:00 a.m. The witness has not brought insurance policy or premium receipt with him. Proposal Form is available on the file. The witness did not see the policy of the vehicle and he

cannot identify whether the policy is manual or computerized. The vehicle was seized in police station for five or six days which remained at the place of occurrence for two days. In cross-examination by the counsel for the petitioner, the witness stated that Bilal Ahmad was prospective owner of the vehicle at the time of the accident which he had purchased two or four years before the occurrence. It is true that the vehicle in question was driven by respondent No.2 against whom the charge sheet has also been presented.

29. RWP-2 namely Mohammad Yousuf Shoda has filed his testimonial affidavit on 02-07-2018 stating therein that Bilal Ahmad Pandith is the owner of vehicle bearing registration No. JK01B-060. Bilal Ahmad Pandith approached the office of United India Insurance Batmallo on 09-01-2012 for securing the insurance of the said vehicle as 07 & 08th January, 2012 were holidays. The insurance company deputed its agent namely Gh. Nabi Khan on the same day to effect the insurance of the vehicle. The agent approached Bilal Ahmad on the same day in presence of other witnesses and inspected the vehicle of Bilal Ahmad Pandith. The agent took the engine traces and chassis no. of the vehicle on the same day. After completing the formalities for effecting the insurance of the vehicle, Bilal Ahmad Pandith paid an amount of Rs.27769/- as premium to the agent on the same day. Bilal Ahmad was instructed by the said agent to visit the office of insurance company on 10-01-2012 to collect the insurance policy. As the formalities were completed and premium accepted on 09-01-2012, the risk cover of the insurance policy started from 09-01-2012.

Therefore, the vehicle of Bilal Ahmad Pandith was insured with United India Ins. Co., on 10-01-2012. It is further stated on oath by the witness that after the accident on 10-01-2012 at 10:00 a.m the vehicle was seized by the police which remained in custody of the police till its release from the court and nobody had access to the said vehicle from the date of its seizure till its release. In cross-examination conducted on the same day the witness stated in response to the questions by ld. Counsel for respondent No.3 that he has no relation with Bilal Ahmad Pandith. The vehicle under question met with an accident at Sumbal on 10-01-2012 at 09.45 a.m. Distance between Sumbal and Batmaloo is about 20 kilometers. The vehicle had fallen 10-15 feet deep. The same was lifted after two days. The witness does not have any Proposal Form nor he saw any such form in the court file. He has not brought premium receipt with him. The witness does not have any knowledge regarding Proposal Form. Insurance policy of the vehicle may be with its owner. The witness does not know as to who is the registered owner as per the records of the vehicle. The witness has appeared for the first time in this case and he does not know who was injured in the accident nor he knows as to in which case court has passed any order.

30. RWP-3 namely Bashir Ahmad Pandith, has filed his affidavit in evidence on 03-10-2018 as a witness for the private respondents and stated therein that he is associated with transport services for the last so many years and owns two big buses. Bilal Ahmad Pandith is his brother and they work in the same business, as such, the witness is acquainted with the facts of the present case.

Bilal Ahmad Pandith was owner of a big bus bearing registration No. JK01B-0605. The insurance of the vehicle was scheduled to expire on 06-01-2012 and the following two days i.e., 07 & 08th January, 2012 were holidays being Saturday and Sunday. As such, Bilal Ahmad Pandith contacted United India Ins., Co., having its office at Batmaloo Srinagar for securing and effecting insurance of the vehicle. The company deputed its agent namely Gh. Nabi Khan who reached the office of the witness at erstwhile general bus stand Batmaloo Srinagar at about 11;15 a.m to conduct inspection of the vehicle. Bilal Pandith alongwith others including the witness accompanied the agent to the spot where the bus was stationed and the agent took the engine traces and Chassis number and conducted thorough inspection of the vehicle. Thereafter, they came back to their office where the agent asked for the premium to effect the insurance. Bilal Ahmad Pandith handed over cash to the agent to get the formalities of the insurance completed and requested his business colleague namely Gulzar Ahmad to accompany the agent to the office of the insurance company. The bus was thereafter scheduled to leave for Sumbal at 4:00 p.m. The same was stationed at Sumbal bus stop whole night. On the next day on 10-01-2012 the vehicle was expected to reach Batmaloo at 11;00 a.m. but it did not come on time and so, they inquired about the cause. They came to learn that the bus met with an accident at Sumbal. The witness immediately rushed to the spot at Sumbal and on reaching there, he found that the bus had fallen into a deep ditch and the same was being pulled up by army crane. Thereafter, it was taken to

policy custody by the P/s Sumbal. In cross-examination by the counsel for the insurance company, the witness stated that respondent No.4 is his brother. The occurrence took place on 10th January. The witness does not know the timing of the accident. The witness does not have policy, premium receipt and Proposal Form with him. The vehicle was previously insured with ICICI. The witness has not seen the fresh insurance policy. The witness cannot say whether the insurance policy is manual or computerized. The witness reached the spot at 2:00 p.m. The army crane was pulling it out but they could not succeed. Thereafter, the witness called for crane from Batmaloo Srinagar and pulled it out and transported to P/s Sumbal where it remained for 5–10 days. The driver was also under custody. In cross-examintion by the counsel for the petitioners, the witness stated that Bilal Ahmad was the owner of the vehicle who had purchased the vehicle two-four years ago. It is true that the driver namely Mohd. Ayoub was injured in the accident and charge sheet was presented against him. Mr. Makaya is the registered owner of the vehicle and his full name is not known to the witness.

31. RWP-5 namely Inspector Zaffar Iqbal No. EXK-022620 presently posted at ACB Kashmir appeared before this Tribunal on 14-05-2024 and stated in examination-in-chief conducted by the counsel for the private respondents, that on 10-01-2012 he was posted at P/s Sumbal on which date P/s Sumbal received information that a bus coming from SadanarSunawari towards Srinagar met with an accident near Sumbal bridge resulting in damage to the bus and causing injuries to the passengers. A case was registered,

investigation of which was entrusted to the witness. The witness went to the spot for investigation and on the spot,a bus bearing registration No. JK01B-0605 was found down on right side of the road and many passengers were seriously injured. The passengers were evacuated to nearby hospital at Sumbal for treatment and most of them being grievously injured were referred to Srinagar for specialized treatment. The vehicle had rolled down about 40 feet into a deep gorge. The witness identifies his signature on the seizure memo of the criminal file. The vehicle was seized on the day of accident. The vehicle was taken to police station after being evacuated from deep gorge with the help of recovery van. The vehicle remained in police station for 10-15 days and it was released under court order. During the period the bus was under police custody in police station, a mechanical team of the Transport Department had access to the bus. As per the seizure memo, the document seized included Route permit, fitness, registration, passenger tax certificate, certificate of insurance and D/L of the driver. They cannot permit the insurance policy to be effected without the permission of the court while the vehicle is seized and lying in the police station. Normally, the status of the documents remains same as seized. The witness has not received any communication regarding the bus in question from the insurance company while it was under custody of police station. The insurance certificate which was seized at the day of the accident would have been valid but the validity has not been reflected in the seizure memo. Later on, the driver of the vehicle namely Mohammad Ayoub Denthoo has been charge-sheeted in

the court for the offences under Sections 279, 337, 338, 304-A RPC. In cross-examination by the counsel for the insurance company the witness deposed that the accident occurred at about 10:00 a.m in the morning. The witness cannot depose the exact validity of the insurance policy seized by him because the same is not mentioned in the seizure memo which can be verified from the insurance document seized in the case. As the insurance document was valid at the time of seizure and so, it was seized otherwise invalidity would have been mentioned in the final police report and the offence incorporated. In cross-examination by the counsel for the petitioners the witness deposed that number of persons were grievously injured and one person died in the accident.

32. The statement of the Insurance witness is very important and the entire defence is based upon his evidence and as such, the same is reproduced hereafter.RW-IC RW-R namely "Rakesh Wantoo Son of P N Wantoo Branch Manager United India Insurance Company Branch Office Batamaloo Srinagar do hereby solemnly affirm and declare, on oath as under:

> 1) That the above titled claim petition is a common claim petition outcome of a single event (accident dated 10/01/2012), and in this connection during the pendency of the above captioned claim petition, the death claim petition titled Muhammad Altaf Khaja And Ors Versus Muhammad Ayub Denthoo and Ors (File Number 15/2012) has been already decided by the Hon'ble tribunal and direct liability of Rupees, 7,

29,800/- in all different heads, Plus interest of 6%, from the date of institution, i.e. 28/01/2012, till its final realization, has been directly fastened against the respondent Owner / driver of the offending vehicle bearing registration number JKOIB/0605 (Bus), and exonerating the respondent /insurance company from any kind of liability.

2) That during the course of evidence of the insurance company in the above captioned (already disposed-off claim petition) titled Muhammad Altaf Khaja And Ors Versus Muhammad Ayub Denthoo and Ors (File Number 15/2012) the respondent insurance company has recorded the statement of the companies official namely Mr. Najar Sahib along with relevant record including the record of break-up insurance register with regard to the above captioned involved vehicle and produced the same before the Hon'ble tribunal. (The certified copies of the same have been already placed on record before the Hon'ble tribunal).

3) That as per the records of the United India Insurance Company Branch Office Batamaloo Srinagar the involved vehicle bearing registration number JKOIB/0605 (Bus), was not insured with the United India Insurance Company at the time of accident dated 10/01/2012 at 10AM.

4) That as per the records of the Branch office Batamaloo the respondent / owner of the vehicle

bearing registration number J K OIB/0605 (Bus), deceitfully approached the United India Insurance Company Branch Office Batamaloo Srinagar on the same day / date of accident l.e. 10/01/2012 at 2.30 PM, for Insuring his crime vehicle (Bus) bearing registration number JKOIB/0605, by concealing the material fact, that the crime vehicle (Bus) bearing registration number JKOIB/0605, had already met an accident in the morning at 10AM on 10/01/2012 near Sumbal, the insurance company in good-faith and bonafide manner prepared /signed the proposal forum, on 10/01/2012, and it bears the signatures of the owner of the vehicle also. (The certified copy of which has been already placed on record).

5) That as per the records of the United India Insurance Company Branch Office Batamaloo Srinagar the formalities for insuring the vehicle bearing registration number JKOIB/0605 (Bus) were completed at 2.30 PM on 10/01/2012, as the insurance Premium was received by the company at 3.26 PM (the copy of the premium receipt has been already placed on record which clearly shows the date of 10/01/2012 and time 3.26 PM). More-over as per the insurance guidelines / rules the particulars of the vehicle (Bus) bearing registration number J K OIB/0605, were registered in the break in insurance gape cases register vide serial number 898. (The attested copy of

the premium receipt is enclosed).

6) That in view of the time of collection / receipt of the insurance premium by the respondent insurance company i.e. 10/01/2012 at 3.26 PM the insurance policy was issued in favour of the owner of the vehicle commencing the risk WEF 15.14 HRS ON 10/01/2012 to MID NIGHT ON 09/01/2013.

7) That specific time for the purchase of the insurance policy copy, (produced along with the claim petition), has been mentioned, as such the said insurance contract becomes effective/operative from the time mentioned in the insurance policy i.e. we f 15.14 hrs on 10/01/2012 to mid-night on 09/01/2013 as such the involved vehicle bearing registration number JKOIB/0605 (Bus), was not insured with the United India Insurance Company at the time of accident dated 10/01/2012 at 10AM.

8) That as a matter of fact the vehicle was not inspected at the time of insurance, as the owner of the vehicle had given impression that the vehicle to be insured is parked outside the branch office Batamaloo of the company and when the company official came out to trace the engine and chassis number of the vehicle, however the vehicle was not there, on this the company handed over the proposal form to the owner of the vehicle to take the trace mark of the vehicle.

9) That the branch office Batamaloo has already

informed the higher-ups about the deceitful means adopted by the owner while insuring his vehicle which had already met an accident in the morning on 10/01/2012 at 10AM.

10) That the particulars of the accident of the involved vehicle bearing registration number JKOIB/0605 (Bus), dated 10/01/2012 at 10AM were investigated by the companies investigator namely Mack Insurance Auxiliary service from the police station Sumbal and as per the investigation report / FIR / Final Charge Sheet the accident of the involved vehicle bearing registration number JKOI B/0605 (Bus), dated 10/01/2012 has authenticated the fact that the accident of the involved vehicle had already taken place at 10AM before insuring the crime vehicle. (The certified copy of the report has been already placed on record).

11) That since it evident from the records that the involved vehicle bearing registration number JKOIB/0605 (Bus), was not insured with the United India Insurance Company at the time of accident dated 10/01/2012 at 10AM, as such no liability can be fastened on the respondent company as already submitted above.

Statement of Respondent insurance company witness namely Rakesh Wantoo S/O: P. N. Wantoo R/O: Indra Nagar, Srinagar Aged 47 years Branch Manager, United India Ins. Co. B/O Batamaloo, Srinagar on oath:

On court question, the witness stated as under:-

1. That on 13.12.2018 I have filed the affidavit, available on record of the file as evidence.

2. That it was drafted as per my instructions and its contents were read and explained to me. Thereafter, it was got attested by me from the Notary/Oath Commissioner/ Magistrate.

3. That I hereby identify my signature(s) available over the affidavit and admit its contents as true and correct.

On consideration of the above recorded statement of the witness, contents of his/her affidavit is hereby considered as evidence, recorded, examination-in-chief

On cross-examination by counsel for the respondents 1, 2 & 4, the witness deposed that in the year 2012 I was posted at Divisional Office, Regal Chowk as Stenographer. On 09.03.2018, I have assumed the charge of Branch Manager, Batamaloo. I have no personal knowledge regarding the insurance of the offending vehicle, but facts are on the file. One Mohammad Lateef Mir was the branch Manager of the insurance company B/O Batamaloo& he has retired. Normally, two copies of insurance policy are prepared at the time of insurance, one is given to the owner and another is retained by the

company as official record. We are not having the original office copy. However, certified copy of the insurance policy have already been placed on record. Today, I am submitting the attested copy of the insurance policy along with the premium receipt. The attested copy which I have produced today is the complete policy and it has been attested by me. I have not attested the same from the original policy but photocopy of the same, which is available in our records. It is not mentioned in the insurance policy as to who was the Development Officer and who was the insurance Agent. For effecting the insurance, we have to inspect the vehicle, trace its chassis and engine number and to see the vehicular documents & the insured has to abide by these formalities. Thereafter, the insurance company get the vehicle insured. If the vehicle is nearby to our office, it takes one and a half hour to complete the formalities and get the vehicle insured. In case the vehicle is not nearby the office, then it will take more time. It is true that the insured has to first pay the premium and thereafter the policy is issued. As policy cannot be issued without the payment of premium. Insurance agent is also a responsible person and his job is to get the clients for the company

with documentary evidence relating to the property insured. I have not produced the proposal form today as the certified copy of the same has already been placed on record. As per the proposal form, in the inspection report, registration number of the vehicle and colour of the vehicle is mentioned. Officials of the insurance company are authorized to trace/inspect the engine & chassis number of the vehicle. I cannot say whose signatures are near the trace of vehicle. However, one signature on the proposal form below the trace belongs to one Mohammad Lateef Mir, who happens the Branch Manager of the company at the relevant time of accident. I cannot say who has given the proposal form to the Branch Manager for his signature. It can be a Development Officer, Insurance Agent, Insured or other official of the company. It is true that the policy cannot be issued without taking the trace of engine and chasis number of the vehicle. The time is not mentioned the proposal form but the date is mentioned as 10th of January 2012. One Gh. Mohammad Makaya was the insured of the vehicle and it seems that he had signed the proposal form. It is true that the insurance cannot be effected without the

inspection of the vehicle. There is no signature of the inspecting authority on the proposal form. The last digit of receipt number of premium is 21 and as per the receipt, the Number is 2158. The same does not tally with each other. This is true that there can be no mistake in the computerized policy. Mr. M. L. Mir, then Branch Manager, has issued the insurance policy cover of the offending vehicle. The offending vehicle was not previously insured with our company. The 'break In' Insurance register is being maintained in those cases who have lost the insurance cover at the relevant point of time, even if the insurance policy pertain to different companied. For us. It is primary requirement for insuring the vehicle to see whether the vehicle is in good condition and is having all the documents required to ply the vehicle on roads. The insurance company has issued the insurance policy cover in a good faith as the vehicle was not physically inspected in this case. It is true that as per the facts, the owner has told that he vehicle is on the road side and when we went there to inspect the vehicle, the vehicle was not there. Even then, we had issued the insurance policy cover before the inspection of the vehicle. That means that the owner obtained

the policy on deceitful means &inspite of that, the company has not canceled the policy of the insured. We have not immediately informed the higher ups. The company has conducted the inquiry in the case & the then Branch Manager has been penalized for that. The enquiry was conducted by the insurance company. I have not produced the enquiry report. However, I can produce the same before this Tribunal after permission from the higher-ups.

At this stage, the statement of the witness is deferred with the direction to him to produce the enquiry report on next date of hearing. No more question.

Further Statement of Respondent insurance company witness namely Rakesh Wantoo S/O:P.N.WantooIndra Nagar, Srinagar Aged 47 years Branch Manager, United India Ins. Co. B/O Batamaloo, Srinagar on oath today on 12.03.2019:

On further cross examination by counsel for the respondents 1. 2 & 4 the witness deposed that I have not produced the enquiry report. today in this Tribunal as no such enquiry was conducted by the respondent Insurance company. I have not made any written communication, in this regard to my higher authorities. However, I had verbally conveyed to the Divisional Manager

about the same. The records regarding enquiry, if any, were scrutinized from the offices. However, no such enquiry has been initiated against the said official. The statement deposed in my evidence affidavit is true and correct as per the records available in the office as I have no personal information about the same. The communication was forwarded to the higher ups as has been averred in para 9 of my evidence affidavit & their response was to investigate the matter in the first instance. After submitting the investigation report to the higher ups, the concerned Branch Manager was transferred to another branch of the company & his powers were curtailed and was posted as Assistant Manager of another Branch. This was as a matter of punishment given to the Branch Manger. I cannot say what was the reason of punishment awarded to the said Branch Manager. I cannot say as to whether the punishment awarded to the Branch Manager was given in lieu of any illegality committed by him. The break-in insurance registry from Jan. 2012 (the copy of which is available on the file) has been issued by the insurance company and the same runs from serial No. 896 to 911. On 09.01.2012, the Branch office Batamaloo has

insured two vehicles in the category of break-in insurance under registration Nos. JK03/1811 & JK02AB/4312. This is break-in insurance policy and in such policies the vehicles have not been insured on the relevant date of expiry. The vehicle JK03/1811 was also having the break in the renewal and the same was insured on 09th of January, 2012 and the insurance was given effect from 06.01.2012 to 05.01.2013. Similarly, the vehicle bearing regd. No. JK02AB/4312 was also not renewed on the due date and the same also comes under the break-in insurance policy category. The said vehicle as per the break insurance registry was insured on 09.01.2012 and the insurance effect was given from 09.01.2012 to 08.01.2013. The vehicle under serial No. 898, which is the offending vehicle in the case was insured on 10.01.2012 and the effect was given to the policy from 10.10.2012 to 09.01.2013. The time of insurance of vehicles is not mentioned in the break-in insurance registry. I cannot suggest the Sig. Column of the said break-in insurance registry as what for it stands. I will try my best to locate the policies of vehicles bearing regd. Nos. JK03/1811 & JK02AB/4312. I will trace the policies of the above referred vehicles, if same are available in our office & produce them before

this Tribunal. At the time of issuance of premium receipt, two copies are generated from the computer, one is given to the insured and one is retained for the office records.

At this stage, the statement of the witness is again deferred with the direction to him to produce the relevant record of policies pertaining to the aforementioned vehicles on next date of hearing.

Further Statement of Respondent insurance company witness namely Rakesh Wantoo S/O: P. N. Wantoo R/O indra Nagar, Srinagar Aged 47 years Branch Manager, United India Ins. Co. B/O Batamaloo, Srinagar on oath today on 22.04.2019:

On further cross examination by counsel for the respondents 1. 2 & 4 the witness deposed that I have not brought the relevant record pertaining to the other vehicles which were insured on 09.01.2012 as the same were not available in our office. Since I have recently joined the Brach as branch head and the matter pertains to the year 2012 as such as per my best efforts, the records could not be traced. The computerized policies were started by the company from the year 2005. The policy issued in the instant case was also computerized. I cannot say as to whether the record pertaining to these policies have been

destroyed or not. We have tried to find out the record of these policies. However, same could not been located. I cannot produce the record pertaining to policies issued from Serial No. 896 to 911 of the Break Insurance Registry from Jan. 2012. I cannot say as to whether the record has been destroyed or not. It is not true that we have deliberately with held the record, as is being asked. I can produce the format of the insurance policy & premium receipt which is being issued by the insurance company now-a-days for insuring the vehicles.

At this stage, the statement of the witness is again deferred with the direction to him to produce the format of insurance policy and premium receipt on next date of hearing.

Further Statement of Respondent insurance company witness namely Rakesh Wantoo S/O: P. N. Wantoo R/O: Indra Nagar, Srinagar Aged 47 years Branch Manager, United India Ins. Co. B/O Batamaloo, Srinagar on oath today on 25.04.2019: On further cross-examination by counsel for the respondents 1, 2& 4 the witness deposed that today, I have brought the format of insurance policy cover, premium receipt, proposal form, inspection report and photocopies of photographs. I am submitting these. The said

formats have come into effect from December, 2015. There is no difference in the format which was prevailing prior to the December. 2015 and the recent format which I have produced, today before this Tribunal. As per the format of insurance policy, which I have present today, our company has insured the vehicle (Tipper) bearing regd. No. JK01AG/4085 and the insurance of the said vehicle is effective from 00:00 hours of 13.04.2019 till mid night of 12.04.2020. Time of receiving of premium amount is not mentioned in the insurance Policy, which I have submitted, today, but we cannot issue the policy unless and until we will receive the premium amount. In the premium receipt, which I have produced today, the time is not mentioned in it regarding the receipt of premium. It is true that we have to fill up the columns of the format while issuing the policy and receiving of premium. We mention time only when we insured new vehicle, only and not in the rest of the vehicles, time is not mentioned. We cannot change the format of insurance policy or the premium receipt. The difference between the premium receipt of offending vehicle and the premium receipt which I have submitted today, is only font and alignment. We were having the

column of the time of the receipt of the premium in the previous formate. I cannot say how long the column of time was prevailing in the premium receipt. I cannot say about the date and time which has been mentioned at the bottom of the receipt of the premium of the offending vehicle. The date of receipt of the collection of premium is mentioned in the format which is 10.01.2012 and no time is mentioned in this column. In some policies we used to mention the time and in some policies we did not use to mention the time. The respondent insurance company has not undertaken any legal proceedings including criminal regarding the alleged fraud committed by the respondent owner as to procuring of the insurance policy of the offending vehicle, so far. However, respondent I/C is interested to proceed against him. According to my information, no any decision has been taken till time for undertaking the criminal proceeding against the owner of the offending vehicle with regard to the alleged fraud committed by him by the company. It is in the knowledge of our company since Jan. 2012 that owner has committed afore referred fraud with the company. I cannot explain as to why the criminal proceedings has not been undertaken

against the respondent owner, in the matter. Besides this, no decision has been made by the company, so far, for cancellation of the insurance policy in question. No more question."

33. Considered the arguments raised by the ld. Counsels for the parties which have been cited above. For the sake of brevity, the same are not reproduced here again. As stated above the private respondents have produced five witnesses including the I.O of the case. Besides that, there are certain documents in the form of Xerox copy of the Proposal Form bearing S. No. BNO-898 and list of the vehicles insured in Break Insurance Registry Form of January, 2012 maintained by the United India Insurance Company,attested copy of the premium receipt, attested copy of insurance cover note/ policy filed by the Rw-IC along with his affidavit.

34. An important point highlighted by the ld. Counsel for the private respondents is that the premium was paid on 09-01-2012 by the owner namely Bilal Ahmad Pandith to the agent of the insurance company namely Gh. Nabi Khan who visited the place where the vehicle was parked, inspected the same and took traces of the engine and chassis number on the Proposal Form and on his instruction representative of the owner visited the company's office on the same day where he signed a document. This document, as stated by the ld. Counsel for the private respondents, is the Proposal Form on which the signature of representative of the owner of the bus is affixed. The three

witnesses of the private respondents have corroborated and in verbatim stated the same fact that the vehicle was inspected on 09-01-2012 by the insurance agent and premium was paid on the same day in cash. The formalities of insurance were also completed on the same day.

35. The insurance company's witness stated in cross-examination that premium was received on 10-01-2012 at 3.26 p.m. and the policy was issued in favour of the owner of the vehicle commencing the risk w.e.f. 15.14 hours on 10-01-2012 to Midnight on 09-01-2013. The witness further stated that the insurance policy, as per insurance contract,becomes effective from the date and time mentioned in the insurance policy and further in the case in hand the insurance was effected without inspecting the vehicle because the owner had given the impression that the vehicle to be insured is parked outside the branch office Batmaloo and when the company official came to trace the engine and chassis number of the vehicle the vehicle was not found there and so, the company handed over the Proposal Form to the owner of the vehicle to take the trace mark of the vehicle. The company learnt that the vehicle had already met with an accident at 10:00 a.m on 10-01-2012 with respect to which higher-ups were informed as the owner adopted deceitful means to get the insurance.

36. In cross-examination, the witness stated that it is must that the insured has to first pay the premium and then insurance policy can be issued and moreover, only officials of the insurance company are authorized to trace/inspect the engine and chassis number of the vehicle. The witness also admitted that insurance

cannot be effected without inspection of the vehicle and moreover, on being confronted with premium receipt number mentioned in the insurance policy and the receipt issued against receipt of the premium, the witness admitted that the receipt number mentioned in the insurance policy ending with 21 does not tally with the number ending with 2158 in the receipt of premium. The witness has also admitted that the insurance company has issued the insurance cover in good faith as the vehicle was not physically inspected. Besides, the witness also admits that despite the owner obtained the policy through deceitful means the company has not cancelled the policy of the insured. As regard the conduct of the insurance agent, the witness stated that inquiry was conducted against him and he was transferred as a penalty by the Branch Manager. However, despite deferring the witness thrice, the witness could not produce any inquiry record against the insurance agent.

37. The dispute which arises is with respect to date of the payment of premium by the insured. The insured claims that premium was paid on 09-01-2012 and the vehicle was also inspected on the same date but the insurance policy shows that the premium has been paid on 10-01-2012 which is fabricated and managed by the insurance company. Second limb of the same is that on the insurance policy a different receipt number of the premium has been mentioned as against the receipt of payment produced by the RW-IC as a representative of the insurance company. Further, even if it is assumed that the payment of the premium has been

made on 10-01-2012 as pleaded by the insurance company still the policy will be effective from Midnight of 10-01-2012 i.e., 12:01 a.m.

38. This is purely a factual part of the argument dependent upon the evidence of the party. All the three witnesses have testified by their statements and they withstood the cross-examination, that the premium was paid on 09-01-2012 when the vehicle was also inspected and Proposal Form was also signed. The Proposal Form, xerox copy of which has been placed on record proposes period of insurance from 10-01-2012 to 09-01-2013 without mentioning any time of effective period. Signature of the proposer appearing in Urdu letters apparently read as Gulzar Ahmad Guroo. Across the Proposal Form, there is signature of someone with the date mentioned beneath it as 10th January. The insurance witness admits that although there is a column for time but the time is not mentioned. Further, the insurance policy shows that the payment was made vide receipt No. 11403/81/11/00000021 dated 10-01-2012, broker code 6005, Development Officer Code; 60 while the receipt of premium shows collection number as 111483/81/11/0000002158 dated 10-01-2012. It is quite evident that the receipt numbers issued by the same insurance company through computerized printout as hard copies placed on record by the insurance company and admitted to be true, do not match. Ld. Counsel for the insurance company was called upon to explain this but no explanation could be tendered much less to say a reasonable explanation or clarification. However, Learned Counsel presented fresh print outs of the insurance policy and the

premium receipts (duplicate) as also Certificate in compliance of Section 64 VB of Insurance Act.

39. If the statement of the witness of the insurance company is to be acted upon there cannot be any insurance policy issued unless before the same, the insured pays the premium amount. Moreover, without inspection by the officials of the insurance company, as stated by the insurance witness, insurance policy cannot be issued. However, the stand of the insurance company is that the premium was paid on 10-01-2012 at 15.26 hours while the policy has been made effective from 15.14 hours on 10-01-2012. It means the policy has been issued first and then premium has been paid which is against the norms and practice of the insurance company as per the statement of the witness of the insurance company. Besides that, the fresh print out of the premium receipt, submitted by Mr Sajad Ahmad Shah, advocate for the Insurance Company, shows at the footer margin of receipt (duplicate) the date and time as 07-02-2026 and time as 9.39. It is not possible that the time at the bottom margin(footer) be treated and accepted as a proof as to the time and date of payment of the premium which is quite obvious from the conflicting timing and date recorded on the two print outs of the premium receipts. It seems that the date and timing at the footer-margin reflects the date and timing when the document is printed through network printer of the insurance company. That is why for payment made in 2012 the fresh print out shows the date as 07-02-2026 and time as 9.39 which is almost more than 15 years later. This goes to establish that the stand of the insurance company that payment

was made on 10-01-2012 at 15.26 hours based on the timing at the margin of the premium receipt is misleading and un-acceptable. If this is accepted as a certificate of date and timing then the same violates the norms and regulations of the insurance company and the insurance contract where the premium is to be first paid and then insurance policy can be issued. As such, based on the marginal time and date at the receipt, the insurance company cannot get any help rather it impeaches the credibility of the insurance company who has put forward such a misleading argument seeking support from the print time of the receipt.

40. The finding on the bottom margin date and time of the receipt expands scope for oral evidence and corroborative documentary material. PW-1, PW-2 and PW-3 have in one voice reiterated that on 09/01/2012 premium was paid to the agent of the respondent-insurance company namely Gh Nabi Khan. The Proposal Form shows that traces of the chassis have been taken on the reverse of the Proposal Form. PW-4, who is Investigation Officer of the case FIR, submitted that immediately after the accident the bus was taken in custody and no one is permitted to have access to the seized vehicle during the time it was seized except under the order of competent court. In this case, there is no such material on the record to establish that any court permitted any of the parties including the official of the insurance company to take traces of the seized vehicle. If on the Proposal Form, traces have been taken and the respondent-insurance company has issued insurance policy effective from 10/01/2012, it means the same has been done before the issuance of the insurance policy. On the one

hand, the allegation of the insurance company is that the Proposal Form was handed over to the proposer to take traces of the Chassis of the vehicle and on the other hand, the investigating officer of the criminal case pertaining to the same vehicle, affirmed that immediately after the occurrence the vehicle was taken in police custody and no one was permitted to have any access to the vehicle except the mechanical department. This material has come in the form of evidence on the record. The allegation of the insurance company is based on surmises and conjectures and there is no evidence that traces of the chassis number of the offending vehicle were taken after the accident. The only one witness produced by the insurance company namely Rakesh Wantoo, representative of the insurance company, admits that insurance policy cannot be issued unless officials of the insurance company inspect the vehicle and take traces of the chassis which means as on 10/01/2012 at 15.14 hours traces of the chassis number had been already taken and formalities completed consequent upon which the insurance policy was issued. The contention of the insurance company is that the insurance company has been misled and through deceitful means the insurance policy has been obtained by the insured. The basis of this allegation is that on 10/01/2012 at 2.30 PM insurance company was approached by the owner for effecting insurance of the vehicle in question and the insured visited the office of the insurance company at Batmaloo although the same vehicle bearing registration number JK01B/0605 had already met with an accident on the same day at 10 AM near Sumbal. The insurance

company in *good faith in bona fide* manner prepared/signed the Proposal Form on 10/01/2012 which bears the signature of the owner of the vehicle also. The insurance company claims, the same is reiterated by the witness of the insurance company, that premium was paid on 10/01/2012 at 3.26 PM. However, as stated above, the timing of 15.26 hours on the basis of marginal(footer) printed date and time is misconceived and misleading as the time at the footer-margin appears as and when the same is printed. If a print-out is given today it will show the time and date as on today which does not mean that the premium has been paid today or on any date of the printout. The insurance company has vehemently emphasized on the margin printout *timing* to establish that premium was paid at 15.26 hours which is after the time of issuance of insurance policy. RW-IC produced by the insurance company has, in his cross-examination held on 25/04/2019, stated that he cannot say about the date and time which has been mentioned at the bottom of the receipt of the premium of the offending vehicle. Therefore, the insurance company has failed to prove that the timing and date mentioned at the marginal footnote is a proof of date and time when the premium was actually received from the owner of the offending vehicle.

41. The insurance company has pleaded that the owner has, through deceitful means, obtained the insurance policy when the vehicle had already met with the accident in the morning of the same day on 10/01/2012. The insurance company claims to have *bona-fidely* and in *good faith* handed over the Proposal Form to the owner for taking traces of the chassis number of the vehicle. RW-IC

produced by the insurance company is not an ordinary witness of the insurance company but he is branch manager of the insurance company of the concerned branch who affirmed and reaffirmed in his in cross-examination that officials of the insurance company authorized to trace/inspect the engine and chassis number of the vehicle. The same witness in his cross-examination held on 13/12/2018 at page 3 stated that the insurance company has issued the insurance policy cover in a *good faith* as the vehicle was not physically inspected in this case. The witness also stated that it is true as per the facts, the owner has told that the vehicle is on the roadside and when we went there to inspect the vehicle, the vehicle was not there. Despite that, the witness admits that they have issued the insurance policy cover before the inspection of the vehicle. This is very strange that on the one hand the insurance company pleads that it has acted in good faith and issued insurance policy *bona fidely* without inspecting the vehicle physically or taking its traces. This is not a case of *bona fide or good faith* on the part of the insurance company. If the stand taken by the insurance company is accepted nowhere it flows from the conduct of the insurance company that it has acted in good faith and it cannot take the shelter under the umbrella of *Uberrima fides* (good faith). If it was a practice or legal requirement to get the vehicle inspected and traces taken of the chassis and engine number by the officials of the insurance company the same must have been complied by the insurance company and it ought not to have handed over the Proposal Form to the owner of the vehicle for taking traces of the chassis and engine number. This cannot

be said to be *bona-fide* rather this is a gross negligence and carelessness of the concerned officials of the insurance company who has not followed the set procedure and practice adopted by the insurance company. The branch manager of the insurance company deposed before this Tribunal that although it was the requirement to get the vehicle inspected by the official of the insurance company physically but in this case on the assurance of the owner, Proposal Form, as is claimed by Company, was given to him for taking traces of his vehicle. The insurance company, if its stand is accepted to be true and correct, has not acted in a fair, reasonable and *bona fide* manner. The insurance company states that once it was noticed that through deceitful means the insurance policy was taken by the owner the matter was reported to the higher-ups of the insurance company who transferred the then branch manager of the insurance company and shrunk his powers to the level of assistant branch manager. Although no such material could be produced despite adjourning the witness of the insurance company thrice for cross-examination and production of the enquiry report and punishment prescribed but however, in any case even if it is true that the branch manager has been penalized, it will not be a case of fraud or deceit by the insured who has lawfully approached the insurance company with the request in the form of Proposal Form for effecting insurance of his vehicle, it was incumbent upon the insurance company to satisfy itself before issuance of the insurance policy which has not been done and by punishing its own employee, the insurance company cannot evade its liability.

42. For claiming benefit under the umbrella of the doctrine of good faith, the insurance company must lead and establish that it acted with due care and caution and despite that the otherside has played fraud or furnished incorrect information persuading the insurance company to issue the insurance policy pursuant to such misleading information. In this case, the insurance company itself admits that it has not bothered to deploy any official of the company to visit the place where the vehicle was parked or stationed to take traces of the chassis and engine number of the vehicle and satisfy itself as to the existing condition of the vehicle before issuing insurance policy. Since this was a mandatory requirement for the insurance company to physically inspect the vehicle which it has failed to and so, it cannot shift its negligence on the other side attributing deceitful information furnished by the owner of the vehicle. It is to be noted that the insurance policy is not issued only on the basis of information furnished but there are certain physical acts which have to be performed by the insurance company. It is not the case of the insurance company that the insured has furnished wrong particulars of the vehicle, the accidental vehicle has been camouflaged by its appearance to look otherwise which on the face of it appears to be non-accidental or any other written information. The case of the insurance company is very simple where it admits that it has failed to discharge its duty to satisfy itself from physical inspection of the vehicle. Had the official of the insurance company inspected the vehicle, the real condition of the vehicle would have been reasonably discovered by the insurance

company but once it has failed to play its part and took the risk, may be on mutual trust basis, it cannot take the defence that the owner has obtained the insurance policy through deceitful means. Once the insurance company has taken the risk of handing over the Proposal Form as pleaded by the insurance company, which is not the proved case, the company has to face the repercussions of such risk and delegating its responsibility and duty to the owner of the vehicle. Therefore, on factual basis the insurance company has not acted in *good faith* and *bona-fidely*but it was grossly negligent on the basis of its own admission. As such, the insurance company is not justified in alleging fraud and deceit on the part of the owner of the offending vehicle.

43. Despite finding on this factual part as to whether it is negligence of the insurance company or deceitful means of procuring insurance policy by the owner of the offending vehicle, the claim of the private respondents that premium is paid on 09/01/2012 has to be analyzed. As repeated above that the three witnesses produced by the private respondents have given a clear account of how the owner of the offending vehicle approached the insurance company and paid premium to agent of the insurance company namely Gh Nabi Khan on 09/01/2012 who is claimed to have inspected the vehicle on 09/01/2012 itself and on the same day, the representative of the insured namely Gulzar Ahamd Guru visited the office of the insurance company and signed a document. This document signed by such representative of the insured is the Proposal Form. The insurance company did not examine its agent namely Gh Nabi Khan to clarify or rebut the

claim of the private respondents. And there is no other evidence to disprove the claim of the petitioner that the vehicle was inspected on 09/01/2012 and the premium is paid on the same date.

44. Although there is a premium receipt bearing number ending with 2158 dated 10/01/2012 but it does not prove the time of payment. Likewise, there is no mention of time in the Proposal Form even if it is accepted that the same has been furnished on 10/01/2012. There is a possibility that after the Proposal Form has been submitted to the insurance company, the authorized signatory has accepted the same thereafter on 10/01/2012. In the date column of the Proposal Form the date mentioned is 10/01/2012 but however, it appears to be indifferent hand writing than the one of the proposer. Even if it is assumed that the Proposal Form has been submitted on 10/01/2012 still there is no mention of time. However, in the absence of any proof to the contrary which is reliable and trustworthy inspiring confidence, the evidence of the private respondents which described the entire transaction in natural coherence has to be accepted as the witnesses despite cross-examination could not be impeached and their credibility could not be shaken by the respondent insurance company. The initial burden of proof is on the private respondents to prove its claim who has successfully discharged the same by leading evidence and it is for the insurance company to rebut that the amount was paid on 09/01/2012 as it is the insurance company which is denying it. Similarly, no evidence has been led by the insurance company to prove that the Proposal Form was submitted on 10/01/2012. On

the other hand, the private respondents have led their evidence proving that on 09/01/2012 amount of the premium is made and Proposal Form submitted. The evidence of the private respondents on the principle of preponderance of properties of the evidence proved the claim that Proposal Form was submitted on 09/01/2012 and on the same day, the agent of the insurance company inspected the vehicle in the erstwhile General Bus Stand Batmaloo and got the proposal signed on the same date. There is a possibility that after the needful was done the Authorised Signatory has filled the details including the date and the Proposal Form and signed the same across both pages on the next date on 10/01/2012. There is a reason to draw this inference on the basis of evidence led by the private respondents as the fact that the payment was made on 09/01/2012, the vehicle was inspected on the same day, a representative of the owner of the vehicle visited along with the agent to the office of the insurance company at Batmaloo on 09/01/2012 itself. If everything was done on the same date, any entry showing any later date must have been made later on the subsequent day. Therefore, on the basis of the evidence led by the insurance company and the private respondents this Tribunal has come to the conclusion that payment of the premium appears to have been made on 09/01/2012. This fact is not denied by the insurance company that the payment of the premium was received by the insurance company through cash as reveals from the receipt of the premium also. The same is the claim of the private respondents that the premium is paid in cash on 09/01/2012. On this basis of above discussion, the necessary

conclusion, which this Tribunal arrives at, is that all the formalities including payment of the premium, inspection of the vehicle and submission of the Proposal Form were completed on 09/01/2012.

45. After deciding the factual part of the objections raised, the legal aspect and the repercussions of such finding is required to be discussed. As stated at the outset that Ld. counsel for the insurance company has cited certain judgments and predominantly, he relies upon the recent judgment of Hon'ble the Supreme Court of India in the case of Reliance life insurance Co Ltd and another versus Jaya Wadhwani Civil Appeal No./2024 arising out of SLP(Civil) No. 10954 of 2019 clubbed with the case titled The Branch Manager, Reliance Life Insurance Co Ltd versus Usha Soni Civil Appeal No./2024 arising out of SLP(Civil) No. 15588 of 2021 cited on 03/01/2024. In this case, 2 different policies were involved.

46. In the appeal of Jaya Wadhwani, the quotation of Policy was issued on 14.07.2012. The Proposal Form was submitted by the life assured on 14.07.2012. Receipt of the Cheque dated 13.07.2012 was also issued on 14.07.2012. On 16.07.2012, the Policy was issued and at all relevant places, it was mentioned in the policy that the date of commencement of the policy would be 16.07.2012. On 15.07.2013, the life assured committed suicide. It was held that 14th July 2012, therefore, cannot be taken to be the date of issuance of policy. It is only the date of issuance of receipt of the initial premium. The date of issuance of policy being 16.07.2012 is actually the date from which the policy commences and becomes effective.

47. In the appeal of Usha Soni, the date of submission of Proposal Form by the life assured is 26.09.2012. The date of issue of policy as also the date of commencement of policy was 28.09.2012. The date of next premium due was 28.09.2013. As the next premium was not paid, the policy lapsed. The assured paid the next premium on 25.02.2014 and the lapsed policy was reinstated from that date (25.02.2014). On 03.06.2014, the life assured committed suicide.

48. It was held that from the documents on record in the case of *Usha Soni*, we find that the first cheque was issued on 26.09.2012. The policy issuance and commencement date in the Policy is mentioned as 28.09.2012. Further, the next premium due was on 28.09.2013. Grace period is 30 days under Clause 1(iv) of the terms and conditions. Clause 5 mentions that the policy would lapse. Clause 6 provides for reinstatement. However, since the renewal amount was not paid within the time allowed, the policy stood lapsed and subsequently, upon payment of the premium against the lapsed policy on 25.02.2014, the policy was reinstated from the said date. The life assured committed suicide on 03.06.2014, which was well within the period of 12 months.

49. Para 13 of the judgment relied upon by the insurance company is very important for the purpose of the instant case which is extracted below:

> "13. In this connection, it would be useful to reproduce the extract which form part of paragraph 6 in the case of *Life Insurance Corporation of India* v. *Dharam Vir Anand*[4]. It reads as follows:
> "6. Having examined the rival submissions and having examined the policy of insurance which is nothing but a

contract between the parties and having considered the expressions used in Clause 4-B of the terms of the policy, we are persuaded to accept the submissions made by Mr. Salve, the learned Senior Counsel appearing for the appellant. In construing a particular Clause of the Contract, it is only reasonable to construe that the words and the terms used therein must be given effect to. In other words, one part of the Contract cannot be made otiose by giving a meaning to the policy of the contract. Then again, when the same Clause of a contract uses two different expressions, ordinarily those different expressions convey different meanings and both the expressions cannot be held to be conveying one and the same meaning. Bearing in mind the aforesaid principle of construction, if Clause 4-B of the terms of policy is scrutinized, it becomes crystal clear that the date on which the risk under the policy has commenced is different from the date of the policy. *In the case in hand, undoubtedly the date on which the risk under the policy has commenced is 10.5.89 but the date of the policy is 31.03.1990 on which date the policy had been issued*. Even though the Insurer had given the option to the Insured to indicate as to whether the policy is to be dated back and the insured indicated that the policy should be dated back to 10.05.1989 and did pay the premium for that period, thereby the risk under the policy can be said to have commenced with effect from 10.5.1989 but the date of the policy still remains the date on which the policy was issued i.e. 31.03.1990. The death of the life assured having occurred as a result of suicide committed by the assured before the expiry of three years from the date of the policy, the terms contained in Clause 4-B of the policy would be attracted and, therefore, the liability of the Corporation would be limited to the sum equal to the total amount of premium paid under the policy without interest and not the entire sum for which the life had been insured. The Forums under the Consumer Protection Act committed gross error in construing Clause 4-B of the policy and giving the same meaning to the two expressions in the aforesaid Clause 4-B namely "the date on which the risk under the policy has commenced" and

"the date of the policy". The construction given by us to the provisions contained in Clause 4-B get support, if the proviso to Clause 4-B is looked into. Under the proviso, if the life assured commits suicide before expiry of one year reckoned from the date of the policy, then the provisions of the Clause under the heading "suicide" printed on the back of the policy would apply. In a case therefore where a policy is dated back for one year prior to the date of the issue of the policy, the proviso contained in Clause 4-B cannot be operated at all. When parties had agreed to the terms of the contract, it is impermissible to hold that a particular term was never intended to be acted upon. The proviso to Clause 4-B will have its full play if the expression "the date of the policy" is interpreted to mean the date on which the policy was issued and not the date on which the risk under the policy has commenced. In the aforesaid premises, we are of the considered opinion that under Clause 4-B of the policy the date of the policy is the date on which the policy had been issued and not the date on which the risk under the policy had commenced by way of allowing it to be dated back. In view of our aforesaid construction to Clause 4-B, in the case in hand, the respondent in law would be entitled to only the sum equal to the total amount of premium paid under the policy without any interest inasmuch as the death of the life assured has occurred before the expiry of three years from the date of the policy, i.e., 31.3.1990..."

50. As per the judgment relied upon by the Counsel for the insurance company, the date mentioned in the insurance policy has to be given effect to as to the commencement of the policy. The ratio of the judgment particularly the words in Para 13 is that in some cases there can be commencement of the policy on one date mentioned in the insurance policy which shall be the date of the issuance of the policy and a different date can be the date from which the risk under the policy may commence. It means that in some cases the policy issued on one date may give different

timing to commencement of the risk.

51. In para 11 of the supra judgment, Hon'ble the Supreme Court has also observed that the date of proposal cannot be treated to be the date of policy until and unless on the date of proposal, initial deposit as also the issuance of policy happens on the same date where, *for example, the premium is paid in cash then, immediately, the policy could be issued.* Merely, tendering a cheque may not be enough as till such time the cheque is encashed, the contract would not become effective. The drawer of the cheque may, at any time, after issuing, stop its payment or there may not be enough funds in the account of which the cheque is issued and there could be many other reasons for which the cheque could be returned without being encashed.

52. Ld. counsel for the insurance company states that it is not necessary that from the date of the premium itself the insurance policy will be effective becausethe policy will be effective from the date mentioned in the policy. This Tribunal has no reservation in accepting this contention as this is the settled position of law but how far it is applicable to the present case has to be seen in view of the factual position.

53. Ld. counsel for the insurance company has also relied upon the New India Assurance Co. Ltd. v. Sita Bai (Smt) And Others SLP (C) No. 12511 of 1991 decided on 10-09-1999 by the Hon'ble Supreme Court of India. Para 5 of the judgment is very important.

> "5. The correctness and applicability of the judgment in Ram Dayal's case (supra} came up for consideration before this Court subsequently in a number of cases.

InNew IndiaAssurance Col Ltd. V/S Bhagwati Devi and Ors. - Civil. Appeal No. 1550 of 1994, decided on 10.2.1998, a three- Judge Bench of this Court relied upon the view taken in National Insurance Co. Ltd. Vs. JikubhaiNathuji Dabhi (Smt) and Ors., [1997 (1) SCC 66], wherein it had been held that if there is a special contract, mentioning in the policy the time when it was bought, the insurance policy would be operative from that time and not from the previous midnight as was the case in Ram Dayal's case, where no time from which the insurance policy was to become effective had been mentioned. It was held that should there be no contract to the contrary, an insurance policy becomes operative from the previous midnight, when bought during the day following, but in cases where there is a mention of the specific time for the purchase of the policy, then a special contract comes into being and the policy becomes effective from the time mentioned in the cover note/the policy itself. The judgment in Jikubhai's case (supra) has been subsequently followed in Oriental. Insurance Co. Ltd, Vs. Sunita Rathi & Ors. [1998 (1) SCC 365] by a three-Judge Bench of this Court also."

54. Ld. counsel has cited various judgments to make his point that the date and time mentioned in the policy is the period of commencement of the policy and not from the date of the payment of the premium. Since the two judgments have been referred above in which other judgments on the point have been discussed and as such, this Tribunal feels that it shall be useless exercise to

refer to all the judgements at the cost of time and space as no different point is made out from other judgments followed in the above referred judgments.

55. The observations made in the above referred judgments are significant for adjudicating the controversy between the insurance company and the private respondents. However, it shall be profitable to make a reference to Certificate inRespect Of Compliance of Section 60-VB the Insurance Act 1938. The same has been produced by the learned Counsel for the insurance company as stated above. The certificate is in respect of policy No. 111403/31/11/02/00001557 and in the date of commencement of the risk, the date is mentioned as 10th January 2012. There is no mention of any time in the commencement of the risk. Apart from this, the Break Insurance Registry from January ,2012 of the respondent-insurance company produced before this Tribunal shows that as against serial No. 898 date for policy is mentioned as 10/01/2012. The name of the insured is Gh Mohd Makaya, the vehicle registration number is JK01B 0605 and the agency is Gh Nabi. This Gh Nabi is the same person to whom the owner of the vehicle had paid the amount on 09/01/2012 as per evidence. The risk period mentioned inthe same is 10/01/2012 to 09/01/2013. There is no mention of any time in the record of January 2012.

56. The manual record in the form of the Break Insurance Registry maintained by the insurance company, copy of which has been placed on record, is the basic record on the basis of which computerised copy can be generated. There is no other record to suggest that other than the Insurance Cover Note/Policy, the time

of the commencement is mentioned. It means that the insurance policy/cover note is the outcome of the record of the insurance company but however, there has been an addition in the time which is mentioned as 15.14 hours. In the manual record in the form of Break Insurance Registry, there is no mention of the timing and insurance company could not explain as to where the basis of the timing in the insurance cover could be traced. In the same manual record, on 09/01/2012 insurance of two other vehicles figuring at serial No. 896 and 897 has been effected. Risk period for the vehicle at serial No. 896 commences from 06/01/2012 to 15/01/2013 although the date on which the client approached is 09/01/2012- the insurance risk has commenced from back date of 06/01/2012 which is mentioned in the record. The vehicle at serial No. 897 has also been ensured and the risk period commences from 09/01/2012 to 08/01/2013. In both these vehicles, there is no mention of timing in the manual record of the insurance company.

57. Ld. counsel for the insurance company has placed on record certified copy of statement of one witness namely, Mohd Yousuf Najar, the then branch in-charge of United India insurance Co, branch office Batmaloo recorded on 24/03/2015 in another case titled Mohammad Altaf Khawaja V/S Mohd Ayoub Denthoo and ors. The witness has in his statement before the Tribunal, as per the certified copy, stated that it is mandatory to inspect the vehicle physically before effecting insurance of such vehicle but in the case in hand of the offending vehicle the Proposal Form was handed over to the owner on 10/01/2012 after filling the same. The

Proposal Form on the record reveals that traces of the chassis number taken. The witness states that the traces were taken by the owner of the vehicle himself. The insurance company had first provided Proposal Form to the owner when the owner approached the company, the Proposal Form was filled in the office of the company and necessary documents were issued to the owner. The owner of the vehicle claimed that the vehicle is outside the office of the insurance company. However, on coming outside the company the vehicle was not found available there. The owner stated that the vehicle had left for some other station and so, the insurance company handed over the Proposal Form for taking traces of the chassis number of the vehicle. The Proposal Form was submitted on the next date. The witness also stated that after 9 months, the matter was intimated to the senior officers of the insurance company but however, there is no independent witness to such claim of the insurance company. The witness admits that there is no mention of such facts in the record of the company which are narrated by the witness in the Tribunal. The statement of the witness was deferred and he was further cross-examined on 27/03/2015. The witness admitted that the vehicle at serial No. 897,in Break Insurance Registry, was insured and the policy was effective from 00.00 hours which means from midnight of 12 hours and likewise, the policy of the vehicle figuring at serial No. 899 is also effective from 00.00 hours. The witness states that he has brought photo copy attested by him of the Break Insurance pertaining to the vehicle involved in this case and the period of risk is from 10/01/2012 to 09/01/2013

but there is no mention of time from which the same has to commence on 10/01/2012. In further cross-examination, the witness has stated that the Proposal Form of the offending vehicle was submitted by the owner on 11/01/2012 after taking traces of the vehicle himself. However, the witness admits that he has no personal knowledge that the Proposal Form was submitted on 11/01/2012. The witness has no role in issuing the policy according to him and it was another branch manager who had issued the policy and the witness was appointed as enquiry officer by the order of senior DM, however, no formal order has been issued for the enquiry. A set comprising of premium receipt of another vehicle dated 12/04/2019 acknowledging receipt of the premium from one Bashir Ahmad Sheikh, xerox copy of the insurance cover as well as the insurance policy and Proposal Form submitted on 12/04/2019, has been produced before the Tribunal. The period of commencement of the policy is 0.00 hours.

58. On consideration of the statement of the branch manager, certified copy of which has been placed in this file by the Counsel for the insurance company, it reveals that generally insurance policy is effective from 0.00 hours upto midnight of the next yearly date. The witness has himself admitted that as per the record of break insurance registry, the insurance of the other two vehicles is effective from 00.00 hours. In the same record viz Break Insurance Registry of January 2012, the offending vehicle involved in this case is mentioned in the insurance commences from 10/01/2012 but there is no mention of time fromwhich it will commence on 10/01/2012. But despite that, the insurance

policy/cover shows the period of insurance from 15.14 hours on 10/01/2012 to midnight on 09/01/2013. On the insurance policy, in row number 5 from top to bottom, the following is mentioned "Effective DateOf Commencement Of Insurance ForThe Purpose OfThe Act From: 15:14 hours on 10/01/2012, date of expiry of insurance: Midnight on 09/01/2013"

59. It is important to be appreciated that it is the date of commencement mentioned in the policy and not date and time. As per metadata format of the insurance policy, it is only the date which is to be mentioned. However, in response to the information required there is an addition of time as well. It may not make much difference if additional information is furnished but however, this additional information "time" has no legs to stand on the basis of record of the insurance company. The manual record in the form of Break Insurance Registry from January 2012 does not maintain any record of time from which the policy is to commence but only date is mentioned.

60. There is one more respect of the matter i.e if the insurance policy is issued for one year, as per the format of the insurance company produced on record and admitted by the witness of the insurance company, the policy commences from 00:00 hours to midnight of the next year and that is how a year completes. For instance, an insurance policy commencing on 00.00 hours on 10/01/2012 will come to an end on midnight(00:00 hours) on 09/01/2013. If the policy commences in late hours the same has to end in the next year in late hours. Suppose a policy commences from 3 PM of 10/01/2012 it will complete its cycle of one year at 3

PM of 09/01/2013. If it ends at midnight of 09/01/2013, the policy is not covering the entire period of one year. In the present case, the time and date on which the policy end i.e midnight on 09/01/2013 is not disputed as that is in accordance with the routine practice of the insurance company adopted in other cases as well. However, the time of commencement of the policy is disputed which the private respondents claimed that must be from midnight of 10/01/2012 i.e 00:00 hours and not from 15:14hours on 10/01/2012. If the policy time is accepted to be correct then the policy is covering a period of insurance which is less by 15.14 hours to complete one year of risk. Of course, it is based on contractual obligation but as a matter of practice and procedure the period of risk adopted by the insurance company is for one year, 2 years or 3 years, 5 years and 20 years. A year has to be a completed year ending not only with the date buttime as well. As per the settled position of law, a policy commences from midnight and ends on midnight. It means logically the insurance policy involved in the instant case should have been effective from midnight of 10/01/2012 even if the stand of the insurance company is accepted.

61. There is one more angle to look at the insurance policy which pertains to proof of the insurance policy. The witness of the insurance company namely Mohd Yousuf, Branch Manager admits that the record is maintained in a computerised form and there is no manual intervention. The copy of the insurance cover/policy attested by the manager is the printed computerised copy in the form of hard copy. The question arises as to how this printout of the computerised record is to be proved.

62. In this regard, it shall be appropriate to refer to the judgment of Hon'ble High Court of Bombay in the case titled UNITED INDIA INSURANCE COMPANY LTD. THROUGH ITS DIVISIONAL MANAGER V/S SMT. SUNITA SANJAY GUJAR AND ORS. (FIRST APPEAL NO.588 OF 2016 WITH CIVIL APPLICATION NO.1404 OF 2016) decided on 08/07/2016 which has been relied upon by the Ld. counsel for the private respondents.

63. Paragraph 13-15 are important for the purpose of point under determination. The same are reproduced for the sake of convenience as under:

> "13. The question that arises is whether in respect of the said computer printout, the mandate of Section 65B was required to be followed. In so far as the Section 65B is concerned, it applies to evidence which is produced by way of electronic record which is printed on a paper stored, recorded or copied in optical or magnetic media produced by acomputer. There can be no gain saying of the fact that a computer print-out is the information which is printed from the information which is stored in the computer. It is in view thereof that safeguards have been provided by way of Section 65B(2) and 65B(4) of the Evidence Act, namely that a document produced by way of electronic device is admissible in evidence only if it satisfies the prerequisites mentioned in Section 65B(2) and 65B(4) of the Evidence Act. In the instant case, as indicated above, the said print out is only a copy certified by the Managing Director and is not certified in the manner required by Section 65B(4) of the Evidence Act. In the said context, paragraphs 14 and 15 of the judgment in Anvar's case (supra) are material and are reproduced herein under.
>
> "14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and65A, can be proved only in accordance with the procedure prescribed under

Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to satisfy secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under subsection (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2). Following are the specified conditions under Section 65B(2) of the Evidence Act :(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:(a) There must be a certificate which identifies the

electronic record containing the statement;(b) The certificate must describe the manner in which the electronic record was produced;(c) The certificate must furnish the particulars of the device involved in the production of that record;(d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device."

14. Since the requirement of Section 65B(2) and (4) have not been satisfied in the instant case, the computer print-out of the insurance policy was inadmissible in evidence and therefore the case of the Insurance Company that the risk was not covered at the time when the accident took place cannot be accepted. The judgments in National Insurance Co. Ltd.'s case (supra) and New India Assurance Co. Ltd.'s case(supra) would therefore, not further the case of the Insurance Company. The Insurance Company is therefore, liable to third party risk and is accordingly liable for the payment of compensation. However, by the impugned judgment and order the Insurance Company has been first directed to pay and then recover from the owner of the vehicle and it is observed by the Trial Court that it is an issue between the Insurance Company and owner of the vehicle and that the Insurance Company can recover money from the owner without filing any further proceedings as held by the Apex Court in Challa Upendra Rao's case (supra) and BaljitKaur's case (supra). In my view, the instant order in so far as pay and recover is concerned, cannot be faulted with. The First Appeal is therefore bereft of any merit, the same is accordingly dismissed."

64. This judgment squarely covered the present case where the insurance company has not complied with Section 65-B(2) and 65-B(4) of The Evidence Act. Therefore, the time mentioned in the printout of the insurance policy was inadmissible in evidence and

for ascertaining the date and time of commencement of the policy only the admitted part can be relied upon which is to say that the date of the policy which is 10/01/2012 and the same is substantiated by the manual physical record in the form of break insurance registry which shows that the insurance policy was effective from 10/01/2012 to 09/01/2013 and there is no mention of any time. Apart from this, learned counsel Mr. Sajad Shah, advocate appearing for the insurance company submitted fresh printouts of the documents including certificate in respect of compliance of Section 64 VB of Insurance Act 1938 which reveals that the date of commencement of the risk is 10/01/2012. It appears that the insurance company has overlooked this important document/entry in the computer, printout of which has been placed on record by the Ld. counsel for the insurance company itself. Although the procedure for proving printout shall be in accordance with Section 65-B(2) and 65-B(4) of The Evidence Act but this part of the documents, to the extent of date of commencement i.e 10/01/2012, is acceptable to the private respondents as well as an this entry showing commencement of the risk from 10/01/2012 without mentioning the time is as per the manual record maintained by the insurance company and moreover, the same appears to be as per the practice adopted by the respondent insurance company.

65. It is profitable to refer to the following a few judgments cited by Ld. counsel for the private respondents aimed at establishing that once premium is received the insurance company cannot defer the commencement of risk and secondly, if no time is mentioned

in the cover note the policy shall be effective from the midnight of the same date. Ld. counsel wants to make out the point that the commencement of the risk in the instant case is from 10/01/2012 to 09/01/2013. Since there is no mention of time in the commencement certificate of the risk, the policy to the extent of commencement of the risk will be effective from midnight of 10/01/2012 i.e 00:00 hours or 12:01AM of 10/01/2012.

66. In the case titled Zameer Ahmad V/S B.R NarayanaShetty and another reported in 2012 ACJ 1322, Hon'ble High Court of Karnataka has held on 30/09/2010:

> "As a matter of fact, the appellant has insured the vehicle and paid the premium for which he has been issued with the receipt. As on the date of the accident the policy was in force. As pointed out by the learned counsel, this court had an occasion to consider the said question in the case of National Insurance Co. Ltd. v. Bhadramma, 2010 ACJ 1687 (Karnataka), wherein it is held that the insured had also paid premium. The insurer had issued a receipt to that effect and also the policy. Therefore, the question was whether the insurer can defer the assumption of risk at a later point of time other than from the date and time of receipt of the premium. This court relied on the judgment of the Apex Court in Oriental Insurance Co. Ltd. v. Sunita Rathi, 1998 ACJ 121 (SC), where it also lays down the salutary principle of law that the liability of the insurer would commence from the date

of the policy and if any time is mentioned in the policy, from that time the liability becomes effective and not earlier to that. The coverage of insurance for a motor vehicle would virtually stand on a different footing unlike in other types of contracts of insurance. It is mandatory that the third-party risk should be covered when a vehicle has to ply in a public place. The insurance company being a state authority doing business of insurance is duty-bound to honour and implement the provisions of law. Section 64-VB declares that insurer can assume the risk only upon the receipt of premium. Maybe, that in other types of contracts where insurance is sought, the insurer may have the discretion to enter into a contract or not. But in respect of motor vehicles there is no discretion on the part of the insurer. The insurance company has to enter into the contract and issue policy in accordance with law, if proper premium is paid. In the context of the said factual and legal situation, it is to be held that in contract of insurance in respect of motor vehicles, the issuance of policy becomes effective when premium is received. The insurer cannot postpone the assumption of liability after receipt of premium. The necessary verification of vehicle and the documents should be done before receipt of premium. However, under the said pretext the insurer cannot postpone the assumption of risk, other

than from the date and time of receipt of premium.

9. During the course of the argument, the learned counsel also relied on the judgment of the Supreme Court in the case of Oriental Insurance Co. Ltd. v. Dharam Chand, 2010 ACJ 2659 (SC), wherein it is held that insurance must be deemed to have commenced from the time of the accident or four hours later when the vehicle met with the accident and the owner must be deemed to have been covered by the insurance policy. Hence, it dismissed the appeal filed by the insurance company."

67. It has been already decided above that on the basis of the evidence produced by the private respondents the premium has been paid on 09/01/2012 in cash but receipt of premium has been issued on 10/01/2012. It means the premium is deemed to have been paid in the beginning of the day which is midnight of 10/01/2012 and so, the insurance company could not be justified in deferring the risk.

68. In Oriental Insurance Co. Ltd. v. Sunder Singh and Others arising out of F.A.O No.144 of 2001 decided on 16-09-2005 by Hon'ble High Court of Himachal Pradesh, the accident took place at 1.15 p.m. on 08/10/1995 and cover note was obtained at 3.15 p.m. The owner of the bus deposed that he had paid the premium to the Development Officer of the insurance company at 7AM and not mentioned the time 3.15 PM just above the date 08/10/1995. There is no mention of time of commencement in the policy of insurance and only date has been filled. It was held by the Hon'ble court that

the insurance company is liable even if the insurance policy was obtained in connivance with the officials of the insurance company. Para 9 of the judgment laying the ratio decidendi of the judgment is extracted below:

> "9. The case of the insurance company may be correct that the cover note was obtained after the accident had already taken place. However, this cover note even if it was issued after the accident, has been issued in connivance with the officials of the appellant insurance company especially the Development Officer, Geeta Ram. Nothing has been placed on record to show what action the insurance company has taken on the administrative side to find out under what circumstances the insurance policy was issued. In my view, in the light of the fact and evidence discussed above, it cannot be said that the insurance policy was effective only from 3.15 p.m It also cannot be said that the policy was obtained by misrepresentation. It may be true that the policy was obtained after the accident but this could have only been done in connivance with the officials of the insurance company. Therefore, there is no merit in the appeal of the insurance company and the same is dismissed with no order as to costs."

69. In the case in hand also, the witness produced by the insurance company stated that action has been taken against the official of the insurance company who issued the insurance policy but despite opportunities the witness could not produce the enquiry report or any formal order. Otherwise also even if any action is taken against the official of the insurance company, the insurance company cannot evade its responsibility once it has accrued. It means that if official, acting within the competence of its powers, issues insurance policy negligently or carelessly it will bind the insurance company for the insurance contract but the insurance company can take action as per norms against its employee

which will be purely an internal correctional measure but it will not give any justification to the insurance company to escape from its responsibility arising out of the contract of insurance.

70. Another important judgment on the point of commencement of the risk, in the absence of mentioning of the time, is Oriental insurance Co Ltd versus Vedathal and anr (2000(2) AJR 252) in which the insurance company contended that the accident occurred on 20.5.1991, whereas the insurance policy on its face became valid only from 21.5.1991, and therefore, the insurer could not be fastened with liability for the accident on 20.5.1991.Hon'ble High Court of Madras held on 23/07/1999 in paragraphs 23-26 and 29 as under:

> "23. In the instant case, the date on which the premium was received is 20.5.91 The date means "the 'day' and the 'date' commence just after midnight, i.e, 12 o'clock and one minute". Therefore, the risk in respect of the accident which had taken place at 2.00 p.m on the same date, though earlier to the issue of policy, stands covered.
> 24. In the instant case, the premium was paid, according to PW 1, on 20.5.1991 at 10.00 a.m The accident took place at 2.00 p.m Regarding the date and time of the payment of premium, there is no denial by the insurance company.
> 25. As indicated earlier, the insurance policy had been signed by the authorities on 20.5.1991
> 26. Under those circumstances in the absence of the time mentioned in the policy, regarding the receipt of the premium, it shall be assumed that the effective date of the commencement of the policy was just after the midnight, i.e, after 12 o'clock on 20.5.1991*Therefore, the mentioning in the policy as 'midnight from 21.5.1991' would not disentitle the owner of the vehicle to make a plea that the real effective date of commencement of policy would only be the date of receipt of the premium.*
> 27. As stated earlier, a bare reading of Section 64-VB of the Insurance Act, 1938 would make it manifestly clear

that the insurance coverage should start from the date of the payment of premium whether in cash or by cheque or by money order. The 'Explanation' to sub-section (2) of Section 64-VB makes the position further clear. The accepter of the amount of premium, if it is paid by postal money order, or cheque, sent by post, it shall be assumed that the postal department would be accepting the money as an agent of the insurance company as it will be deemed to have been received by the postal department on behalf of the insurance company on the date the money order is booked.

28. When that is the case, there is no difficulty in the present case to hold that the date of the receipt of the premium by the insurance company directly shall be considered to be the date of effective date of commencement of the policy.

29. As a matter of fact, in the decision in New India Assurance Co. Ltd. v. Ram Dayal, 1990 ACJ 545 (SC), it is held that when a policy is taken on a particular date, its effectiveness would be from the commencement of the said date. If this principle is applied, it can be safely held in the present case that the effectiveness of the policy commences just after midnight, i.e, 12 o'clock on 20.5.1991"

71. Ld. counsel for the insurance company has also referred to the judgment of Hon'ble the Supreme Court of India in the case titled New India Assurance Co. Ltd. v. Sita Bai (Smt) And Others, 1999 ACC 2 451 (Sep 10, 1999). In that case, the proposal for insuring the vehicle in question was made by the owner of the vehicle on 16-4-1987 at 2100 hours. The cover note was issued by the appellant in respect of that vehicle, being No. P/703802 on 16-4-1987 at 2100 hours. The insurance policy (Exh. P-5) was later on issued in which also the date of commencement of the insurance policy was recorded as 16-4-1987 (2100 hours). The accident, in question, in which Smt Salta Bai received fatal injuries had admittedly

occurred at 10.00 a.m on 16-4-1987, i.e, much before the commencement of the insurance policy." Hon'ble the apex court has held in Para 6 and 7 as under:

> " 6. The correctness and applicability of the judgment in Ram Dayal case (1990) 2 SCC 680 came up for consideration before this Court subsequently in a number of cases. In New India Assurance Co. v.BhagwatiDevi (1998) 6 SCC 534 a three-Judge Bench of this Court relied upon the view taken in National Insurance Co. Ltd. v. JikubhaiNathuji Dabhi (1997) 1 SCC 66 wherein it had been held that if there is a special contract, mentioning in the policy the time when it was bought, the insurance policy would be operative from that time and not from the previous midnight as was the case in Ram Dayal case (1990) 2 SCC 680 where no time from which the insurance policy was to become effective had been mentioned. It was held that should there be no contract to the contrary, an insurance policy becomes operative from the previous midnight, when bought during the day following, but in cases where there is a mention of the specific time for the purchase of the policy, then a special contract comes into being and the policy becomes effective from the time mentioned in the cover note/the policy itself. The judgment in Jikubhai case (1997) 1 SCC 66 has been subsequently followed in Oriental Insurance Co. Ltd. v. Sunita Rathi (1998) 1 SCC 365 by a three-Judge Bench of this Court also.
>
> 7. In the fact situation of this case since the commencement of the policy at 2100 hours on 16-4-1987 was after the accident which had occurred at 1000 hours on 16-4-1987, the Tribunal as well as the High Court were wrong in burdening the appellant Insurance Company, with any liability under Section 92-A of the Motor Vehicles Act by applying the law laid down in Ram Dayal case (1990) 2 SCC 680 which, on facts, had no application to this case. This case is squarely covered by the judgment in Jikubhai case (1997) 1 SCC 66 and the other judgments following it as noticed above. The impugned order against the appellant cannot thus be sustained. The same is hereby set aside. The appeal consequently succeeds and is allowed insofar

as the appellant is concerned. No costs."

72. Likewise, the same has been held in another case identical case cited by the learned counsel for the Insurance company. It is National Insurance Co. Ltd. v. Sobina Iakai (Smt) And Others, 2007 INSC 726 (Jul 9, 2007) in which in para 19, the following was held:

> "19. In order to curb this widespread mischief of getting insurance policies after the accidents, it is absolutely imperative to clearly hold that the effectiveness of the insurance policy would start from the time and date specifically incorporated in the policy and not from an earlier point of time."

73. This case cited is distinguishable from the present case under determination as it has been held above that the time mentioned in the cover note/policy could not be proved by the insurance company as per law but however, there is another certificate of insurance in compliance to Section 64-VB of the Insurance Act which mentions date only and there is no mention of time for commencement of the risk. Even if thecomputer printout of the insurance policy/cover note is accepted to be true, it mentions the date and time of commencement of the insurance policy but however, certificate of insurance in compliance to Section 64 VB of The Insurance Act mentions the commencement of risk from 10/01/2012 without mentioning the time. This certificate is part of the Insurance Policy though on separate page. A conjoint reading of the insurance policy/cover note and certificate of insurance in compliance to Section 64-VB of The Insurance Act, it can be concluded that the insurance policy will be effective from 15.14 hours after 10/01/2012 to 09/01/2013(midnight) while under the same insurance policy commencement of the risk will be from 10/01/2012. Since there is no mention of the time in the

commencement of risk certificate issued by the insurance company as a part of the same Policy Cover (certificate of insurance in compliance to Section 64 VB of The Insurance Act), by applying the judgment cited by Ld. counsel for the insurance company the insurance policy has to be effective from midnight of 10/01/2012 which means the accident which has taken place at 10 AM on 10/01/2012 falls under the riskcovered as per commencement of risk certificate. This interpretation is based upon the judgments cited by Ld. counsels for the insurance company in New India Assurance Co. v.BhagwatiDevi (1998) 6 SCC 534 (three-Judge Bench of Supreme Court),National Insurance Co. Ltd. v. JikubhaiNathuji Dabhi (1997) 1 SCC 66, and New India Assurance co.Ltd V/S Ram Dayal(1990 2 SCC 680, Reliance life insurance Co Ltd and another versus Jaya Wadhwani Civil Appeal No./2024 arising out of SLP(Civil) No. 10954 of 2019 clubbed with the case titled The Branch Manager, Reliance Life Insurance Co Ltd versus Usha Soni Civil Appeal No./2024 arising out of SLP(Civil) No. 15588 of 2021 decided on 03/01/2024.

74. Although there is no dispute between the insurance company and the private respondents as far as the settled position of law as to commencement of the insurance policy is concerned but however, it seems that the insurance company as well as its Counsel withheld and ignored the commencement of the risk certificate, and raised unnecessary objection before this Tribunal. The objection raised by the Ld. counsel for the insurance company is merit less and as such, the same is rejected in view of the discussion made hereinabove.

75. Ld. counsel for the insurance company has referred to the award passed by this Tribunal on 24/04/2017 in the case titled Mohammad Altaf Khaja and others VS Mohd Ayoub Denthoo and others arising out of the same occurrence, to convey that since this Tribunal has already given the finding with respect to the same Issue in that matter and that matter is under appeal before the Hon'ble High Court of Jammu and Kashmir and Ladakh, this Tribunal cannot decide these matters differently. To counter this, Ld. counsel for the private counsel submits that the another cited case is different from the present one as the evidence in that case was different and in that case the respondent No. 4 could not prove the payment of the premium for the insurance policy but in this case, the evidence has been led by the private respondents which has established that the premium was paid on 09/01/2012 and so, these cases under determination may be decided independently.

76. Perusal of the award passed by this Tribunal in the under-reference case reveals that the finding of this Tribunal in that case is based upon the evidence in that case and in this regard, an observation from Page No. 24 of the award in Para 2nd is material which is extracted as follows:

> "…But in the present case, respondents have failed to prove that the premium was paid on 09/01/2012 as the statement recorded before the court by respondent No. 4 has shown ignorance regarding payment of premium to the insurance company. Merely saying that premium had been paid on 09/01/2012, this citation referred by the Ld. counsel for respondents 1, 2 and 4 is entirely different on the facts from the present case in hand, thus it is not applicable in the present case."

77. This observation of this Tribunal in another case decided by this Tribunal makes these cases different because that case was decided in favour of the insurance company in view of deficient evidence led by the respondent No. 4 in that case but in this case, the private respondents have brought sufficient evidence establishing the fact of payment of premium and also the commencement of the policy and the risk thereunder. Therefore, the award dated 24/04/2017 passed by this Tribunal will not have any bearing on the current matters under determination which have to be decided on their own merits considering the evidence and material brought on record. Therefore, this contention of the Ld. counsel for the insurance company will not be of any help to him.

78. After deliberating upon various aspects pertaining to the commencement of the insurance policy and also commencement of the risk under the insurance policy, the conclusion on this point is summed up by holding that the risk under the insurance policy No. 111403/31/11/02/00001557 commences from midnight on 10/01/2012 to midnight on 09/01/2013. Further, it is held that although the printout of the insurance policy mentioning time from 15.14 hours on 10/01/2012 could not be proved by leading admissible evidence as per the Evidence Act, still if the same is accepted to be true and correct, the time mentioned in the policy is the effective date of commencement of the insurance policy as mentioned in the policy itself under which the risk commences from 10/01/2012(midnight at 12:01 AM). It is already stated above that Insurance policy covers two components viz first,

commencement of the policy which is from 15.14 hours on 10-01-2012 and second, commencement of the risk under the same policy from 10-01-2012. As such, the accident which took place on 10/01/2012 at 10 AM is very much covered under the risk of the insurance policy for which the insurance company is responsible under the contract of insurance. Accordingly, this point is decided.

79. Since cost would follow the event and the objection raised by the insurance company has been decided against the insurance company, the insurance company shall pay the cost. The insurance company has withheld a document of certificate of insurance which is part of the insurance policy as the document defines the commencement of the risk but, however, when clarification was sought regarding premium receipt number mentioned in the premium receipt and Insurance policy to resolve the incompatibility,Mr Sajad Ahmad Shah, learned counsel for the insurance company was called upon to produce fresh print out of the relevant documents relied upon by the insurance company which were provided as one set. One of the documents was a certificate showing the date of commencement of the risk. Perhaps, the same has been passed on by the company unmindful of its consequences on the disposal of the instant claims. The entire controversy stretched over many years revolved around the 'time'mentioned in the cover note/insurance policy and had the insurance company sincerely come forward with this document years ago the matter would have been decided without undue requirement of calling the witnesses of private respondents and insurance company. The Insurance company is under legal and

statutory obligation to put forward a legal defence and it is not expected to conceal material information having bearing on the finding to take undue advantage. Learned counsel for the insurance Company has unnecessarily not only cited but reproduced extracts from many cited judgments in the pleadings and then supplied number of judgments rebutted by the otherside to make out a defence that risk was not covered at the time of accident. The judgments cited lay down settled position that if there is no time mentioned in the policy, the same has to be effective from the midnight of the same day. The insurance company relied upon time i.e 15.14 hours on 10-01-2012 mentioned in the cover Note/insurance policy and did not submit the commencement of risk certificate which would have been useful to conveniently and expeditiously settle the controversy. As such, this Tribunal, in exercise of the powers under Section 35 of Code of Civil procedure read with Section 169 Motor Vehicles Act,1988, deems it appropriate to impose cost of Rs.50,000/= out of which half will be paid to each of the four petitioners and half will be paid to private respondents who suffered due to suppression of material document compelling them to adduce evidence in the inquiry stretched over many years. Accordingly, it is ordered. The Insurance company shall pay the costs within 30 days positively.

80. Determination of Compensation;

Reverting to determination of the compensation, before proceeding further, it shall be profitable to refer to certain judgments on the point. In the case of Raj Kumar V/S Ajay Kumar

2011 ACJ 1(SC) Hon'ble Supreme Court of India has laid down the certain parameters for determination of fair compensation in case of injury. "The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages)

1. Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
2. Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
   (a) Loss of earning during the period of treatment;
   (b) Loss of future earnings on account of permanent disability.
3. Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the

head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case. Assessment of future loss of earnings due to permanent disability."

81. In the latter case of Kajal V/S Jagdish Chand 2020 ACJ 1042, Hon'ble the Supreme Court has followed Raj Kumar case (Supra) in awarding just compensation in the case of minor permanently disabled girl.

The Supreme Court in Kajal Vs Jagdish Chand has in Para 27 held as under:

"27. One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. Therefore, the courts or the Tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding compensation. While awarding this amount we are not only taking the physical disability but also the mental disability and various other factors. This child will remain bed—ridden for life. Her mental age will be that of a nine-month-old child. Effectively, while her body grows, she will remain a small baby. We are dealing with a girl who will physically become a

> woman but will mentally remain a 9-month-old child. This girl will miss out playing with her friends. She cannot communicate; she cannot enjoy the pleasures of life; she cannot even be amused by watching cartoons or films; she will miss out the fun of childhood, the excitement of youth; the pleasures of a marital life; she cannot have children who she can love let alone grandchildren. She will have no pleasure. Her's is a vegetable existence. Therefore, we feel in the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least Rs.15,00,000/"

82. Keeping in view the landmark judgments cited hereinabove and the guidelines laid down therein, this Tribunal deems it appropriate to decide the just compensation in the below referred cases under the following broad heads:

1. Mushtaq Ahmad Dar V/S Gh Mohammad Makaya and others
MACP 302/2018.

1. This case, as per the injury memo on the reverse of which opinion of the doctor is mentioned, it reveals that the petitioner had only simple injury on left hand and the patient was stable. The patient was given treatment on 10/01/2012 itself. There is no other evidence led by the petitioner to establish that the expenses which she has incurred on his treatment for the pain and suffering which he has undergone. Therefore, in this case, the Tribunal has to award compensation on guesswork basis.
2. It is proved that the bus was driven very rashly and

negligently which fell into deep gorge causing injuries to about 20 passengers on board out of which five were critically injured and 15 had simple injuries as per the statement of the witnesses. However, out of the five critically injured persons, one Shamima succumbed to injuries with respect which a separate claim was filed by her husband which has been already decided by award dated 24/04/2017 passed by this Tribunal. It shows that the impact of the injury was so high where facts themselves show that the petitioner was subjected to tremendous trauma, pain and shock as well as sufferings. Taking in view sufferings, pain, simple injuries sustained by the petitioner Mushtaq Ahmad Dar, it shall be appropriate to award the following compensation:

S.NO	Heads of Compensation	Amount
1	Expenses on treatment, transportation, medicines, miscellaneous expenses etc	50,000.00
2	Pain, trauma, shock and Sufferings	50,000.00
3		1,00,000.00

3. Accordingly, the petitioner namely Mushtaq Ahmad Dar is held entitled to compensation of Rs.1,00,000.00/= (One lac only) along with interest @ 8% per annum from the date of institution of the

original claim petition i.e 09-02-2012 till its final realization, less by interim, if any, awarded and paid, which shall be paid by the respondent-Insurance company within 30 days of the award failing which the award amount due shall be recoverable @ 10% from the expiry of 30 days' time granted for paying the compensation.

2. Raja Begum V/S Gh Mohammad Makaya and others
MACP 303/2018.

1. In this case, the petitioner has suffered disability to the extent of 50% which was supposed to be reviewed after 36 months from the date of issue which is 24/07/2012.One Dr Parveiz Sajad Shah, consultant medicine at District Hospital Bandipora appeared as a witness and he admitted the contents of the disability certificate being author of the same. The doctor certified that the petitioner had post-traumatic fracture D-10 and facture shaft of humerus right side. The degree of disability was assessed as 50% of the whole body which was temporary and had to be reassessed after 36 months. The disability certificate stood exhibited as EXPW-1. In cross-examination, the witness stated that he had personally examined the patient as one of the Board Members and he has specialization in internal medicines. He further stated that he

cannot state about the present status of the injured. Further, as per the record of obtaining disability certificate, the injured has to apply afresh for determining the present status of the injury.

2. The witness namely Ishfaq Ahmad, who is son of the injured, examined before this Tribunal on 06/03/2014 stated that the mother of the witness remained admitted in JVC for 5/6 days and then she was referred to SKIMS Soura where she was admitted for 12 days. She was again referred to JVC for her surgery and she remained admitted there for 13 days. Almost 2 to 2.50 lakhs were spent on her treatment. The mother of the witness cannot walk properly as her spine is wrapped in belt and arm has plaster. Mother of the witness still requires regular check-up. The witness produced one disability certificate issued vide No. 394 dated 24/7/2012 as per which the mother of the witness has 50% disability. In cross-examination by the Ld. counsel for respondents 1, 2 and 4, the witness stated that he, along with his mother, was travelling in the offending vehicle. There were about 40/45 passengers on board.
3. The witness stated that the petitioner is completely bedridden and she is unable to do

anything. Learned counsel for the petitioner contended that 50% of the disability, which was sought to be reviewed after 36 months, continues to exist and this Tribunal has to take a view on the basis of the certificate produced and can form an opinion that in view of the injuries she has sustained, the same is of permanent in nature as she has fracture shaft of humerus right side and post-traumatic fracture D-10. Learned Counsel further contends that the age of the petitioner was 45 years as on the year 2012 and this Tribunal can infer that a person in advanced age cannot improve ortho problem and rather with the increase in age, the injury becomes more painful and traumatic. Learned Counsel submits that due to the injury which the petitioner has sustained she is not in a position to do anything and as such, it may be taken as a functional disability of hundred percent. It is further contended by the Ld. counsel for the petitioner that in view of the judgment of Hon'ble Supreme Court, notional income of skilled labour, as on the date of the accident, has to be treated as the income of the petitioner and compensation may be awarded accordingly. On the other hand, Ld. counsel for the private respondents submitted that the amount claimed

is exorbitantly high although the petitioner does not have any permanent disability. Ld. counsel for the insurance company says that it is between the owner and the petitioner because at the time of the accident there was no insurance.

4. Considering the rival contentions of the Ld. counsel for the parties and appreciating the evidence, it stands proved that the petitioner was injured in the accident and she has suffered 50% of disability to vital part of her body and she was 45 years of age in the year 2012. A shaft was implanted in humerus right side. It means that her right arm will remain affected for all the times to come and she has to be dependent for heavy work on others. Right arm is a very important part of the body which is required to execute any task whether it be physical or sedentary. Even for performing table task, the petitioner is required to use her right hand. Since there is a defect and in totality of whole body, the disability was assessed at 50%. It means that if counting all the injuries disability improves to some extent reducing the percentage but still the petitioner will not get back the same strength for performing heavy physical task. Therefore, 50% of actual disability is equal to 50% of the functional disability.

5. Hon'ble Supreme Court of India has allowed ₹ 5000 per month to a housewife. At the time of the accident, the petitioner was 45 years of age. As per the judgment of Hon'ble Supreme Court in Pranney Sethi case, the same multiplier as applied in Sarla Verma case has to be applied to injury cases. The multiplier applicable in this case is M-14. If 50% functional disability is taken, it affects half of the monthly income of the petitioner. Besides, there has to be addition of 25% in the age group of 40-50 years as future prospects. It means, loss of income will be 5000/2 x12x25%= 2500 x12=30,000 x 40%=42000 x14= 5,88,000/= which is actual loss of income of the petitioner.
6. There is no doubt that it stands established that the petitioner has 50% of the disability all over her body as per the disability certificate. The same had to be reviewed after 36 months. It means that in view of 50% of the disability the petitioner requires the services of at least one attendant during 36 months. However, there is nothing on record that she may require any attendant beyond 36 months. Therefore, it appears to be appropriate to allow charges for one attendant during 36 months of her actual treatment and disability.

7. Besides, the petitioner has disability to vital part of her body she may require medicine in future as well and as such, the minimum amount of ₹ 3000 per month is considered to be appropriate, which is to be awarded to the petitioner.
8. In view of the above, the compensation is calculated awarded under the following heads:

S.No	Heads of compensation	Amount
1	Expenses on treatment, transport, medicine, diet etc	2,50,000.00
2	Loss of income etc	5,88,000.00
3	Attendant @ Rs. 4500 PM (150 per day)	1,62,000.00
4	Future medicine @3000 per month for 14 years	504000.00
5	Total	15,04,000.00

8. Accordingly, the petitioner namely Raja Begum is held entitled to compensation of Rs.15,04,000.00/= (Fifteen lacs and four thousand only) along with interest @ 8% per annum from the date of institution of the original claim petition i.e 13-02-2012 till its final realization, less by interim, if any, awarded and paid, which shall be paid by the respondent-Insurance company within 30 days of the award failing which the award amount due shall be recoverable @ 10% from the expiry of 30 days' time granted for paying the compensation.

3. Rafiqa Begum V/S Gh Mohammad Makaya and others
MACP 303/2018.

1. The petitioner in this case has 60% permanent disability which has been exhibited as well by examining the author of the disability certificate.The doctor namely Dr Parveiz Sajad Shah, advocate has admitted the disability certificate being one of the Board members and author of the same. The same has been exhibited as EXPW- 1. According to the doctor, the petitioner had post traumatic fracture D-11.Besides that, she has persistent pain and stiffness involving the same area. She has 60% disability of whole body which is permanent in nature. The doctor further stated that she is impaired life time and she cannot perform the work which she used to do before the accident. There is a possibility that she may develop complications like that of kyphoscoliosis and she may also require physiotherapy for lifelong. In cross-examination, the witness stated that he has personally examined the patient as one of the Board members as consultant medicine and the doctor has specialization in internal medicine.
2. Besides the doctor witness, Gh Nabi Dar, husband of the petitioner has been examined as a witness.Gh Nabi Dar appeared on 06/03/2014 before this Tribunal and on questioning by the counsel for the petitioner stated that

in the accident, the passengers went unconscious. The witness gained consciousness after sometime and found that almost all the passengers were injured. The passengers namely Shamima Begum, Mushtaq Ahmad, Raja Begum, Rafiqa Begum wife of the witness, Abdul Majid Dar and Ahjaz Ahmad and others got injured in the accident. The police and CRPF came on the spot. The injured were referred to local hospital and then some of them were referred to JVC Bemina. However, Shamima Begum W/O: Mohd Altaf Khowaja was admitted in hospital for about 10 days succumbed to the injuries. The occurrence took place on 10/01/2012.

3. The wife of the witness remained in hospital for 22 days as she had a crush fracture in her spine. The witness got injured in his right eye. The wife of the witness was admitted in JVC hospital where pins were inserted in her spine after performing surgery. The necessary surgery items were purchased from the market. The petitioner incurred an amount of rupees two and half lakhs as on the date of statement. The wife of the petitioner has permanent disability of 60% and she is not able to do anything. The certificate has been issued by medical Board Bandipora vide No. 345/09/07/2012. She is under continuous medication and requires weekly consultation with doctor at JVC.

   In cross-examination by the Ld. counsel for respondents 1, 2 and 4, the witness stated that the

receipts of the medical expenses on the wife of the witness are available with the witness which he can produce. The witness has sold his land to meet the expenses with his brother. The witness was not himself injured. In cross-examination by the Ld. counsel for the insurance company, the witness stated that the occurrence took place on 10/01/2012 at about 10 AM. The police also came on the spot.

4. Besides, the petitioner namely Rafiqa Begum W/O: Gh Nabi Dar has also appeared before the Tribunal on 09/12/2014 and stated that in the accident the witness got injured and fell unconscious who was taken to hospital. She received injury in her spine. There were other passengers on board the bus who got injured and one lady died succumbing to the injuries namely Mst Shameema. There were others also but she does not remember their names. The witness was referred to JVC Hospital Bemina where she was admitted for about one month under treatment. She was operated in spine twice in the hospital. The medicines were purchased from the open market. She remained confined to bed at home for about 3 months and during that time after every week she would visit the hospital for follow-up and then it continued for 6 months. The petitioner cannot do any work due to the accident and she is totally idle. Almost ₹ 2 lakh has been spent on her treatment. She was doing embroidery work and would

earn ₹ 500 to 800 per day but after the accident she cannot do it. One rod was implanted in her spine after performing surgery and that was removed by performing another surgery. In cross-examination by the Counsel for the insurance company, the witness stated that the occurrence took place at about 8 AM. The vehicle was not overloaded. On questioning by the Counsel for the other respondents, the witness stated that she is not illiterate. She was taken to hospital by her husband who was also travelling in the same bus and he too got injured. She was treated by Dr Sohail in the hospital but he did not charge any fee. The medicines were purchased from the market by husband of the witness. The receipts of the same were presented. The witness was sitting on the seat in the bus. She was taken in a sumo vehicle hospital.

5. The discharge summary certificate issued by SKIMS Bemina shows that the petitioner aged 30 years was admitted vide MRD No. 120886 on 10/01/2012 to 31/01/2012 with the history of road traffic accident. In this case, there is a permanent disability as stated above and certified by the doctor witness. Besides, two of the eye-witnesses have been examined who are not only witnesses to the occurrence but one is the petitioner herself who is facing the trauma of disability and the other is her husband. There is no doubt that60% disability all over the body of the petitioner amounts to

hundred percent functional disability as she cannot do any work nor she can do her normal activity. It means that she is totally dependent upon attendants and she has to be regularly treated lifelong. The doctor has also stated that she may also require physiotherapy lifelong and moreover, in future the complications may increase. In this backdrop, the petitioner is not only entitled to the expenses incurred on her treatment but attendant's charges, future medicines, compensation on account of loss of amenities and for pain and sufferings.

6. Therefore, the compensation is determined under the following broad heads.

Pecuniary damages (Special Damages)

a) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

1. There is no doubt that as per the medical record available the petitioner remained admitted for one month in the hospital from 10/01/2012 to 31/01/2012. The petitioner has 60% disability which is permanent in its nature. The petitioner was a young 30 years old female. The witness stated that an amount of ₹ 250,000 has been incurred on the treatment till March 2014. The medical prescriptions, receipts including one receipt for Rs.97850/ issued by Sheikh ul Alam hospital show that roughly an amount of ₹ 120,000 is supported with the vouchers. There is no

evidence from the respondent side to disprove the claim of the petitioner. The petitioner stayed under treatment for 6 months after discharge from the hospital and she was regularly following-up with the doctors as per medical advice.

2. Although there is very little record available on the file to establish the actual expenses incurred on the treatment of the petitioner but on the surgical procedures and continuously shuttling the patient from one hospital to another and for follow-up, it can be estimated on guesswork that for the last 14 years, the petitioner might have incurred an amount of ₹ 10 Lacs which is to say Rs.70000 roughly in a year on her treatment including purchasing of the implants from open market and medicines, regular follow. Besides, the petitioner might have incurred an amount of rupees 50,000 on her transportation. Therefore, it appears to be appropriate to award an amount of ₹ 10.50 Lacs under the head of actual expenses on treatment, hospitalization, transportation, medicines and other miscellaneous expenses during the treatment of the petitioner. Accordingly, the petitioner is held entitled to receive an amount of ₹ 10.50 Lacs under this head.

   b) Future treatment expenses, physiotherapy etc:

   Since the petitioner has disability of 60% which is permanent in its nature and the doctor has stated that there is a possibility that the petitioner may develop

complications and require physiotherapy for lifelong. Besides she is having persistent pain and stiffness involving the affected area and moreover, the petitioner is impaired lifetime. It means that for treatment of the infection which she may likely develop and apart from that, recurring expenses on her present treatment and for regular physiotherapy the petitioner has to spend cost of the medicine and fee for physiotherapy. Since it cannot be calculated in advance but taking into view the plight and pathetic condition of the petitioner and her young age where she may at times require, sanitary hygienic pads dueto her being confined to bed, apart from the medicines which she may require, it shall be appropriate to allow an amount of ₹ 7000 per month as monthly future medical expenses and fee for physiotherapy. It will be too less to take into account an amount of ₹ 500 per day as physiotherapy sitting charges which comes to ₹ 15,000 per month. The cost of medicine is also very high and even ordinary painkillers or antibiotic cannot be afforded against ₹ 5000 per month. But taking into account lifelong treatment, this Tribunal deems it appropriate to allow a lump sum amount of ₹ 5000 for future medicines, treatment and physiotherapy. Accordingly, it is held that the petitioner shall be entitled to these 5000 per month. It comes to ₹ 5000 x 12 x17(M-17) = 10,20,000/. (Ten Lacs and twenty thousand only).

c) Loss of actual earnings:

Considered the evidence adduced by the petitioner to the extent of income and there is no evidence from the other side with respect to the point of income and on the basis of oral evidence and considering that the petitioner was a doing embroidery work in healthy condition earning rupees 500 to 800 per day which is 24000 per month, his monthly income comes to Rs.19500 if average of 500 to 800 rupees is taken. There is no reason not to accept this income of the petitioner particularly when there is no evidence to the contrary. As such, Rs. 19,000/= per month is accepted to be the income of the petitioner at the time of the accident which is about Rs. 633 per day. The same is not unexpected to earn Rs.633/per day being an artisan doing embroidery skilled work.

Moreover, in unorganized sector it is not expected that this income can be proved by documentary evidence. As per the medical record, although the petitioner was actually hospitalized for one month and then she was discharged and remained under treatment and follow-up for six months. Therefore, the actual loss of income during the period of treatment is Rs. 19000 x6=114000.00

As such, an amount of Rs. 114000.00/=(One lac and fourteen thousand) is held to be the entitlement of the petitioner-Rafiqa Begum under the head of loss of actual income.

b) Loss of future earnings on account of permanent disability:

As stated above that the disability certificate issued vide No. 345 dated 09/07/2012 EXPW-1 dated 10/11/2015 and admitted by the author of the certificate, being one of the members of the Board, has established 60% of the disability all overher body which is permanent in its nature. This is also certified by the doctor and proved by the other witnesses that the petitioner is not in a position to do any work although she was doing embroidery work earning an average amount of ₹ 20,000 approximately per month. She has lost the source of income also not only during the time she was confined to treatment but for all her life. She is not in a position to do any work and is dependent on others. The petitioner has been rendered dependent upon others although she was a young lady in her good health. She has been incapacitated to do anything and thereby ruining her entire life. Instead of becoming a support of her family she has become dependent upon them. She was of the age of 30 years as per the disability certificate issued on 09/07/2012 which means she was less than 30 years at the time of the occurrence which took place on 10/01/2012. As per Sarla Verma judgment of the Hon'ble Apex Court, the multiplier applicable is M-17. As per Pranay Sethi judgment of the Hon'ble Apex Court, 40% addition has to be made to the established income if the age of the deceased/injured was less than 40 years. Computing the same it comes to the following:

1) 19000x 12=228000/=.2) 40% x 228,000= 91,200/=. 3) 1+2= 3,19,000/=.4) 3,19,000 x 17(M-17) = 54,26,400/=. Loss of future income comes to Rs. 54,26,400/=.

c) Attendants' Charges:

The petitioner has pleaded that due to the disability, which she suffers from owing to the accident, it has rendered her dependent upon two attendants and as such, she is dependent on others. One attendant cannot stay with her round the clock. Even if it is her husband but still he has to leave his work and other assignments to attend her.

However, only a lady who was a potential support of the family has become potential responsibility of the family because of the accident. No one enjoys being dependent upon others. God-gifted health and well-being is always a blessing for everyone which makes one's life independent-independent in point of enjoyment, and spending a good moments with the family, in going out and spending time with friends and relatives but when someone becomes dependent all these independent movements/moments are compromised and the same are subjected to will of the attendant or in some cases if the desires of the dependent are respected the same can be fulfilled subject to availability of the attendant.

Considering the nature of disability as certified by the competent authority, this Tribunal feels that one attendant is is allowed to be counted for compensation to the petitioner from her life.

As such, charges for one attendant are allowed to the petitioner for a period of 17 years (M-17) as per Pranay Sethi judgment of the Hon'ble Supreme Court of India. The attendant shall be allowed charges as per the minimum wages notified by the government as on the date of the accident i.e. ₹ 110 per day applicable at the relevant time. It comes to ₹ 3300 per month and ₹ 39,600 per annum. The total charges which the petitioner is entitled to under the head of attendant's charges, as per the judgments of Hon'ble Supreme Court referred hereinabove, sums to ₹ 6,73,000/=

B) Non-pecuniary damages (General Damages)

a) Damages for pain, suffering and trauma as a consequence of the injuries.

It is difficult to gauge pain and sufferings of humans but applying the test of a reasonable and prudent man under the similar circumstances, one can gather from the circumstances which pinched the sufferer at the relevant time and thereafter. A healthy person cannot imagine living with permanent disability and no amount of compensation can recompense for the loss of such strength of a body. The petitioner has stated that due to the permanent disability she is not in a position to do anything due to 60% disability which has incapacitated her to do anything. The petitioner has to live with this disability lifelong. The petitioner has suffered immensely due to shock of the accident, pain of the injury and loss of blood as also sufferings due to physiological and psychiatric

impact on the mind of the petitioner. There is no doubt that no one anticipates or can ever happily receive any injury because of pain and trauma associated with such injury. A permanent disability shatters any hope of recovery and the distal has to live pessimistic life which not only because his personal psychological – impact but it is considered as stigmatic in the society and moreover, apart from the financial loss the petitioner will have to face this trauma lifelong and the petitioner has to live dependent life. A healthy person, working because of her physical strength, has been converted into dependent person struggling to live her life with the support of attendant. As such, a lump sum amount of ₹ 5,00,000/= is awarded under this head.

b) Loss of amenities/loss of expectation of life: The petitioner has lost hope of amenities of her life and she has to live with the disability for her lifelong. All the dreams of the petitioner have been shattered because of a single stroke of a vehicle resulting into confinement of the petitioner to bed. The petitioner has 60% disability which the doctor has stated andshe may have further complications in future. Besides that, the petitioner has to spare time for regular follow-up and also for physiotherapy. With such disability, the petitioner cannot aspire to independently move and enjoy the best moments of her life, go for outing with the family, see her relatives and friends and so, the petitioner will be deprived of all

these amenities of life which add pleasant moments to one's memories. The petitioner was just 30 years of age at the time of the accident and has to spend her entire life with the disability. As such, as a healing touch an amount of ₹ 5,00,000/= (Five Lacs) is awarded under the head of loss of amenities of the petitioner.

S.No	Heads of compensation	Amount
1	1.Treatment, medicines, transport, diet etc 2. Future medical expenses, physiotherapy etc	10,50,000.00 10,20,000.00
2	1.Actual loss of income during treatment. 2. Future prospects/income	1,14,000.00 54,26,400.00
3	Attendant's charges	6,73,000.00
4	Loss of amenities and shortening of life expectancy etc	5,00,000.00
5	Pain, trauma and sufferings etc	5,00,000.00
6	Total	92,83,400.00

Accordingly, the petitioner namely Rafiqa Begum is held entitled to compensation of Rs. 92,83,400.00/= (Ninety -two lacs, eighty three thousand and four hundred only) along with interest @ 8%

per annum from the date of institution of the original claim petition i.e 13-02-2012 till its final realization, less by interim, if any, awarded and paid, which shall be paid by the respondent-Insurance company within 30 days of the award failing which the award amount due shall be recoverable @ 10% from the expiry of 30 days' time granted for paying the compensation.

4. Parvaiz Ahmad Ganai V/S Mohammad Ayoub Denthoo and ors

MACP 111/2018

1. In this case, the petitioner suffered fracture in road traffic accident of both bones of right forearm apart from abdominal trauma. Medical record placed on the record shows that the patient was admitted vide MRD No. 120903 on 10/01/2012 and discharged on 25/01/2012 from J&K Government SKIMS Medical College Hospital, Bemina Srinagar. The petitioner was 22 years of age at the time of the accident as per the medical record. The doctor-Dr S.D.Paljour, who appeared as a witness testified that the patient was operated upon right forearm on 24/01/2012 and plating was done. He also stated that post-surgical complications can be infection at the operated site and losing of the implants. The petitioner was advised not to use his affected the limb for 3 months but after 3 months the patient can use the said land as normally done. Another doctor witness namely Dr Ahjaz Ahmad Rather, HOD SKIMS(Surgery) stated that the petitioner has been operated under MRD

No.024500 for para-colostomy hernia and mesh was implanted stop the patient was admitted on 24/03/2016 and discharge on 31/03/2016. The patient had to purchase the mesh from the open market which cause ₹ 2000. Such type of patients need regular care and follow-up treatment as they have to change colostomy bags on regular intervals till the operation is reversed.

2. It appears from the statement that the patient was operated upon for colostomy hernia on 24/03/2016 which is about more than 4 years from the date of the accident. In cross-examination the doctor has stated that it is nowhere mentioned that the petitioner was a case of RTA for which treatment was done. This Tribunal also feels that the subsequent treatment of the petitioner is not substantially and directly linked to the road traffic accident but maybe the same has some relation but because of the remoteness of the chances of its linkage with the road traffic accident, this part of the treatment cannot be considered to be related with the road traffic accident.

3. The petitioner- Parvaiz Ahmad Ganai S/o: Gh Nabi Ganai has also appeared in witness box and statedbefore the Tribunal on 08/05/2014 on questioning by the Counsel for the claimant/himself(in MACP No.111/2018) that at on 10/01/2012 he boarded one bus from Hajin towards Srinagar and on reaching near Sumbal bridge, the bus bearing the station number JK01B 0605 overturned and

fell into a gorge passing injuries to all the passengers including the petitioner/the witness got severely injured. The witness was taken in injured condition to JVC Hospital where he was operated in emergency because he had sustained some internal injuries. After remaining admitted there for about one month, another surgery was also performed on his right arm. Pins were inserted in his arm. The witness/petitioner was discharged after one and half month from the hospital and he was advised follow up in JVC hospital where he would visit after every 10 days and this is still continuing. Another surgery is also required to be performed pertaining to his internal injury. The witness bore his expenses on medicine and other items which were purchased from the market. The witness was working as a baker but after the accident he cannot do anything. The witness would earn an amount of ₹ 8000 per month. The witness put require a private vehicle to visit the hospital for which he would charge ₹ 500 each side of the trip. In cross-examination by the Counsel for the insurance company the witness stated that the occurrence took place on 10/01/2012 at about 9:30 AM. The bus was not overloaded. There are some receipts of expenses available which he can present before the Tribunal. The witness was an employee at a baker shop of Mohammad Sultan Dar. The witness does not have any receipt of payment to sumo vehicle. In cross-

examination by the Counsel for other respondents the witness stated that the witness was paid rupees eight thousand per month as salary. JVC hospital is a government hospital. The witness did not get any compensation from the government.

4. As per the medical record, the petitioner was admitted in hospital for about 15 days and after implanting pins and plates, the petitioner was advised bed rest and follow-up. The petitioner was advised not to usehis affected limb for 3 months. If an important part of the body is not allowed to be used it means a person cannot work. As such,it can be safely said that for about 4 months from the date of treatment, the petitioner could not actually work. However, the petitioner has claimed that because of the surgery performed on him he is not able to do any work. There is no evidence produced by the otherside to establish otherwise or rebut the evidence led by the petitioner. As such, the income claimed by the petitioner as ₹ 8000 per month as baker is accepted as it is not unexpected for a baker to earn an amount of ₹ 266 per day.

5. Therefore, on the basis of the income and the facts described hereinabove, this Tribunal proceeds to determine the compensation under the following acts:

A) Pecuniary heads:

a) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

1. There is no doubt that as per the medical record available the petitioner remained admitted for 15 days in the hospital from 10/01/2012 to 25/01/2012. The petitioner had fracture in forearm and he was advised three months' not to use the limb. Although the petitioner has not produced any voucher or bills to establish the expenses incurred on the treatment but however, this can be taken judicial notice of that for such an expensive treatment of ortho, the petitioner might have spent an amount of rupees 2,00,000/= apart from expenses on follow-up, transportation and miscellaneous needs. Such additional expenses on follow-up, transportation and miscellaneous can be assessed on guess basis at Rs. 1,00,000.00/=. So, the total amount under this head is awarded as ₹ 3,00,000/=.
2. b) Loss of actual earnings:

   As per the medical record, although the petitioner was actually hospitalized one month and then he was discharged and remained under treatment and follow up for three months. Therefore, the actual loss of income during the period of treatment is Rs. 8000 x3=24000.00.As such, an amount of Rs. 24000.00/=(Twenty-four thousand only) is held to be entitlement of the petitioner-Parvaiz Ganai under the head of loss of actual income.
3. c) <u>Attendants' Charges</u>:

The petitioner was under treatment for a period of 3 months including the period when the petitioner was advised not to use his limb and for this purpose, he required the support of one attendant to look after in the hospital during admission and then at home after discharge and also for taking him to the hospital/doctors for follow-up. As such, one attendant is allowed during this period for a period of 3 months. The charges for such attendant are fixed at Rs.3333/= per month i.e Rs. 110 per day as minimum wages applicable at the time of the accident. It comes to rupees 3333 x3=9999 rounded to Rs.10,000/=

B) Non-pecuniary damages (General Damages)

a) Damages for pain, suffering and trauma as a consequence of the injuries.

1. It is difficult to gauge pain and sufferings of humans but applying the test of a reasonable and prudent man under the similar circumstances, one can gather from the circumstances which pinched the sufferer at the relevant time and thereafter. A healthy person cannot imagine living with permanent disability and no amount of compensation can recompense for the loss of such strength of a body. The petitioner has stated that due to the injury he is not in a position to do anything. The petitioner has suffered immensely due to shock of the accident and pain of the injury and sufferings due to physiological

and psychiatric impact on the mind of the petitioner. As such, a lump sum amount of ₹ 1,00,000/= is awarded under this head. The compensation is summed up in tablet form as under:

S.No	Heads of compensation	Amount
1	1.Treatment, medicines, transport, diet etc	3,00,000.00
2	Actual loss of income during treatment.	24,000.00
3	Attendant's charges	10,000.00
4	Pain, trauma and sufferings etc	1,00,000.00
5	Total	4,34,000.00

2. Accordingly, the petitioner namely Parvaiz Ganai is held entitled to compensation of Rs. 4,34,000.00/= (Four lacs,thirty four thousand only) along with interest @ 8% per annum from the date of institution of the original claim petition i.e 16-04-2012 till its final realization, less by interim, if any, awarded and paid, which shall be paid by the respondent-Insurance company within 30 days of the award failing which the award amount due shall be recoverable @ 10% from the expiry of 30 days' time granted for paying the compensation.

83. Issue No.4.

RELIEF? O P Parties

The respondent-insurance company is directed to pay the compensation amount in favour of the petitioners in the above titled four claims which are tabulated below for convenience:

S.No	Case details	Total amount	Interest
1	Mushtaq Ahmad Dar MACP No.302/2018	1,00,000.00	8% with interest from the date of institution till realization if paid in 30 days else @10% after 30 days' time.
2	Raja Begum MACP NO.303/2018	15,04,000.00	
3	Rafiqa Begum MACP No.305/2018	92,83,400.00	
4	Parvaiz Ahmad Ganai MACP No.111/2018	4,34,000.00	
5	Total	1,13,21,400.00	
6	Costs	50,000.00	UIIC shall pay as directed above.

Needless to reiterate that the Tribunal has to award just compensation as per Section 168 M.V.Act irrespective of the claim made for the quantum of amount of compensation which is not dependent on the prayer made. Therefore, as per law, this Tribunal has awarded compensation which appeared to it to be just which is different than the amount prayed for.

However, the payment of court fee shall be first charge on the awarded amount and the amount shall be paid subject to

deduction of income tax as per law.

The petition is accordingly disposed off and the same shall be consigned to records.

Announced
11-03-2026

MEHRAJ UDDIN MALIK
Digitally signed by MEHRAJ UDDIN MALIK

Sd/=
(District & Sessions Judge)
Presiding Officer, MACT,
Srinagar