**IN THE SUPREME COURT OF BANGLADESH**
**HIGH COURT DIVISION**
**(Special Statutory Jurisdiction)**

**TRANSFERRED MISC. CASE NO. 01 OF 2016**

**In the matter of:**

An application for compensation under section 128 of the Motor Vehicles Ordinance, 1983

**And**

**In the matter of:**

Catherine Masud (a. k. a. Catherine Shapere,
Wife of the late Abu Tareque Masud
currently residing at B-2, Siza Court
152, Monihar Road, Monipuri Para
Police Station-Tejgaon, Dhaka
Permanent Address-
170, Darling Road, Salem CT 06420
USA and two others
… Petitioner-claimants

**Versus**

Md. Kashed Miah
Son of Haji Loshkor Miah
Co-owner of Chuadanga Deluxe Service
Gokulkhali
Police Station-Alamdanga
District-Chuadanga
Present Address-
Chuadanga Deluxe Service
New Malik Traders
Shahid Abdul Kashem Sharok
Chuadanga
Head Office-
Counter No. Gha/16

Inter City Bus Terminal
Mirpur, Dhaka and four others
… Opposite-parties

Dr. Kamal Hossain with
Ms. Sara Hossain,
Mr. Ramzan Ali Sikder,
Mr. Md. Motahar Hossain, Advocates
… For the petitioner-claimants

Mr. Md. Abdus Sobhan Tarafder, Advocate
… For opposite-party Nos. 1 to 4

Mr. Ehsan A. Siddiq with
Mr. Imran A. Siddiq,
Dr. Chowdhury Ishrak Ahmed Siddiky,
Mr. Mohammad Shishir Manir, Advocates
… For opposite-party No. 5

Mr. A. Z. M. Fariduzzaman, Advocate
… For opposite-party No. 6

Mr. Mahbubey Alam, Attorney General with
Ms. Israt Jahan, DAG
Ms. Nurun Nahar, AAG
Mr. Swarup Kanti Dev, AAG
Mr. A. H. M. Ziauddin, AAG
… For the Court

**Arguments heard on: 09.07.2017, 10.07.2017, 11.07.2017, 12.07.2017, 16.07.2017, 18.07.2017, 19.07.2017, 20.07.2017 and 16.11.2017.**

**Judgment on the 03rd December, 2017**

**Present:**

**Ms. Justice Zinat Ara**
**And**
**Mr. Justice Kazi Md. Ejarul Haque Akondo**

**Zinat Ara, J:**

This is an application under section 128 of the Motor Vehicles Ordinance, 1983 (shortly, the MV Ordinance) for compensation over the road accidental death of Abu Tareque Masud and injuries caused to claimant No. 1, Catherine Masud, wife of Abu Tareque Masud (now deceased). The two other claimants of this case are Nishaad Binghamputra Masud and Nurun Nahar, son and mother of Abu Tareque Masud, respectively.

## Transfer of the Case to this Court

The claimants initially filed the case under section 128 of the MV Ordinance before the District Judge, acting as the Motor Accident Claims Tribunal, Manikganj (shortly, the Tribunal). It was accepted by the Tribunal and registered as Miscellaneous Case No. 01 of 2012 on 13.03.2016.

To contest the case, opposite-party Nos. 1 and 2, Md. Kashed Miah and Md. Khokon Miah (Md. Mujibul Haque Khokon) filed a joint written statement/objection and opposite-party Nos. 3, 4 and 5 Md. Jahangir Kabir (Tuhin), Md. Jamir Uddin and Reliance Insurance Limited, each filed a separate written statement/objection before the Tribunal. The case proceeded and the Tribunal, on 23.08.2012, framed issues to decide the merit of the case.

Thereafter, the claimants filed Transfer Petition No. 01 of 2013 before the High Court Division under article 110 of the Constitution for transfer of the case from the Tribunal to the High Court Division. Whereupon, a rule was issued by the High Court Division on the matter and upon hearing, the rule issued was made absolute by the High Court Division by judgment dated 29.10.2014. Consequently, Miscellaneous Case No. 01 of 2012 was withdrawn from the Tribunal and registered/re-numbered as Transferred Miscellaneous Case No. 01 of 2016. Eventually, the Hon'ble Chief Justice has sent this case for hearing and disposal by the Division Bench presided over by one of us (Zinat Ara, J.).

## Addition of Party

The petitioners, after transfer of the case to the High Court Division, filed an application, on 26.03.2016, for adding the United Commercial Bank Limited, Jhenaidah Branch, Jhenaidah (the Bank, in brief) as opposite-party No. 6 to the claim application on the ground that the Bus was mortgaged to the Bank by Md. Jahangir Kabir being owner of the Bus and Proprietor of M/S Ruhin Motors. The application was allowed and the Bank has been added as opposite-party No. 6 to this case.

## Case of the Petitioner-claimants

The sum and substance of the case of the petitioner-claimants is as under:-

Deceased victim Abu Tareque Masud (shortly, Tareque) used to make films. He intended to make a new film titled "Kagojer Phool." So, on 13.08.2011, he started from Dhaka along with nine others, namely,- (1) claimant No. 1, Catherine Masud (shortly mentioned as Catherine), (2) Cameraman Ashfaque Munier, (3) Painter Dhali Al-mamun, (4) Painter Dilara Zaman Jolly, (5) Tareque's Assistant Monish Rafiq and several Production Crew Members being (6) Saidul Islam Saeed (briefly, Saidul), (7) Wasim, (8) Jamal and (9) driver of the Microbus Mostafizur Rahman for visiting a shooting site at Saljana village of Shibalaya Upazila under Manikganj district. The team went there by a microbus bearing registration No. DHAKA METRO CHA-13-0302 (shortly, the Microbus) owned by claimant No. 1, Catherine and Tareque. After arrival at Saljana, they spent some time there.

On their way back to Dhaka at about 12.30 p.m., the Microbus arrived at a place named "Joka" on the Dhaka-Aricha Highway under Ghior Police Station. At that time, a passenger bus in the name and style "Chuadanga Deluxe

Paribahan" licensed as "Dhaka Metro Ba 14-4288 (hereinafter stated as the Bus) was coming from the opposite direction at a high speed. It was carrying about fifty passengers from Dhaka to Chuadanga. The Bus driver Md. Jamir Uddin (shortly, Jamir), in order to overtake a smaller bus, at a curving point of the road (Highway), suddenly took a sharp turn and continued to drive the Bus through the wrong lane i.e. right side of the road through which the Microbus was running and caused head on collision with the Microbus. The effect of the collision was disastrous. Five persons boarded in the Microbus, film-maker Tareque, the driver and three other passengers, died instantly. But Jamir, instead of stopping the Bus to assist the victims, sped away and then abandoned the Bus at Paturia, further ahead on the road towards Manikgonj. Out of the surviving passengers, four were injured, namely, Catherine, Dhali Al-Mamun, Dilara Begum Jolly and Saidul. They were initially taken to Manikganj Sadar Hospital. Subsequently, they were sent to Dhaka and admitted into Square Hospital.

On hearing about the accident, Sub-Inspector of Police (S.I.) Lutfar Rahman, S.I. Enamul Haque and other police personnel of Ghior Police Station rushed to the place of occurrence. On the same day i.e. on 13.08.2011, S.I. Lutfor

Rahman lodged a First Information Report (FIR) alleging that the Bus Driver Jamir was driving the Bus recklessly and negligently at a high speed leading to a head-on collision with the Microbus resulting in killing the driver and four passengers of the Microbus and causing injuries to some other passengers of the Microbus. The FIR was recorded as Ghior Police Station Case No. 07 dated 13.08.2011 under sections 279, 337, 338-A/304-B and 427 of the Penal Code.

The claimants claim that deceased victim Tareque was a renowned film-maker. Catherine and Tarique were the owners of a production house named Audiovision. They were well-known for directing the films, “Muktir Gaan” (1995) and “Matir Moyna” (2002) (also released under English title “The Clay Bird”) the latter won the FIPRESCI International Critics Prize at the Cannes Film Festival in 2002 for its authentic, moving and dedicated portrayal of a country struggling for its democratic rights.

The claimants further claim that due to the death of Tareque, his wife Catherine, as a widow, has been deprived of the love and affection of her beloved husband. Their minor son, claimant No. 2, has been deprived of his father’s love, affection, support, care and nursery. Claimant No. 3, mother of Tareque, an old lady of 75 years and dependant on

her eldest son Tareque, has been deprived of her son's care, support and affection.

In the above noted background, the petitioners i.e. the claimants claim that opposite parties/defendant Nos. 1 to 4 as the custodians, owner and driver of the Bus and opposite party/defendant No. 5, Reliance Insurance Limited, as the insurer of the Bus, are liable to pay the following compensation and damages caused due to the accident :-

| **Nature of Damage** | **Amount Claimed** |
|---|---|
| 1. Loss of Income | Tk. 2,40,00,000/- |
| 2. Loss of Dependency suffered by Claimant Nos. 1 and 2, the minor | Tk. 2,50,00,000/- |
| 3. Loss of Dependency suffered by Claimant No. 3, represented by Abu Tayab Masud | Tk. 10,00,000/- |
| 4. Loss of Future Advancement | Tk. 10,00,000/- |
| 5. Loss of Estate | Tk. 10,00,000/- |
| 6. Loss of Love & Affection suffered by Claimant Nos. 1 and 2 | Tk. 2,50,00,000/- |
| 7. Medical Expenses of Claimant No. 1 | Tk. 25,452/- |
| 8. Funeral Expenses | Tk. 1,00,000/- |
| 9. Damage to Property (Microbus) | Tk. 5,00,000/- |
| **Total** | **Tk. 7,76,25,452/-** |

The petitioners, by way of amendment of the original claim petition, claimed an amount of Tk. 2,18,04,646/- instead of Tk. 25,452/- for treatment and future treatment of Catherine. Thus, their total claim stands at Tk. 9,94,04,646/-.

The petitioner-claimants filed the original claim application for compensation under section 128 of the MV Ordinance as a

simple petition and not in the prescribed form. Subsequently, they have submitted a filled up application form for the same compensation in CTA Form with their photographs. It was received and accepted by this court on 13.03.2016.

## Case of Opposite-party Nos. 1 & 2

The sum and substance of the case of opposite-party Nos. 1 and 2 as stated in their joint written objection/statement is as under:-

> They are full brothers. They have been running the business of transporting passengers under the business banner "Chuadanga Deluxe Paribahan" in the route of Dhaka-Chuadanga-Dhaka. For running their business, they operate several passenger coaches (buses) along with the Bus. They are the actual owners of some of the buses but not the owners of all the buses including the Bus involved in the accident.
>
> On the day of accident, on 13.08.2011, they were operating the Bus under necessary and valid documents like registration certificate, fitness certificate, tax-token, route permit and insurance certificate. They admit that on 13.08.2011, the Bus in question was in operation under their business name/banner "Chuadanga Deluxe Paribahan" and

that on its way from Dhaka to Chuadanga, the Bus reached the place called ‘Joka’ when the accident took place. They claim that the driver of the Microbus carrying the victims crossed the divider line of the road and hit the Bus directly. It is the driver of the Microbus, not the driver of the Bus, who was driving the Microbus recklessly at a high speed. On the contrary, the driver of the Bus, in order to avoid the accident, slided the bus beside the road, but failed to avoid the collision. However, due to the said collision, several road side trees and the left side of the Bus were damaged.

They admit that the police initiated a criminal case by lodging an FIR over the accident and submitted a charge-sheet in the said case. They claim that the said criminal case is pending for disposal and that before disposal of the criminal case, the claimants have filed this claim case out of greed. They contend that, in the above circumstances, the claim made in this case is not maintainable and liable to be disallowed.

## Case of Opposite-party No. 3

The case of opposite-party No. 3, Jahangir Kabir Tuhin, is that the Bank is the owner of the Bus involved in the accident, but it was being operated, in his Jimma, under the business banner of “Chuadanga Deluxe Paribahan.” With regard to the accident, he has

stated the facts similar to those stated by opposite-party Nos. 1 and 2.

## Case of Opposite-party No. 4

Opposite-party No. 4, Jamir, in his separate written objection/statement, has stated that he is a poor man and a professional driver. He admits that, on 13.08.2011, at 12.30 p.m., he was driving the Bus in question as usual. When the Bus reached at Joka on the Dhaka-Aricha Highway from Gabtali, Dhaka towards Chuadanga, the Microbus carrying the victims crossed the divider line of the road and hit the Bus. He has raised similar objection to the claim as raised by opposite-party Nos. 1 to 3.

## Case of Opposite-party No. 5

Opposite-party No. 5, Reliance Insurance Limited (in brief, Reliance), filed a written objection/statement stating that on 24.08.2010, this opposite-party, in course of its business, Reliance issued a Commercial Vehicle Comprehensive/Third Party Insurance Policy for the Bus, which was jointly owned by M/S Ruhin Motors, Proprietor- Md. Jahangir Kabir (Tuhin) as mortgagor and the Bank as mortgagee. According to the Insurance Policy document vide Motor Insurance Policy No. RIL /JES /MV(CV) /P-00303 /08 /2010(COMP) and Certificate No. RIL/JES/MV(CV)/CERT-00303/08/2010(COMP) (briefly stated as

the Insurance Policy), the Insurance Policy was valid for the period from 26.08.2010 to 25.08.2011.

The Insurance Policy contains specific terms of coverage stipulating the quantum of the liabilities of Reliance in respect of losses caused to third parties by the vehicle insured, which are,- (1) for death- Tk. 20,000/-, (2) for severe hurt- Tk. 10,000/-, (3) for any other hurt- Tk. 5,000/- and (4) for property damage-Tk. 50,000/-.

On 14.08.2011, the Jessore Branch Manager of Reliance informed the Head Office of Reliance that the owners of the Bus submitted a formal claim, under the Insurance Policy for Tk. 8,17,000/- for the damage caused to the Bus. In that claim, supported by the statement of the driver of the Bus, it has been stated that, on 13.08.2011, the Bus was running from Dhaka to Chuadanga carrying 32 passengers and the Bus had a head-on collision with a microbus (registration No. Dhaka Metro-Cha 13-0302) at a place called 'Joka' under Ghior Police Station, Manikganj on the Dhaka-Aricha Highway. In the said claim it has further been stated that the **Microbus was on the wrong side of the road and was trying to overtake another vehicle and** that the Bus, in an attempt to avoid collision, hit the road side trees, but failed to avoid accident and that due to the accident, **the Bus was damaged and the driver, the helper and some passengers were injured**. After observing necessary formalities and conducting

survey, Reliance has paid to the owner of the insured Bus an amount of Tk. 1,45,350/- as full and final settlement of the claim under the Insurance Policy.

Reliance claims that, under the Insurance Policy, it has limited liability to a third party as stated above and, as such, it is not liable to pay the compensation as claimed by the claimants.

Reliance in an additional written objection/statement has stated that the case is not maintainable in the present form, as it has not been filed in the Form CTA as prescribed by rule 220 of the Motors Vehicles Rules, 1940 (hereinafter mentioned as the MV Rules).

**Reliance has further stated that after making payment on the claim of the Bus owners, recently, it came to the knowledge of Reliance that the driver of the Bus had no valid driving license. Reliance has also stated that it came to know that charge-sheet No. 15 dated 22.03.2012 was submitted in Ghior Police Station Case No. 07 dated 13.08.2011 to the effect that the driver of the Bus had no valid driving license on the date of accident, that the validity of his driving license had expired three years back and that he managed to collect a fake slip about renewal of the expired driving license**.

(Bold, to give emphasis)

## Issues to be Considered

Before transfer of the case to this Court, the Tribunal framed the following issues:-

"বিচার্য বিষয়

১। অত্রাকারে মামলাটি চলতে পারে কিনা?

২। অত্র মামলায় প্রদত্ত কোর্ট ফি সঠিক আছে কিনা?

৩। অত্র মামলা তামাদিতে বারিত কিনা?

৪। অত্র মামলায় পক্ষাভাব দোষ আছে কিনা?

৫। অত্র মামলার আরজিতে বর্নিত মতে মোটরযান দূর্ঘটনার জন্য ক্ষতিপূরন বাবদ বাদীপক্ষ বিবাদীদের নিকট হতে ৭,৭৬,২৫,৪৫২/- টাকা পেতে অধিকারী কিনা?

৬। অত্র মামলার আরজিতে বর্নিত মতে মোটরযান দূর্ঘটনার জন্য ক্ষতিপূরন বাবদ বাদীপক্ষ বিবাদীদের নিকট হতে পেতে অধিকারী হলে কি পরিমান টাকা পেতে অধিকারী?

৭। বাদীপক্ষ প্রার্থীত প্রতিকার পেতে পারে কিনা?"

After transfer of the case, none of the parties raised any objection to the issues framed by the Tribunal. However, as stated earlier, the claimants, by amending the claim petition, have claimed Tk. 9,94,04,646/-.

So, issue No. 5, accordingly, stands modified on the quantum of compensation.

## The Manner of Contest in the Trial

In support of their claim, the petitioner-claimants have adduced oral evidence through seven witnesses, PWs-1 to 7, including petitioner-claimant Catherine herself as PW-1. They have produced some documents marked as Exbts.-1 to 9 and 15.

On the contrary, opposite-party Nos. 1 to 3 and opposite-party No. 4-Jamir, the driver of the Bus, have adduced oral evidence through five witnesses (OPWs-1 to 5) including opposite-party No. 4 himself as OPW-1 and opposite-party No. 2 Md. Mujibul Hoque Khokon as OPW-2.

Opposite-party No. 5-Reliance has produced one witness as OPW-1, who also produced two documents marked as Exbts.-A and B.

The witnesses of the petitioners' side were cross-examined by the respective opposite-parties, sometimes jointly and sometimes separately. Similarly, the witnesses adduced by the opposite-parties were also cross-examined by the petitioners' side.

The Bank (added-opposite-party No. 6) though has filed a written objection/statement, but neither adduced any evidence, oral or documentary, nor cross-examined any witness of the other parties.

Apart from the above noted manner of participation in the trial, the learned Advocates for all the contending parties, including the Bank, advanced detailed arguments.

## Substance of Depositions of Witnesses of the Parties

**P.W.1-Catherine, claimant No. 1,** appeared and deposed on behalf of herself and the two other claimants, being her minor son Nishaad and her mother-in-law, Nurun Nahar. She produced a guardianship certificate for her son Nishaad. She stated that her husband Tareque died at the age of 54 years due to accident. She and Tareque were film-makers and owners of a film producing enterprise, namely, Audiovision Productions. Both of them were Co-Directors of Audiovision Productions. Together they made several films including ‘Muktir Gan’ and ‘Matir Moyna’. Matir Moyna won the International Critics Prize at Cannes Film Festival in 2002. They decided to make a new film titled ‘Kagojer Phool.’ So, on 13.08.2011 at 06.00 a. m., she herself, her husband along with others, being ten in all, including the driver, started their journey from their home situated at Monipuripara, Dhaka by their own microbus bearing No. Dhaka Metro-Cha 13-0302 (the Microbus) towards the shooting site at Saljana village of Shibalaya Thana in Manikganj. They reached the site at about 09.00 a.m. and

spent about two and half hours there. At about 11.30 a.m. they boarded the Microbus for returning to Dhaka.

She described their sitting arrangement inside the Microbus. She herself was sitting facing backside of the road. So, she could see everything in the backside. At about 12.10 to 12.15 p.m, the Microbus reached the Dhaka-Aricha Highway. They were heading towards Dhaka in the eastern side. The Microbus was running through the correct lane at a low speed, as it was raining and they were looking for a place to take lunch. She was in a seat facing backwards and so, she could clearly see from the backside window that they were travelling on the correct side of the road. After about fifteen minutes of driving on the Highway, at about 12.30 p.m., they faced the accident. **Suddenly, she heard a tremendous sound of crashing and she was pushed back by the force of the impact. She could hear the roaring sound of a huge engine towards her left side and their Microbus was being pushed backward down the road. She felt a blow on the back of her head. After about ten seconds, she noticed bright light overhead. She could understand later on that the roof of the Microbus had been torn open by the Bus that hit them. None from the Bus came to help them. Rather, she heard the sound of the Bus speeding away towards the left.**

After a little while, the local people came to help them. With their help, she and her co-passenger Jolly could get down from the Microbus and found the damage done to the Microbus and also found the dead bodies inside. Monish Rafique and some local people found Dhali Al-Mamun in the Microbus alive, but seriously wounded. Saidul was also injured. She also found the dead body of co-passenger Mishuk Munier fallen out of the Microbus to the road on the other side. With the help of local people, they stopped a running local passenger bus to make arrangement for treatment of surviving passengers of the Microbus. She and three other surviving co-passengers boarded the bus for going to hospital. Monish Rafique, the only one who was not injured, stayed back with the Microbus.

Firstly, they had gone to Manikganj Hospital. Dhali Al-Mamun was bleeding heavily. She herself had head injury. Jolly and Saidul had broken arms. After initial treatment at Manikgonj Hospital, they, by two ambulances, went to Square Hospital in Dhaka and got admitted there.

She had a CT scan which showed cranial hematoma. She was released on the next date. Few days after, she noticed some changes in her eye-sight with pain and flashes. But, before the accident, she had perfect vision. Her eye-sight gradually deteriorated. In December, 2011, she went to USA and got her eyes

were checked. The US doctor found that she had developed an epi retinal membrane (ERM) in right eye, which developed due to traumatic injury to the eyes. For the next four years, she had been under treatment for her eye condition. Retina Specialist, Dr. Niaz Rahman of Bangladesh opined that her eye sight has been permanently affected, possibly as a result of the trauma in the accident.

Subsequently, she came to know that Manikgonj police had come to the spot of the accident immediately after and initiated a criminal case over the accident. In that case, the Investigating Officer examined her as a witness.

**After the accident, she had to close their business. In 2011, as per the tax return filed in USA, the joint income of herself and Tareque was approximately taka five lacs per month.** But the death of Tareque has caused loss to the business and also deprived her of the love, affection and care of Tareque. Similarly, she herself, her minor son and mother of Tareque, as dependents of Tareque have been deprived of love, affection and care of Tareque.

As stated in the plaint, she mentioned ten items of compensation claimed by herself and two others claimants, amounting to Tk. 9,94,04,646·00.

In support of her statements, she produced the following documents:- (1) Succession Certificate, Exbt.-1, (2) Guardianship Certificate for her son, Exbt.-2, (3) Plan for making of the film titled 'Kagojer Phool,' Exbt.-3, (4) Trade License for their Production Company, Exbt.-4, (5) Birth Certificate of her son Nishaad, Exbt.-5, (6) Death Certificate of Tareque, Exbt.-6, (7) Certified copy of the seizure list, Exbt.-7, (8) Certified copy of the F.I.R. relating to the accident, Exbt.-8 and (9) Certified copy of the charge-sheet, Exbt.-9.

She has denied the defence suggestion that the Bus was on the correct side of the road and that the Microbus crossed the divider line and hit the Bus.

In cross-examination by the Insurer Reliance (opposite party No. 5), she has stated that **the certificate of insurance for** the Microbus **expired on 25.07.2011, but due to her stay in USA at the end of 2011 and her father-in-law's death in August, 2011, she could not get renewal of the insurance for the Microbus in time.** She could not re-call if any part of the Microbus was lying on the road crossing the divider line. She admitted that she deposed as a witness in Sessions Case No. 109 of 2012 relating to the accident. She admitted that the first indication of the accident was the sound of a tremendous crashing noise and that she did not hear any horn of the Microbus prior to the accident.

In cross-examiantion by opposite-party Nos. 1 to 4, she stated that it was raining on that day and as they were looking for a place to stop to take some food, the Microbus was being driven slowly. She stated that probably the Bus that caused accident was mortgaged in favour of the Bank and for that reason, she made the Bank a party to the case subsequently. She admitted that while she was sitting in the Microbus, she could not see the exact traffic situation in front of the Microbus but voluntarily added that other co-passengers and other witnesses to the accident told her that the Bus was overtaking another bus at the time of accident.

**PW.-2 Md. Saidul Islam**, a passenger of the Microbus, corroborated the statements of PW.-1 with regard to the date, time and the purpose of the visit of the ten member team including himself, Tareque and others to Saljana, their return journey by the same Microbus and the vivid description of the accident at 12.30 p.m. on the Dhaka-Aricha Highway. He described the sitting arrangement of those ten including himself in the Microbus. P.W.2 also corroborated PW-1 about the light rain and about searching for a food shop, when the Microbus was running through Dhaka-Aricha Highway.

PW-2 further stated that from his seat he could see the frontal scenario ahead of the Microbus and thus, he witnessed the manner in which the accident took place. He narrated that the **Microbus**

**was running within the left side lane from the middle traffic line of the highway. He saw a turning/curving point at the right side of the road towards Dhaka. He found, in the front of the Microbus, a minibus at the right side coming from the opposite side i.e. from Dhaka towards Aricha. Then, all on a sudden, he found that a big bus overtook the minibus and the Bus hit the Microbus with force and he became senseless.**

PW-2 further stated that he sustained injuries on his legs, right arm and head. Subsequently, he had surgical operation in his right arm and a steel device was placed in his right arm. PW-2 also stated that at the Square Hospital, he heard from others that five of his co-passengers, namely, Tareque, Mishuk Munier, Washim, Zamal and driver Mostafiz had been killed in the accident and that the surviving four others had sustained various injuries.

In cross-examination by the Bus driver, PW-2 denied the defence suggestions that the dirver of the Bus, before the accident, had tried to avoid accident by blowing a horn and that the Microbus hit the Bus after crossing the middle traffic line of the highway.

Opposite-party Nos. 1 to 3 declined to cross-examine PW-2.

However, Reliance, the Insurer, cross-examined PW-2 and he denied the suggestion that the driver of the Microbus was responsible for the accident.

PW-2 was further cross-examined on some other points, but there is no deviation from what he has stated in examination-in-chief.

**PW-3 is Dilara Begum Jolly, another surviving passenger of the Microbus**. She corroborated the statements of PWs 1 and 2 relating to the date, time, place and manner of the accident. She stated that the Microbus was running through the left side of the road. Suddenly, the Bus hit the Microbus and **that the Microbus was being pushed by the Bus for about ten seconds with severe forces after the said hit** and that the accident led to the instant death of the driver and four co-passengers of the Microbus including Tareque and injuries caused to herself and others.

PW-3 was cross-examined separately by opposite-party Nos. 1-3 and by opposite-party No. 4. But there is no deviation from her statements made in the examination-in-chief.

Opposite-party No. 5, the Insurer Reliance, declined to cross-examine PW-2.

**PW-4, Dhali Al-Mamun, another co-passenger of the Microbus,** also corroborated the statements of PWs-1, 2 and 3 about the date, time and place of the accident. He also narrated their sitting arrangement in the Microbus and the manner of the accident including the fact that the Microbus was running through the

left/correct lane of the road and the injuries sustained by him. He further stated that **he became senseless and regained his sense at a hospital in Bangkok and he had to undergo several surgical operations to recover from head, shoulder and other injuries. He denied the defence suggestion that the Microbus hit the Bus.**

**PW-5 is S. I. Md. Lutfor Rahman**. He has stated that on 13.08.2011, he was serving as a Sub-Inspector of Police at Ghior Police Station of Manikganj district. On that day, on the basis of General Diary No. 437, he with his companion police force went to the site of accident called "Joka" on the Dhaka-Aricha Highway. He found the severely damaged Microbus and five dead bodies and a passenger bus of Chuadanga Deluxe Paribahan. He has mentioned the registration numbers of the Microbus and the Bus.

**On asking a passenger of the Microbus named Md. Monish Rafique and the local people, he came to know that the Microbus with passengers was going towards Dhaka and that the Bus was coming from Dhaka and going towards Aricha. They told him that the Bus was being driven recklessly at a high speed and it the Microbus directly at about 12.30 p.m. He found the backside roof of the Microbus torn apart. He came to know that the five persons killed in the accident were Tareque, Mishuk Monier, Mostafizur Rahman, Wasim and Jamal and**

**that Catherine, Dhali Al-Mamun and Dilara Begum Jolly were injured.**

He seized the Microbus and the Bus by preparing seizure lists, prepared inquest reports on the dead bodies of the victims. However, he did not send the dead bodies to the morgue at the request of the relatives of the deceased persons. On the same day, he lodged an FIR bearing No. 07 dated 13.08.2011 and stated therein that the Bus driver of the Bus named Jamir was responsible for the accident. He produced and proved the certified copy of the FIR and the seizure list, which were used as evidence in the criminal case. These two documents have been marked as Exbts. 8 and 7 respectively in this case. He added that the original of those documents were lying with the record of the relevant criminal case.

In cross-examination, he admitted that he had not witnessed the accident. But, immediately after the accident, he found the Bus on the left side of the road towards Aricha and right side towards Dhaka and the **Microbus in the middle of the road**. He admitted that he did not get the driving license of the driver of the Microbus and that he had not conducted any search inside the Microbus.

**PW-6 is Md. Ashraf-ul-Islam**. He stated that, while he was working as Officer-in-Charge of CID, he conducted investigation of the criminal case initiated on the basis of the aforesaid FIR dated 13.08.2011. He narrated the manner of his investigation of the

criminal case relating to the accident and produced and proved the certified copy of the charge-sheet marked as Exbt.-9 in this case and Exbt.-11 in criminal case.

His findings recorded in the charge-sheet are quoted below:-

> "তদন্তকালে আমি বাসের এম. ভি. আই (Motor Vehicle Inspection) টেস্ট করাই। রিপোর্ট পর্যালোচনায় দেখা যায় বাসের স্পিড গভর্নর সিল (গতি নিয়ন্ত্রক) টেম্পার্ড করা অর্থ্যাৎ বাস তৈরির কোম্পানী কর্তৃক নির্দিষ্ট গতি সীমা রেখে গাড়ী চালানের যে বাধ্যবাধকতা ছিল তাহা নষ্ট করা হয়। এক্ষেত্রে স্পিড গভর্নর সিল (গতি নিয়ন্ত্রক) না থাকার কারণে বাসের গতি নিজ ইচ্ছামত বাড়ানো কমানো সম্ভব। যদি স্পিড গভর্নর সিল (গতি নিয়ন্ত্রক) টেম্পার্ড করা না থাকত তাহলে কখনই বাসের নির্দিষ্ট গতির বেশি গতিতে বাস চালানো সম্ভব ছিল না। তদন্তকালে দেখা যায় বাসের ফিটনেস মেয়াদ উত্তীর্ন ছিল। বাসের ড্রাইভার জমির হোসেনের ড্রাইভিং লাইসেন্স এর মেয়াদ বেশ কয়েক বছর পূর্বে উত্তীর্ন হয়। তিনি জানান যে, ড্রাইভিং লাইসেন্স নবায়নের জন্য বিআরটিএ কর্তৃপক্ষের কাছে ড্রাইভিং লাইসেন্স জমা আছে। এই মর্মে একখানা কাগজ প্রদর্শন করিলে তদন্তকালে দেখা যায় ঐ কাগজটি ভূয়া। আমার তদন্তে চুয়াডাংগা ডিলাক্স পরিবহনের বাস নাম্বার ঢাকা মেট্রো-ব ১৪-৪২৮৮ বাসটি রাত্রি ৪ টার সময় চুয়াডাংগা থেকে ঢাকার উদ্দেশ্যে রওয়ানা হয়ে সকাল ১০.০০ টায় গাবতলী পৌছায়। পুনরায় ১০.৩০ মিনিটে গাবতলী থেকে যাত্রী নিয়ে চুয়াডাংগার উদ্দেশ্যে রওয়ানা করে এবং ঘিওর থানাধীন জোকা নামক স্হানে অনুমান ১২.৩০ মিনিটে পৌছায় এবং দুর্ঘটনা ঘটায়। ঘটনাস্হলে ৫ জন মারা যায় এবং বাকী ৩ জন গুরুতর আহত হয় এবং বাকী ২ জন সাধারন জখম প্রাপ্ত হয়। মৃত ব্যক্তিদের মধ্যে বিখ্যাত চলচিত্রকার তারেক মাসুদ, বিশিষ্ট সাংবাদিক এবং ক্যামেরাম্যান মিশুক মনির, ড্রাইভার মোস্তাফিজুর রহমান, সেট ডিজাইনার ওয়াসিম এবং জামাল। আঘাত প্রাপ্তদের মধ্যে ছিলেন তারেক মাসুদের স্ত্রী ক্যাথেরিন মাসুদ, চট্রগ্রাম বিশ্ববিদ্যালয়ের শিক্ষক ঢালি আল মামুন ওনার মিসেস দিলারা জামান জলি, সাইদুর রহমান সাইদ, মনিশ রফিক। ঘটনাস্হল পরিদর্শনকালে দেখা যায় ঘটনাস্হল থেকে মহাসড়ক এর ১৭৫ ফুট পূর্বে একটা বাক আছে। ঘটনাস্হল থেকে মহাসড়কের পূর্বে ৪৫০ ফুট দুরত্বে আর একটা বাক আছে। ৪৫০ ফুট বাক থেকে আরিচার দিকে যাওয়ার পথে ১৭৫ ফুট দুরে আর একটি বাক থাকায় পরপর দুইটি বাকে বাসের গতি নিয়ন্ত্রন না করার কারণে সাদা মার্কিং করা রোড ডিভাইডার পার হয়ে মাইক্রোবাসকে আঘাত করে পুনরায় বামে ৭০ ফুট পশ্চিমে যাওয়ার পর মহাসড়ক হইতে বাসটি কাচা রাস্তায় নেমে যায় এবং মোট ১২৬ ফুট যাওয়ার পর বাসটি পরপর ৩ টি গাছের সাথে ধাক্কা খেয়ে থেমে যায়। বাসের গতি যদি নিয়ন্ত্রনে থাকত তাহলে ১৭৫ ফুট, ৪৫০ ফুট এবং দুর্ঘটনার পর ১২৬ ফুট পরে ৩টি গাছের সাথে ধাক্কা খেত না।"

In cross-examination, PW-6 stated that he could not examine the passengers or the Supervisor/Conductor or Helper of the Bus, as they were not available for recording their statements. During investigation, he came to know that the Bus was purchased by Ruhin Motors by taking loan from the Bank and the blue book of the Bus was in the name of the Bank and Ruhin Motors jointly. During investigation, he found that the Bus and the Microbus had head-on collision. He denied the defence suggestion that he found both the Microbus and the Bus on the left side of the road.

**PW-7 Dr. Niaz Abdur Rahman** has stated that he is an Ophthalmologist having 27 years' experience as a Retina Specialist. He is practising in Bangladesh Eye Hospital as a Retina Consultant and he is also the Managing Director of the said hospital. Catherine (PW-1) came to him on 22.09.2014 for her eye-examination. On examination, he found that she had an operation in her right eye and that her right eye had a good vision with glasses. Catherine also produced some medical reports before him showing that she had retina operation **on her right eye and she had epi retinal membrane removal through surgery**. Her left eye showed signs of epi retinal membrane. Catherine informed him that in a motor accident, she had been hit on her head and eyes and that in the next couple of years, her vision became blurred and she saw gray spots. Membrane develops slowly after trauma.

PW-7 proved the medical report dated 7th March, 2016 prepared by him and marked as Exbt.-15 and also the signature of the issuing doctor. He further stated that Catherine developed cataract as the consequence of the retina surgery and that there is possibility that in future she might again develop epi retinal membrane.

In cross-examination, PW-7 admitted that in the US medical report dated **7th March, 2013 as submitted by the claimants' side with documents, but not produced for marking as an exhibit, it contains certain statements about Catherine's medical condition under the heading of 'ocular history**,' "**trauma-no**." On various dates during the periods from on 18th June, 2013 to 17th December, 2015, **the said US medical report** under the heading of **ocular history contains "trauma-no.**"

PW-7 further admitted that in the said US medical report **dated 7th March, 2013, it has been stated,- "patient state July, 2011 her son was playing with plastic shovel and was poked with it in the OD (right eye), states she had pain short after.**" He also admitted that **this incident was not mentioned in his medical report** and that he had not gone **through the whole US medical report before issuing medical report dated 7th March, 2016. He also admitted that he had no knowledge if the US physician refused to issue medical report stating "trauma due to**

**accident.**" However, he denied the defence suggestion that he has issued a false and motivated medical report.

**Md. Jamir Hossain** (opposite-party No. 4), driver of the Bus, deposed as opposite-party witness No. 1 (OPW-1). He has stated that he has been driving motor vehicles since 1978. His monthly income is Tk. 8,500/-. He has a family comprising five persons. On 13.08.2011, he was the driver of the Bus of Chuadanga Deluxe Paribahan having all valid driving documents. He started his trip at 10.30 a.m. from Gabtali, Dhaka through Dhaka-Aricha Highway. It was a drizzling day.

His bus (the Bus) was carrying about forty passengers and when he reached Joka, he found a Microbus coming towards Dhaka from the opposite direction. He was driving the Bus in the left side of the Highway. However, on seeing the Microbus being driven in a zigzag manner, he took the Bus to the further left side on the Kancha road (কাঁচা রাস্তা) beside the Highway. At that time, the Bus hit the trees on the left side. But the Microbus crossed the divider line of the Highway and hit the right side of the Bus and the accident took place resulting in the death of several passengers and driver of the Microbus and injuries to some passengers. He fled away from the Bus due to fear of being beaten up by the public. No one was injured in the Bus. He stated that claimants are not entitled to get the compensation from him and the other opposite-parties.

He added that he is a poor man and he has no capacity to pay the amount.

In cross-examination, he stated as follows:-

> "সত্য নয় যে, মানিকগঞ্জের ফৌজদারী আদালতে আমি কোন ড্রাইভিং লাইসেন্স জমা দেই নাই। এবং অদ্য এই বিষয়ে মিথ্যা সাক্ষ্য দিলাম। ইহা সত্য আমি একটা টোকেন কার্ড মানিকগঞ্জের ফৌজদারী আদালতে জমা দিয়েছিলাম। আমি চুয়াডাঙ্গায় আমার নিজ বাড়ীতে থাকি কোন বাড়ী ভাড়া দেইনা। আমাকে প্রতি দিনে আপ-ডাউন ট্রিপে ৮৫০ টাকা দেওয়া হয়। আমি ঘটনার দিনে সকাল ৯.০০ ঘটিকায় চুয়াডাঙ্গা থেকে ঢাকায় গাবতলী পৌছাই। চুয়াডাঙ্গা থেকে ঢাকায় পৌছতে ০৫.০০ ঘন্টা সময় লাগে। বাস ছাড়ার ০২ ঘন্টা আগে অফিসে রিপোর্ট করতে হয়। মজিবুল হক খোকন সাহেব চুয়াডাঙ্গা ব্যানারে গাড়ীটির মালিক। ঘটনার স্থলের পিছনদিকের রাস্তা বাকা ছিল তবে ঘটনাস্থলের রাস্তা সোজা ছিল। ইহা সত্য নয় যে, আমি ওভার স্পিডে গাড়ী চালাইতে ছিলাম। বাসটির স্পিড গভর্নর ভাঙ্গা ছিল ইহা সত্য নয়। ইহা সত্য নয় যে, আমাদের একটা নির্দিষ্ট সময়ের মধ্যে গন্তব্যস্থলে বাস নিয়ে পৌছানোর বাধ্যবাধকতা ছিল। জোকা থেকে চুয়াডাঙ্গা গন্তব্যস্থলে পৌছাতে অনুমান ৩.৩০ থেকে ৪.০০ ঘন্টা সময় লাগে। ঢাকা থেকে চুয়াডাঙ্গার দুরত্ব ২৪০ কিঃমিঃ। দুর্ঘটনার পূর্বে আমি আস্তে আস্তে গাড়ী চালাইয়া বাম দিকে নামাই এবং থামাই। ইহা সত্য যে, বাসটির বাম দিকে ধা,ালেগে ক্ষতিগ্রস্ত হয়। ইহা সত্য নয় যে, আমি বেপরোয়া গতিতে চালাইতে ছিলাম যাহার ফলশ্রুতিতে গাড়ীটি গাছের সংগে ধা,লাগে। সত্য নয় যে, আমি বেপরোয়াভাবে উচ্চ গতিতে রাস্তার মধ্যবর্তী বিভাজন ক্রোস করে উল্টা দিক থেকে আসা মাইক্রোবাসে সজোরে ধাককা মারি এবং দুর্ঘটনা ঘটাই। সত্য নয় যে, আমি দুর্ঘটনা ঘটিয়ে ০৫ জন লোককে নিহত করি ও ৩ জনকে আহত করি এবং মাইক্রোবাসটি মারাত্মক ক্ষতিগ্রস্ত করি এবং এই কারণে আমি ঘটনাস্থল থেকে পালাইয়া যাই।"

**OPW-2 Md. Mujibul Haque Khokon** (opposite-party No. 2) deposed on his behalf and also on behalf of opposite-party Nos. 1 and 3. He stated that United Commercial Bank, Jhenaidah is the owner of the Bus. He further stated as follows:-

"৩নং বিবাদী জাহাঙ্গীর কবির তুহিনের লোন একাউন্টে এই গাড়ীটি আছে এবং তিনি এই গাড়ীটিসহ তার স্হাবর সম্পত্তি ব্যাংকের কাছে বন্ধক রেখেছে। আমি এবং ১ নং প্রতিপক্ষ আমার ভাই চুয়াডাংঙ্গা ডিলাক্স পরিবহনের ব্যানারের সত্ত্বাধিকারী। ঘটনার সময় ১৩-০৮-২০১১ চুয়াডাংঙ্গা ডিলাক্স পরিবহনের ব্যানারে বিভিন্ন মালিকানাধীন সর্বমোট ১২ টি গাড়ী ছিল। আমার ব্যানারে এই গাড়ীগুলি চলাচল করে এবং আমার ট্রেড লাইসেন্স আছে। আমি প্রতিটি গাড়ীর ট্রিপ প্রতি নির্দিষ্ট টাকা পাই জিপি সিস্টেম অনুযায়ী। গাড়ীর যাবতীয় কাগজপত্র ব্যাংকের নামে ছিল। ঘটনার সময় এই গাড়ীটি ড্রাইভার জামির হোসেন চালাইত। ড্রাইভার জামির হোসেন একজন পেশাদার চালক। ১৯৮৮ সাল থেকে ড্রাইভার জামির হোসেন চুয়াডাংঙ্গা ডিলাক্স পরিবহনের গাড়ী চালাইয়া আসিতেছিলেন। এর পূর্বে অন্য পরিবহনে গাড়ী চালাইত। আমার মনে হয় যে, বাদীপক্ষ আমাদের পক্ষ থেকে ক্ষতিপুরন পাওয়ার হকদার না।"

In cross-examination, OPW-2 stated that there was no written agreement between him and Jahangir Kabir **for operating the Bus and the management thereof. He admitted that at the request of Jahangir Kabir, he allowed the Bus to operate under his banner and that the Bank never approached him for operating (পরিচালনা) the Bus. He added that "ইউনাইটেড কমর্শিয়াল ব্যাংক নয় রুহিন মটরস মালিক জাহাঙ্গীর কবির (৩ নং প্রতিপক্ষ) লোনের মারফত এই গাড়ী চালানোর ব্যবসা করে." He further stated that the Bus was placed under their care and custody in the year 2010 and that since then he used to supervise the affaris of the Bus including validity and renewal of the driver's license, which he did regularly and found that the driving license was valid before the accident.** He could not say if Jahangir Kabir repaid the loan to the Bank. His own motor vehicles are six in number and

Chuadanga Deluxe Paribahan is his proprietorship establishment. He further stated "আমার ট্রেড লাইসেন্স শুধু আমাকে ব্যবহার করার জন্য দেওয়া হয়েছে কিন্তু পরিবহন ব্যবসায় অনেক গাড়ী ছাড়া চালানো যায়না বলে আমি একটি ব্যানার তৈরী করে অন্যান্য গাড়ীও চালাচ্ছি।"

**OPW-3 is Nasrin Ashrafi**. She stated that she was a teacher of a Non-Government College. On 13.08.2011 at 10.30 a.m., she was going to Chuadanga from Gabtali by the Bus. It was drizzling. When the Bus reached Joka of Manikganj, she saw a white microbus running at high speed was coming from the opposite direction. So, the Bus shifted towards the left side of the road. She narrated the next phase of the scenario as follows:-

> "কিন্তু ঐ মাইক্রোটা দ্রুত এসে ব্যালেন্স হারিয়ে সাদা আইল্যান্ড ক্রোস করে বাসের ভিতরে ঢুকে বেরিয়ে যায়। আমাদের বাসটি থেমে যায়। এরপর আসে পাশের লোকজন ভিড় করে এবং আমাদেরকে বাস থেকে বের করে নিয়ে আসে। আমাদের বাসটি বাম দিকে ছিল। বাসের ডান দিকে মাইক্রোবাসটি আসছিল। ঐ সময়ে বাসে প্রায় ৩৭/৩৮ জন যাত্রী ছিল।"

In cross-examination, OPW-3 stated that she **had collected the tickets of the Bus for traveling from Dhaka to Chuadanga, but at the time of shifting their house from Chuadanga to Dhaka, her valuables and the tickets were stolen. She herself and her husband were acquainted with the employees of Chuadanga Deluxe Paribahan and at their request, she deposed in another case.**

**OPW-4 is Md. Mahbub Haque**. He stated that he was the Supervisor of the Bus on 13.08.2011, the accident day. At 10.30 a.m., they started their trip by the Bus for Chuadanga from Gabtali. When they had reached Joka, he found that a microbus was running at a high speed from the side of Paturia. **The driver of the Bus blew the horn many times. But the driver of the Microbus, crossing the white dividing line entered into their lane, through which the Bus was running. To avoid collision, the driver of the Bus slowly shifted the Bus further to the Kancha road and hit several trees**. **However, the Microbus hit the right side of the Bus and crushed. The driver of the Bus fled away**. Then OPW-4 made an arrangement for the passengers of the Bus with their goods to be shifted to another bus and all of them left for Chuadanga.

**In reply to a question put by the Court, he admitted that he had not taken any step for helping the victims of the accident or informing the police about the accident.**

In cross-examination, OPW-4 stated that he is unable to show any document about his status as an employee of Chuadanga Deluxe Paribahan. **However, he knew that the Bus was under the supervision and control (পরিচালনা) of Md. Mujibul Haque Khokon and his brother, Md. Kashed Miah. He further admitted that there was a culvert and curving of the road, a little back from the place of accident towards Dhaka.**

**OPW-5 is Md. Hiron Sheikh**. He stated that he was the Helper of the Bus and narrated the accident as under:-

> "মানিকগঞ্জের যোকা নামক স্হানে পৌছিলে দেখি সম্মুখ দিকে থেকে সাদা মাইক্রোবাস আসতেছিল। আমার ড্রাইভারকে বলি সামনে গাড়ী বায়ে চাপেন। বামে চাপাতে চাপাতে বাস গাছের সাথে ধা,া লাগে। দ্রুত গতিতে একটি মাইক্রোবাস আমাদের বাসের ডান সাইডে ধা,া মারে। মাইক্রোবাসের ৫(পাঁচ) জন লোক মারা যায়। আমি ও আমার সুপারভাইজার (মাহাবুব) সেখানে যাই ও দেখি ৫(পাঁচ) জনলোক মারা গেছে। তারপর ফায়ার সার্ভিসের গাড়ী আসে। তারা পাঁচ জনের লাশ বের করেন। আমাদের বাসের ৩৭/৩৮ জন যাত্রীদের অন্যান্য বাসে তুলে দিলাম। এরপর পুলিশ এসে আমাদের বাস রেকার দিয়ে তুলে নিয়ে যায়। তারপর আমি ও আমার সুপারভাইজার চুয়াডাঙ্গা চলে গেলাম। মাইক্রোবাসটি রেকার দিয়ে পুলিশ রাস্তার সাইডে নিয়ে যায়। সত্য নয় যে, আমাদের গাড়ীর ড্রাইভার ধীর গতিতে বাস চালাচ্ছিল। মাইক্রোবাসের ড্রাইভারের গাফিলতিতে দুর্ঘটনা সংঘটিত হয়েছিল।"

In cross-examination, OPW-5 admitted that he had no document to show that he was the Helper of the Bus and that he could not say the **name of the owner of the Bus.** He stated that, after the accident, **he started working in a truck. However, at the request of Jinarul, a leader of the** W**orkers' Union, he deposed in Manikganj Court in a criminal case and also in this case.** He further stated that before deposing in the Court room, he had a talk with the owner of the Bus in the Court verandah and replied as under:-

> "প্রশ্নঃ কখনও মালিকের স্বার্থ বিরোধী কোন কাজ করেছেন কি না?
>
> উত্তরঃ মালিকের কাজ করলে মালিকের স্বার্থ দেখতেই হয়।"

**OPW-1 Ashiqur Rahman** for opposite-party No. 5 is the sole witness produced by Reliance. He stated that Reliance is engaged in issuing insurance policies relating to general non-life insurance including motor vehicle insurance. He further stated that, on 24.08.2010, Jessore Branch of Reliance issued a motor insurance certificate in favour of opposite-party Nos. 2 and 3 to cover the comprehensive risk of the Bus owned by them. He produced and proved the copy of the Insurance Policy (marked as Exbt.-B). He further stated that as per this policy, the liabilities of Reliance are limited to **Tk. 20,000/- for the death, Tk. 10,000/- for grievous hurt and Tk. 50,000/- for property damage.** For damage of the Bus due to the accident, Reliance has paid Tk. 1,45,350/- to the Bus owner, Ruhin Motors. But **Reliance has not paid any amount to the heirs of the persons killed or the persons injured in the accident, as no one claimed any compensation.**

In cross-examination, he admitted that the capacity and number of seats of the vehicle has not been mentioned under clause 1(b) of the Insurance Policy; that the comprehensive insurance policy covers the death or bodily injury to any person or damage to any property of third party caused by the insured vehicle in a public place. He further admitted that Reliance appointed an independent surveyor to assess various aspects of the accident and that the

Survey Report states that the insured bus received damage in its front left side, which might be caused **due to severe hit with the road side trees**. **He has gone through the additional written statement filed by Reliance and that he does not disown the statements made in the additional written statement.**

**(Bold and underlines put by us in the depositions of witnesses)**

## Arguments Advanced by the Contending Parties

Dr. Kamal Hossain, the learned Advocate appearing with the learned Advoicates Ms. Sara Hossain, Mr. Ramzan Ali Sikder and Mr. Md. Motahar Hossain for the petitioner-claimants, with reference to the claim petition, the written objection/written statements of the contending opposite-parties, the oral as well as the documentary evidence led by the parties put forward the following arguments:-

(1) From the statements of the six witnesses of the petitioners, Catherine, Md. Saidul Islam, Dilara Begum Jolly, Dhali Al Mamun, S.I. Md. Lutfur Rahman and Md. Ashraful Islam, it is evident that opposite-party No. 4 Jamir was driving the Bus recklessly and at a high speed, that caused the accident, resulting in the death of Tareque and four others and injuries sustained by petitioner No. 1-Catherine and others.

(2) The eye witnesses and the victims of the accident being PWs-1 to 4, in a voice, stated that the Bus, at the time of overtaking another motor vehicle called ‘mini bus’ at a curving of the road, rushed at a high speed and crossed the dividing line of the highway and hit the Microbus and as a result, the roof of the Microbus was torn apart causing death and injuries to the passengers.

(3) From the written statements of the opposite-parties as well as the statements made by their witnesses (OPWs), it is evident that opposite-party Nos. 1 and 2 were in supervision and control of the Bus and in fact, they were engaged in operation **(পরিচালনা)** of the Bus in the route of Dhaka-Chuadanga-Dhaka under the business name/banner “Chuadanga Deluxe Paribahan” on the accident day.

(4) Since they were in control and operation of the Bus and the accident was caused by their engaged driver Jamir, they are liable to pay compensation to the claimants.

(5) In the criminal case, over the accident, being Sessions Case No. 109 of 2012, the Trial Court i.e. the Additional Sessions Judge, Manikganj has found the Bus driver Jamir guilty of the offence of culpable homicide under section 304 of the Penal Code and also of the offence under section 427 of the Penal Code and convicted and sentenced him under those sections. The decision of the said court shows that the Bus driver was found responsible for the accident.

(6) PW-5, S. I. Lutfur Rahman, who initiated the said criminal case, stated in this case that he had rushed to the place of occurrence immediately after the accident and came to know from a passenger of the Microbus, Md. Monish Rafique, and the local people that the Bus was being driven recklessly at a high speed and that the Bus directly hit the Microbus.

(7) PW-6, the Investigating Officer of the criminal case, has stated that, according to the report of Motor Vehicles Inspection, the speed Governor (গতি নিয়ন্ত্রক) of the Bus was tampered with and due to such tampering, the Bus could be driven beyond speed limit of the Bus that has been restricted/limited by the manufacturer. This independent witness (PW-6) further stated that the period of fitness of the Bus had expired and the validity period of the driving license of driver Jamir also expired several years back. These statements of PW-6 clearly prove that the driver (opposite party No. 4) as well as the owner and the operator of the Bus i.e. opposite party Nos. 1-3 are collectively and directly responsible for the accident and hence for paying compensation as claimed by the petitioners.

(8) Reliance, the insurer, is also liable to pay the entire compensation to the petitioners under the indemnity clause of the Insurance Policy. However, Reliance may, by way of subrogation or otherwise, recover from opposite party Nos.

1-4, the compensation which Reliance has to pay in excess of the insurance coverage under the Insurance Policy.

(9) The petitioners have also been able to prove that due to the accident, petitioner No. 1 (Catherine) had to not only spend money for treatment of her injured eye, but she will also have to spend money for future treatment of her injured eye and PW-7 Dr. Niaz Abdur Rahman supports it. Therefore, petitioner No. 1 is also entitled to the additional amount as claimed for treatment of her eyes.

(10) The petitioners have lawfully claimed a reasonable amount of compensation on ten items of damage resulting from the accident amounting to Tk. 9,94,04,646/-.

(11) The money claimed by the petitioners cannot compensate for the loss of life of Tareque and other sufferings faced by the claimants/petitioners, but the compensation can at least help them survive and render some consolation.

(12) It is a common scenario in Bangladesh that everyday serious accidents are being caused by the drivers of buses and trucks due to their rough, high speed and reckless driving and thereby, causing death and injuries to many innocent people. In most cases, the victims remain silent and their miseries remain unattended. The petitioners are similar victims, however, with a difference that they have

approached this Court with some claim against the backdrop of the accidental death of a renowned film-maker and the winner of an international award.

(13) The Court, while deciding the claims made in this case or similar claim made in other cases, must not confine itself on minor technicalities or minor discrepancies, because an accident generally takes place at the twinkle of an eye and the victims may not be able to see every minor details and narrate the same in Court.

In support of his submission, Dr. Kamal Hossain has relied on the decisions in the following cases:-

(i) Bangladesh Beverage Industries Limited vs. Rawshan Aktar and others, reported in 69 DLR (AD) 196.

(ii) Sri Manmath Nath Kuri vs. Mvi. Md. Moklesur Rahman and another, in CA No. 38-D of 1965, Mvi Md. Mokhlesur Rahman and others, in CA No. 73-D/1966, reported in 22 DLR (SC) 51.

(iii) Amrit Lal Sood and another vs. Smt. Kaushalya Devi Thapar and others, reported in AIR 1998 (SC) 1433.

(iv) An unreported decision dated 10.04.2003 passed by the High Court of Gujarat in First Appeal No. 1519 of 1979 with First Appeal No. 198 of 1980 (Oriental Fire and General Insurance Company vs. Firdos Pervez Mysorewala and others), reported in the electronic version of Manupatra i.e. MANU/GJ/0135/2003.

(v) An unreported decision dated 05.10.2010 passed by the Supreme Court of India in Civil Appeals No. 1578-1579 of 2004 (New India Assurance Company Limited vs. Vimal Devi and others), reported in the electronic version of Manupatra i.e. MANU/SC/1087/2010.

In reply, Mr. Md. Abdus Sobhan Tarafder, the learned Advocate for opposite-party Nos. 1 to 4, takes us through the written objection/statement filed by opposite-party No. 1 and 2 jointly and the ones filed separately by opposite-party No. 3 and 4, the oral and documentary evidence as adduced by the contending parties and contends as under:-

(a) The accident took place on 13.08.2011, and the claim application was filed before the Tribunal on 13.02.2012, but the Tribunal has not complied with the mandatory requirement of examining at least one of the claimants/applicants on oath as mandated by rule 220(2) of the MV Rules. The legal effect of such non-examination is that the claim petition is to be rejected under rule 221 of the MV Rules.

(b) The application was not initially filed in Form CTA as provided under rule 113 of the MV Rules. However, the petitioners filed a filled up Form CTA before the High Court Division in the year 2016, which is beyond the period of six months as provided in section 128(3) of the MV Ordinance. Therefore, the entire proceeding of

the claim case as entertained by the Tribunal as well as by the High Court Division is not maintainable and hence, unlawful.

(c) Under paragraph (20) of the CTA Form, before filing of a case before the Claim Tribunal, the claimants are required to notify the owner of the vehicle and, in case of non-response or insufficient response, the result has to be mentioned in the claim petition. In the instant case, this did not happen. Therefore, the case is liable to be rejected outright.

(d) With regard to the accident, none of the PWs has stated anything relating to the averment made in paragraph 6 of the claim petition that the Bus was overtaking a third minibus at a curving/turning point of the road.

(e) None of the PWs stated that driver Jamir was driving the Bus recklessly or at a high speed. On the contrary, OPW-5 stated that the driver shifted the Bus slowly to the Kancha road to avoid the accident and this statement was not challenged in cross-examination which indicates that the driver of the Bus, Jamir, is not responsible for the accident.

(f) The license of the Microbus has not been produced in the criminal case or in the instant case.

(g) All the OPWs produced by opposite-party Nos. 1 to 4 uniformly stated that the driver of the Bus was driving slowly and that the driver of the Microbus was driving recklessly and thus, hit

the Bus causing the accident. So, neither the Bus driver nor the owners/operators of the Bus are responsible for paying any compensation to the petitioners.

(h) From the statements of PW-1, it is evident that her injury to the right eye was caused by her own son which she has reported to the doctor in USA. Therefore, the evidence of PW-1 Catherine and PW-7 Dr. Niaz Abdur Rahman is not believable on the subsequent claim relating to injuries to her eye or compensation for the purpose of treatment of the eye. The additional claim of compensation is an afterthought for the purpose of getting more compensation from the opposite-parties.

(i) The petitioners have raised their claims under the MV Ordinance which was promulgated by General Ershad in exercise of the powers under the Proclamation of Martial Law Order of the 24th March, 1982. In the case of Siddique Ahmed vs. Government of Bangladesh and others, reported in 1 Counsel (Spl) (2013), known as and hereinafter referred to as the 7th Amendment Judgment, the Appellate Division declared section 3 of the Constitution (7th Amendment Act) (Act No. 1 of 1986) to be void. In that judgment dated 15th May, 2011, in sub-paragraph (7) of paragraph 152, it has also been declared that the Proclamation of Martial Law itself on 24 March, 1982 and all other Proclamations, Proclamation Orders,

Ordinances, etc. made by Lieutenant General H. M. Ershad, ndc. psc. from 24.03.1982 till 11.11.1986 are absolutely illegal and void ab initio.

(j) Subsequently, a Validation Act was promulgated by the Parliament, namely, ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকরকরণ (বিশেষ বিধান) আইন, ২০১৩ (hereinafter referred to as the Validation Act) on 26th February, 2013. Therefore, on the date of filing of the application before the Tribunal on 13.02.2012 under the MV Ordinance and entertainment of the same were beyond jurisdiction of the Tribunal and also of this Court inasmuch, as the MV Ordinance itself was not legally in existence as decided by the Appellate Division. So, the case, as framed, has no legal backing and liable to be dismissed.

Mr. Ehsan A. Siddiq, the learned Advocate appearing with learned Advocates Mr. Imran A. Siddiq, Dr. Chowdhury Ishrak Ahmed Siddiky and Mr. Mohammad Shishir Manir for opposite-party No. 5, takes us through the written objection/statement filed by Reliance, the statement of OPW-1 deposing for Reliance. Mr. Siddiq contends that Reliance has a limited liability relating to the claim of third party like the petitioners of this case, simply because the premium paid by the Bus owner as the insured did not cover the entire risk relating to third parties in case of an accident. He next

contends that Reliance, in relation to a third-party claimant, is liable for payment of Tk. 20,000/- for a death, Tk. 10,000/- for serious injuries and maximum Tk. 50,000/- for property damage caused due to road accident. Mr. Siddiq further contends that Reliance has already paid to the Bus owners sufficient compensation for the damage of the Bus. He adds that the petitioners or any other legal heirs of the deceased persons or the injured victims never approached Reliance for payment of compensation and for that reason, Reliance has not paid any compensation to the claimants, as third-party claimant.

In support of his submissions, Mr. Siddiq has relied on the decisions in the following cases:-

(i) M/S. Sheikhupura Transport Company Limited vs. Northern India Transport Insurance Company, reported in 1971(1) Supreme Court Cases 785.

(ii) New India Assurance Company Limited vs. Shanti Bai (Smt) and others, reported in (1995) 2 Supreme Court Cases 539.

(iii) New India Assurance Company Limited vs. C. M. Jaya and others, reported in (2002) 2 Supreme Court Cases 278.

Mr. A. Z. M. Fariduzzaman, the learned Advocate for added respondent No. 6 i.e. the Bank, takes us through the written

statement filed by the Bank and submits that the Bank is not the owner of the Bus and Md. Jahangir Kabir, Proprietor of Ruhin Motors, is the owner of the Bus and that he had purchased the Bus by taking loan from the Bank. He next submits that the Bus was mortgaged to the Bank with other properties only as a security for the loan given by the Bank. He finally submits that, meanwhile, Md. Jahangir Kabir, Proprietor of Ruhin Motors has repaid the loan of the Bank and that the Bank was never in charge of the Bus. So, the Bank is not responsible for payment of any compensation to the petitioner-claimants.

Since a very important legal question about the existence of MV Ordinance on the date of filing of the application under section 128 of the MV Ordinance has been raised in this case, Mr. Mahbubey Alam, the learned Attorney General, on our direction, appeared before us with Ms. Israt Jahan, the learned Deputy Attorney General, Ms. Nurun Nahar, Mr. Swarup Kanti Dev and Mr. A. H. M. Ziauddin, the learned Assistant Attorney Generals to address this issue.

Mr. Mahbubey Alam, the learned Attorney General, refers to the Preamble of ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকরণ (বিশেষ বিধান) অধ্যাদেশ, ২০১৩ (২০১৩ সনের ২ নং অধ্যাদেশ) (hereinafter referred to as Ordinance No. 2 of 2013), particularly, sections 1, 3, 4 and 5 of Ordinance No. 2 of

2013 and the provisions of the Validation Act enacted after expiry of that Ordinance, Mr. Alam contends that the whole purpose of Ordinance No. 2 of 2013 as well as of the Validation Act was to keep the MV Ordinance and the other Ordinances promulgated during the period from 24.03.1982 to 11.11.1986 in continuous force and also to protect and preserve all actions taken under the aforesaid Ordinances, that were declared void by the 7th Amendment Judgment passed by the Appellate Division. Mr. Alam further contends that the intention of the legislature was to give validation to the MV Ordinance, 1983 and other Ordinances from the date of their respective inception. Therefore, the MV Ordinance is to be treated a continuous law as an Act made by the Parliament from the date of its inception.

On the legal issue about the existence of the MV Ordinance, Dr. Kamal Hossain makes similar submissions as advanced by the learned Attorney General.

Dr. Kamal Hossain further submits that the full text of the 7th Amendment Judgment was available on 22.02.2012 that is after nineteen months of the date of its pronouncement and immediately after the availability of the full text of the judgment, the President promulgated Ordinance No. 2 of 2013 on 22.01.2013 and subsequently, the Parliament enacted the Validation Act with similar provisions. Thus, the MV Ordinance has been validated

from the date of its inception and the petitioners are entitled to get the claimed compensation for the damages under the MV Ordinance.

## Discussions, Findings and Decision on the various Issues

### Issue No. 2 (court fee)

Let us first decide issue No. 2 i.e. if the court fees paid is correct.

On this point, the learned Advocate for the opposite-parties did not raise any question. Moreover, during pendency of the case, the petitioners have deposited Tk. 57,500/- along with VAT as the maximum court fees. Therefore, the court fees paid by the petitioners are sufficient. Thus, issue No. 2 is decided in favour of the petitioners.

### Issue No. 3 (Limitation)

This issue has been raised by the learned Advocates for the contending opposite-parties with reference to the fact that the accident took place on 13.08.2011, the claim petition was filed in the Tribunal on 13.02.2012 and the CTA Form was submitted in this Court on 13.03.2016 i. e. after more than four years from the dates of accident and filing of the original claim petition.

The issue of limitation has to be examined and decided in view of the provision of section 128 of the MV Ordinance and the requirement of filing of a claim petition in the CTA Form under rule 220 of the MV Rules. For proper appreciation, section 128 of the MV Ordinance and rules 220 and 221 of the MV Rules are quoted below:-

> *"**section 128. Application for compensation-** (1) An application for compensation arising out of an accident for the nature specified in section 127 may be made-*
>
> *(a) by the person who has sustained injury or whose property has been damaged; or*
> *(b) where the death has resulted from the accident, by all of or any of the legal heirs of the deceased; or*
> *(c) by any agent duly authorized by the person injured or by all or any of the legal heirs of the deceased, as the case may be:*
>
> *Provided that where all the legal heirs of the deceased have not joined in any such application for compensation the application shall be made on behalf of or for the benefit of all the legal heirs who have not so joined, shall be impleaded as respondents to the application.*
>
> *(2) Every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred and shall contain such particular as may be prescribed.*
>
> *(3) **No application for compensation under this section shall be entertained unless it is made within six months of the occurrence of the accident:***
>
> ***Provided that the Claims Tibunal may entertain the application after expiry of the said period of six months if it is satisfied that the***

> ***applicant was prevented by sufficient cause from making the application in time."***
>
> (Bold, emphasis given)
>
> *"**rule 220**. **Application for compensation**,-(1) An application under section 128 of the Motor Vehicles Ordinance, 1983 (LV of 1983), for payment of compensation shall be made in Form CTA in person or by registered post to the Claims Tribunal having jurisdiction over the area in which the cause of claims has arisen and shall be accompained by a fee of twenty taka in the form of court fee stamp:*
>
> *Provided that the Claims Tribunal may accept an application under this sub-rule without the fee specified therefor, subject to the condition that in case of an award of compensation in favour of the applicant the fee shall be recovered from the amount of compensation.*
>
> *(2) Upon receipt of an application under sub-rule (1) the Claims Tribunal shall enter it into a register of applications to be maintained in Form T and may examine the applicant on oath and reduce the substance of such examination to writing.*
>
> ***"rule 221**. **Disposal of application for compensation**,--(1) If, after considering the substance recorded under sub-rule 92) of rule 220, the Claims Tribunal is of the opinion that there is no sufficient ground for proceeding the case further, it may reject the application summarily and inform the applicant accordingly."*
>
> (Underlined by us)

It is evident that section 128 of the MV Ordinance read with rule 220 of the MV Rules requires that the claim application is to be submitted in CTA Form within six months of the accident. However, the proviso to sub-section (3) of section 128 of the MV Ordinance authorizes the Tribunal to entertain an application after

the period of six months, if the Tribunal is satisfied that the claimants were prevented by sufficient cause.

The Tribunal, due to transfer of the case, had no opportunity to examine and decide in details the limitation issue. The Tribunal received the application, notified the opposite-parties and after filing of their written statements/objection framed issues to be decided. The Tribunal, however, did not record any decision with regard to non-filing of the application in CTA Form or non-attaching thereof. But, the actions of the Tribunal, as revealed from the record, clearly indicate the primary satisfaction of the Tribunal for entertaining the application without CTA Form.

However, we have thoroughly examined the various aspects of limitation issue and our findings are as under:-

(a) The claim application contains all the relevant facts of the accident including the date, time and description of the accident, the particulars of the Bus, the claims along with the reasons and persons responsible to meet the claims.

(b) The entries required to be made in the prescribed CTA Form are nothing more than what are mentioned in the application. This CTA Form has been prescribed in the MV Rules under section 136 of the MV Ordinance only for easy/convenient presentation.

(c) The original application substantially conforms to the requirement of recording the relevant entries in the CTA Form and submission of the CTA Form by the claimants in this Court is a proper and legal compliance with the technical requirements of rule 220 of the MV Rules.

(d) Section 128 or any other section of the MV Ordinance or any rule or the CTA Form of the MV Rules does not contain any provision to the effect that failure of the claimants to submit their claim in CTA Form itself would render the claim to be rejected outright.

(e) The accident, according to the claimants, resulted in the death of the head of their family, Tareque and also of four other persons along with injuries to Catherine and co-passengers. Despite such disaster to the family the claimants filed the claim petition within the statutory period of six months. Had they filed it after six months, the disaster caused to them would be a sufficient reason justifying the delay.

(f) The Tribunal was primarily satisfied and we are fully satisfied that the claim petition can be lawfully entertained, despite the delay in submitting the CTA Form, which, in our considered view, was a mere formality.

In view of the above, we hold that the case is not barred by limitation.

Accordingly, issue No. 3 is decided in favour of the claimants.

## Issue No. 4 (Defect of Parties)

At the time of arguments, the learned Advocates of the opposite-parties did not agitate this issue.

However, we have examined this aspect of the case. The record shows that all the necessary parties have been impleaded in this case, namely, the two brothers, who were operating the Bus that allegedly caused the accident (Opposite-party Nos. 1 and 2), the Bus owner (opposite-party No. 3), the driver of the Bus

(opposite-party No. 4) and Reliance, the insurer of the Bus (opposite-party No. 5) and the Bank with which the Bus had been hypothecated/mortgaged (opposite-party No. 6).

None of the contesting parties, after the Bank was added as opposite-party No. 6 in the case, indicated at any stage of the case that any other person or enterprise was a necessary party or even a proper party for adjudication of the dispute.

In the above circumstances, we hold that the case does not suffer from any defect of party.

## Issue No. 1
## (Maintainability of the Case)

In filing this case, the claimants have invoked the provision of section 128 of the MV Ordinance. But the learned Advocates for the opposite-parties have raised serious objection relating to entertainment and maintainability of the case.

Their objections are focused on the following three points.

**The first point** of objection is whether the MV Ordinance was in operation as a law on the date of filing of the case on 13.02.2012. This question has been raised in the context of the admitted legal position that MV Ordinance was declared as being unconstitutional by the Appellate Division by judgment dated 15.05.2011 passed in the 7th Amendment Case and thereafter, Ordinacne No. 02 of 2013 was promulgated on 21.01.2013

validating the MV Ordinance. Subsequently, the Parliament enacted the Validation Act by incorporating similar provisions and published the same in the Gazette on 26.02.2013.

The first objection is purely a legal issue as to whether the Validation Act i.e. Act No. 07 of 2013 has a retrospective effect authorizing continuous operation of the MV Ordinance that was promulgated in 1983 by the Martial Law Authority, but was declared unconstitutional by the Apex Court by judgement dated 15.05.2011 passed in the 7th Amendmant case.

**The second point** of objection on maintainability of the case as raised by the learned Advocates for the opposite-parties is that even if it is presumed that the MV Ordinance was in operation by virtue of the retrospective effect given by the Validation Act, the Tribunal, while initially receiving the claim application, did not comply with the requirement of rules 220 and 221 of the MV Rules made under the MV Ordinance. This provision, according to the objection raised, requires mandatory examination of, at least, one of the claimants on oath in the Tribunal/the Court.

**The third point** of objection is that paragraph (20) of the CTA Form requires that, before filing of a case before the Tribunal, the claimants must present their claim with the owner of the motor vehicle.

**In order to decide the first point** of objection on maintainability i.e. the legal issue of the retrospectivity of the Validation Act in relation to the continuous operation of the MV Ordinance, we need to examine the Preamble of the Validation Act and the related provisions of the Act. These are quoted below:-

**"২০১৩ সনের ০৭ নং আইন**

**১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকর করিবার লক্ষ্যে**

**প্রণীত আইন**

যেহেতু সংবিধান (পঞ্চদশ সংশোধন) আইন, ২০১১ (২০১১ সনের ১৪নং আইন) দ্বারা ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত অধ্যাদেশসমুহ অনুমোদন ও সমর্থন (ratification and confirmation) সংক্রান্ত গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের চতুর্থ তফসিলের ১৯ অনুচ্ছেদ বিলুপ্ত হওয়ায় উক্ত অধ্যাদেশসমূহ কার্যকারিতা হারাইয়াছে; এবং

যেহেতু সিভিল আপীল নং ৪৮/২০১১ এ সুপ্রীমকোর্টের আপীল বিভাগ কর্তৃক প্রদত্ত রায়ে সংবিধান (সপ্তম সংশোধন) আইন, ১৯৮৬ (১৯৮৬ সনের ১নং আইন) এর ধারা ৩ এবং বাংলাদেশের সংবিধানের চতুর্থ তফসিলে ১৯ অনুচ্ছেদ বাতিল ঘোষিত হওয়ায় উক্ত সময়ের মধ্যে জারীকৃত উক্ত অধ্যাদেশসমুহ কার্যকারিতা হারাইয়াছে; এবং

যেহেতু উক্ত অধ্যাদেশসমূহ ও উহার অধীনে প্রণীত বিধি, প্রবিধান বা আদেশবলে কৃত কাজ-কর্ম, গৃহীত ব্যবস্থা বা কার্যধারাসমুহ, অথবা প্রণীত, কৃত, গৃহীত বা সূচীত বলিয়া বিবেচিত কাজ-কর্ম, ব্যবস্থা বা কার্যধারাসমূহ আইনের শাসন, জনগণের অর্জিত অধিকার সংরক্ষণ এবং প্রজাতন্ত্রের কর্মের ধারাবাহিকতা বহাল ও অক্ষণ্ন রাখিবার নিমিত্ত, জনস্বার্থে, উহাদের কার্যকারিতা প্রদান আবশ্যক; এবং

যেহেতু উক্ত সময়ে জারীকৃত কতিপয় সংশোধনী অধ্যাদেশ (amending Ordinances) দ্বারা প্রচলিত আইন সংশোধন করা হইয়াছে বিধায় আইনের শাসন, জনগণের অর্জিত অধিকার সংরক্ষণ এবং প্রজাতন্ত্রের কর্মের ধারাবাহিকতা বহাল ও অক্ষণ্ন রাখিবার নিমিত্ত, জনস্বার্থে, উহাদের কার্যকর রাখা আবশ্যক; এবং

যেহেতু উক্ত অধ্যাদেশসমূহের অধীন সূচীত কার্যধারাসমূহ বা গৃহীত ব্যবস্থা বা কাজ-কর্ম বর্তমানে অনিস্পন্ন বা চলমান থাকিলে, জনস্বার্থে, উক্ত কার্যধারাসমুহ বা গৃহীত ব্যবস্থা বা কাজ-কর্ম চলমান রাখা আবশ্যক; এবং

যেহেতু উক্ত অধ্যাদেশ কার্যকারিতা হারাইবার ফলে সৃষ্ট আইনী শূন্যতা পূরণ করিবার লক্ষ্যে আশু ব্যবস্থা গ্রহণের প্রয়োজনীয় পরিস্থিতি বিদ্যমান রহিয়াছে মর্মে রাষ্ট্রপতির নিকট সন্তোষজনভাবে প্রতীয়মান হওয়ায় এবং সংসদ অধিবেশনে না থাকিবার কারণে বিগত ২১ জানুয়ারি ২০১৩ তারিখে রাষ্ট্রপতি গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের ৯৩(১) অনুচ্ছেদে প্রদত্ত ক্ষমতাবলে উক্ত অধ্যাদেশসমূহকে তফসিলভুক্ত করিয়া ২০১৩ সালের ২ নম্বর অধ্যাদেশ জারী করেন; এবং

যেহেতু সংবিধানের ৯৩(২) অনুচ্ছেদের নির্দেশনা পূরণকল্পে, নবম জাতীয় সংসদের ১৬তম অধিবেশনের ২৭ জানুয়ারি ২০১৩ তারিখে অনুষ্ঠিত প্রথম বৈঠকে ২০১৩ সালের ২নং অধ্যাদেশ উপস্থাপিত হইয়াছে এবং উহার পরবর্তী ৩০ দিন অতিবাহিত হইলে অধ্যাদেশটির কার্যকরতা লোপ পাইবে; এবং

যেহেতু দীর্ঘসময় পূর্বে জারীকৃত অধ্যাদেশসমূহ যাচাই-বাছাইপূর্বক বাংলায় নূতনভাবে আইন প্রণয়ন করা সময় সাপেক্ষ; এবং

যেহেতু উপরি-বর্ণিত প্রেক্ষাপট বিবেচনায় ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত অধ্যাদেশ সমূহের মধ্যে কতিপয় অধ্যাদেশ কার্যকর করা সমীচীন ও প্রয়োজন;

সেহেতু এতদ্দ্বারা নিম্নরুপ আইন করা হইলঃ-

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।**- (১) এই অধ্যাদেশ ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকরকরণ (বিশেষ বিধান) আইন, ২০১৩ নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। **সংজ্ঞা।**- বিষয় বা প্রসঙ্গের পরিপন্থী কোন কিছু না থাকিলে, এই আইনে-

(ক) "**অধ্যাদেশ**" অর্থ ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত ধারা ৪ এ উল্লিখিত অধ্যাদেশসমুহ; এবং

(খ) "**তফসিল**" অর্থ এই আইনের তফসিল।

৩। **আইনের প্রাধান্য।**- আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের বিধানাবলী কার্যকর থাকিবে।

৪। **কতিপয় অধ্যাদেশের কার্যকারিতা প্রদান।**- ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত (উভয় দিনসহ) সময়ের মধ্যে জারীকৃত

(ক) তফসিলভুক্ত অধ্যাদেশসমুহ; এবং

(খ) অন্যান্য অধ্যাদেশসমূহ দ্বারা প্রচলিত কোন আইন, আদেশ বা অধ্যাদেশ সংশোধন করা হইয়া থাকিলে উক্ত সংশোধনী অধ্যাদেশসমূহ (amending Ordinances),

এমনভাবে কার্যকর থাকিবে যেন উহা এই আইনের উদ্দেশ্য পূরণকল্পে, জাতীয় সংসদ কর্তৃক প্রণীত কোন আইনঃ

তবে শর্ত থাকে যে, এই ধারার অধীন ১১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকরকরণ করা হইলেও যতটুকু উহাদের বিষয়বস্তুর (contents) সহিত সংশ্লিষ্ট শুধুমাত্র ততটুকু গ্রহণ করা হইয়াছে মর্মে গণ্য হইবে এবং উক্ত সময়কালে অবৈধ ও অসাংবিধানিকভাবে রাষ্ট্রক্ষমতায় আসীন সামরিক শাসন আমলের কৃতকর্মের অনুমোদন ও সমর্থন (confirmation and ratification) করা হইয়াছে বলিয়া কোনক্রমেই বিবেচিত হইবে না।

৫। **হেফাজতকরণ**।- (১) অধ্যাদেশসমূহ ও উহাদের অধীন প্রণীত বিধি, প্রবিধান বা আদেশবলে কৃত কাজ-কর্ম, গৃহীত ব্যবস্থা বা কার্যধারাসমূহ, অথবা প্রণীত, কৃত, গৃহীত বা সূচীত বলিয়া বিবেচিত কাজ-কর্ম, ব্যবস্থা বা কার্যধারাসমূহ এমনভাবে নিষ্পন্ন হইয়াছে বলিয়া গণ্য হইবে যেন এই আইনের বিধানাবলী বলবৎ ছিল।

(২) অধ্যাদেশসমূহের অধীন দায়েরকৃত কোন মামলা বা সূচীত কোন কার্যধারা বা গৃহীত কোন কাজ-কর্ম বা ব্যবস্থা নিষ্পন্নাধীন থাকিলে উহা এমনভাবে নিষ্পন্ন করা যাইবে যেন উহা সংশ্লিষ্ট অধ্যাদেশের অধীন দায়েরকৃত বা সূচীত বা গৃহীত হইয়াছে।

(৩) অধ্যাদেশসমূহের অধীনে কৃত কাজ-কর্ম, গৃহীত ব্যবস্থা বা কার্যধারাসমুহের ফলস্বরুপ কোন প্রতিকার বা করণীয় বাস্তবায়নের স্বার্থে উক্ত প্রতিকার বা করণীয় পদক্ষেপ সংশ্লিষ্ট অধ্যাদেশের অধীন বাস্তবায়িত হইবে।

(৬) রহিতকরণ ।- .....

....."

(Underlines added by us to emphasize)

The Preamble of the Validation Act states the background in relation to the MV Ordinance. It provides that certain ordinances including the MV Ordinance were promulgated during the period from the 24th March, 1982 to the 11th November, 1986 by the then authority (Martial Law Authority) and these were ratified by the Parliament by 7th Amendment of the Constitution.

The various provisions of the Validation Act declare the manner of validation and consequences of such validation.

The Preamble of the Validation Act not only narrates the background of enactment of the Act, but also, in unambiguous words, declares the intention of the legislature. In the 3rd, 4th and 5th paragraphs of the Preamble of the Act, the Parliament has unambiguously declared that the Validation Act was enacted to fill in the legal vacuum resulting from the decision of the Apex Court and it authorizes the continuity of some of the ordinances (**কতিপয় অধ্যাদেশ**) and continuation of the validity of the actions taken under the ordinances and the rights and liabilities acquired by the people thereunder "উক্ত অধ্যাদেশসমূহ ও উহার অধীনে প্রণীত বিধি, প্রবিধান বা আদেশবলে কৃত কাজ-কর্ম, গৃহীত ব্যবস্থা বা কার্যধারাসমুহ, ....., জনগণের অর্জিত অধিকার সংরক্ষণ এবং প্রজাতন্ত্রের কর্মের ধারাবাহিকতা বহাল ও অক্ষণ্ন রাখিবার নিমিত্ত ....."

The settled principle of interpretation of a statute including an Act of Parliament is that in ascertaining the legislative intent, the Preamble is an important pointer to the intent, but the text of the Act is the ultimate determinant factor of such intent.

Short title of the Validation Act as provided in sub-section (1) of section 1 of the Act clearly states the intention of the Act in the expression "…….কতিপয় অধ্যাদেশ কার্যকরকরণ ……" by

referring to the period during which those were promulgated, namely, "১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত ....." This short title is fully consistent with the Preamble that states the background and intention of enactment of the Act. However, sub-section (2) of section 1 of the Validation Act containing the expression "ইহা অবিলম্বে কার্যকর হইবে" creates some doubts about the retrospectivity of the Validation Act. Because the Act was published in the gazette in 2013. But this doubt is removed when we consider the language employed in section 4 of the Act, namely,-

> "৪Z **কতিপয় অধ্যাদেশের কার্যকারিতা প্রদান**।- ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত (উভয় দিনসহ) সময়ের মধ্যে জারীকৃত
>
> (ক) তফসিলভূক্ত অধ্যাদেশসমুহ; এবং
>
> (খ) অন্যান্য অধ্যাদেশসমূহ দ্বারা প্রচলিত কোন আইন, আদেশ বা অধ্যাদেশ সংশোধন করা হইয়া থাকিলে উক্ত সংশোধনী অধ্যাদেশসমূহ (amending Ordinances),
>
> এমনভাবে কার্যকর থাকিবে যেন উহা এই আইনের উদ্দেশ্য পূরণকল্পে, জাতীয় সংসদ কর্তৃক প্রণীত কোন আইনঃ
>
> তবে শর্ত থাকে যে, ....."
>
> (Underlined by us)

The above quoted provisions unambiguously declare the continuity of the ordinances including the MV Ordinance from its very inception and further declare that those are deemed to be an Act of Parliament. It is noted that MV Ordinance is one of the ordinances mentioned in the 4th Schedule at serial No. 32.

Thus, the Preamble read with the text of the Validation Act as a whole, particularly, sections 1, 4 and the 4th Schedule of the Act lead us to conclude that, by virtue of this Act, the MV Ordinance has been operating since its inception in 1982 without any disruption.

It follows that, on the date of filing of the claim application on 13.02.2012 in the Tribunal, the MV Ordinance was in operation. So, the objection raised by the learned Advocates for the opposite-parties on the first aspect of maintainability of the case is not tenable.

**The second point** of objection on maintainability as advanced by the learned Advocates for the opposite-parties is based on the requirement of rules 220 and 221 of the MV Rules.

The plain reading of rules 220 and 221 of the MV Rules as quoted earlier in the discussion of the issue of limitation shows that the proceeding of the claim case has to be initiated by the Tribunal upon receipt of an application under sub-rule (1) of rule 220. Then this rule requires that the Claims Tribunal *"shall enter into a register ……."* The next phase of the proceeding is *"the Tribunal may examine the applicant on oath ……."*

The use of the words "shall" and "may" in the same provision in relation to registration of the application and

examination of the applicant is legally significant. The significance is that the registration of the application is mandatory, but examination of a claimant is the discretion of the Tribunal. The principle of interpretation of a statutory provision in respect of the words “shall” and “may” is that the first word “shall” is generally mandatory and the second word “may” is generally discretionary.

Rule 221 of the MV Rules spells out the next phase of a proceeding after receipt of an application and the mandatory registration thereof and discretionary examination of the claimant. Under this rule, the Tribunal may proceed with the case or summarily reject it.

In the instant case, the Tribunal, after receipt of the application, registered it as Miscellanelus Case No. 01 of 2012 and then without examining the claimants proceeded with the case.

In our considered view the Tribunal did all these lawfully. There was no violation of the provisions of rules 220 and 221 of the MV Rules. So, the second objection raised by the learned Advocates for the opposite-parties are not also tenable.

**The third point** of objection on maintainability is based on the requirement of presentation of the claim with the owner of the motor vehicle under CTA Form. For proper appreciation, paragraph (20) of the CTA Form is quoted as under:-

"(20) Has the claim been lodged with the owner? If so, with what results."

Thus, it is apparent that only an information is to be provided in the CTA Form as to whether a claim has been earlier lodged with the owner and result thereof. It is not a requirement of this form or of section 128 or other provisions of the MV Ordinance or the MV Rules that if such information is not furnished, the claim made in the CTA Form, is liable to be outright rejected. Therefore, the third objection raised by the learned Advocates for the opposite-parties is not acceptable.

In view of the above discussions made on all the aspects of maintainability of the case, we hold that the case is maintainable and accordingly, issue No. 1 is decided in favour of the claimants.

**Issue No. 5**
**(Claimants Right to Get Compensation from the Opposite-Parties)**

**Issue No. 6**
**(Quantum of Compensation, if any)**

**Issue No. 7**
**(Entitlement of the Claimants to get Relief, if any)**

The above noted three issues are interlinked. So, those are taken up together for the convenience of consideration, recording discussion and decisions.

In deciding these issues, the 1st point to be considered is whether Tareque's death was the result of a road accident. This aspect is fully admitted in the respective written statement/objection filed by the contesting opposite-parties, namely, the Bus operators, the Bus driver and Reliance, the insurer of the Bus. They have admitted the date, time and place of the accident. They have also partly admitted the manner thereof to the extent of collision between the Bus and the Microbus and the result of the accident causing the death of five persons and injuries to other travelers of the Microbus.

The above noted admitted facts are again proved not only by PWs-1 to 4, all being passengers of the Microbus and eye-witnesses to the accident, but also by other eye-witnesses produced by the opposite-parties, being driver of the Bus, Jamir (OPW-1), and the Supervisor and Helper of the Bus (OPWs- 3 and 4). Those facts are also proved by the police witness (PW-5) who immediately after the accident reached the place of accident and witnessed the result of the accident.

PW-5, Lutfor Rahman, S.I. of Police, formally initiated a criminal case by lodging FIR (Exbt.-7), recorded as Ghior Police Station Case No. 07 dated 13.08.2011. This FIR led to investigation and submission of a charge-sheet (Exbt.-9) by another police officer (PW-6). In the FIR and the charge-sheet, the said two police

personnel have specifically stated the result of the accident as noted above and both of them found the Bus driver Jamir responsible for the accident. After detailed investigation, PW-6 recommended for prosecution of Jamir under section 304 along with other sections of the Penal Code for commission of the offence of culpable homicide not amounting to murder and other offences.

The result of the said criminal case is not on record, but it is in evidence that the case was at least at trial stage as stated by the Bus driver Jamir while deposing as PW-1.

**Principal Controversy:**

The principal controversy is, however, about who is responsible for the collision between the two motor vehicles leading to the death of Tareque.

At the time of argument, Dr. Kamal Hossain placed before us a copy of the judgment delivered in Sessions Case No. 109 of 2012 by the learned Additional Sessions Judge, Manikgonj and verbally submitted that the driver of the Bus has been convicted and sentenced to suffer imprisonment for life under section 304 of the Penal Code for causing death of the same victim Tareque.

Mr. Md. Abdus Sobhan Tarafder, the learned Advocate for opposite-party Nos. 1 to 4, at the time of argument, also verbally contended that driver Jamir has been convicted in the said Sessions Case.

However, in deciding the controversy as pointed above, we need to rely not on the verbal submission but on the evidence led by the parties in the instant case.

Evidence on record shows that three groups of witnesses have stated their experiences gathered on the spot of the accident. They are-(1) PWs-1 to 4, all being eye-witnesses to the occurrence and co-passengers of the Microbus travelling with deceased Tareque, (2) OPWs-1 to 4, all being eye-witnesses to the occurrence and on board the Bus and (3) two police witnesses who visited the place of accident after the accident.

On scrutiny of the deposition of the above noted witnesses, we find the following narrations in respect of the accident moment:-

(1) PWs-1 to 4 all being co-passengers of the Microbus, in a voice, stated that it was a drizzling day and the Microbus was running at a low speed through the left side that is the correct and lawful side of the road and they were looking for an eating place.

PWs-3 and 4 both stated that it was the Bus that hit the Microbus. PW-2 elaborates the scene by stating that he was sitting in the Microbus facing the front side and that, from his seat, he could see the scenario ahead the Microbus and thus, witnessed the manner in which the accident took place. He further stated that he saw a turning/curving point in the right side of the road towards Dhaka and found that in front of the Microbus and through the right side of the road a minibus was coming from the opposite direction i.e. from Dhaka towards Aricha. Then, all on a sudden, he found that the Bus overtook the said minibus and hit the

Microbus with severe force and he became senseless. PW-1, claimant Catherine, who was in a seat facing the backside of the Microbus stated that she heard from a passenger of the Microbus that the Bus overtook another bus and then hit the Microbus.

(2) On the other hand, OPW-1, the Driver of the Bus, also stated that there was a curving point behind the accident spot (i.e. towards Dhaka). But the road, at the place of accident, was straight and that he was driving at a slow speed.

OPW-3, a college teacher and a passenger of the Bus, OPW-4, the Supervisor of the Bus and OPW-5, Helper of the Bus, stated that the Bus was bound for Chuadanga and that it was coming from Dhaka through the left side of the road and that the Microbus was coming from the opposite direction.

However, the above four eye-witnesses to the occurrence (OPWs-1 and 3-5) narrated different versions about the exact moment of accident as follows:-

OPW-1, the Bus driver stated in his examination-in-chief that,- **"ঐদিন টিপ টিপ করে বৃষ্টি হইতেছিল।..... মাইক্রোবাসটি আকাবাকা ভাবে চালানো হচ্ছিল।এই অবস্থায় আমি আস্তে আস্তে আমার গাড়ি বাম দিকে কাচা রাস্তায় নামাইয়া দেই।"** In his cross-examination, OPW-1 stated that,- "ইহা সত্য যে, বাসটির বাম দিকে ধাককা লেগে ক্ষতিগ্রস্ত হয়। ইহা সত্য নয় যে, আমি বেপরোয়া গতিতে চালাইতে ছিলাম যাহার ফলশ্রুতিতে গাড়ীটি গাছের সংগে ধাককা লাগে।"

OPW-3 in his examination-in-chief stated that,- "……. কিন্তু ঐ মাইক্রোটা দ্রুত এসে ব্যালেন্স হারিয়ে সাদা আইল্যান্ড ক্রস করে বাসের ভিতরে ঢুকে বেরিয়ে যায়। আমাদের বাসটি থেমে যায়। ....."

OPW-4 in his examination-in-chief stated that,- "…..জোকা নামক স্থানে পৌছিলে তখন পাটুরিয়ার দিক

থেকে একটা মাইক্রবাস দ্রুত গতিতে ছুটে আসতে দেখতে পাই। আমি তখন সামনে বসা ছিলাম ড্রাইভার অনেক বার হর্ণ দেয়। মাইক্রোর ড্রাইভার তার লেন ক্রস করে আমাদের লেনে ডুকে পড়ে। রাস্তার মাঝে সাদা ডিভাইডার দেওয়া ছিল। আমাদের গাড়ী বাম পাসে ছিল। এ সময় আমাদের বাস আস্তে আস্তে কাঁচা রাস্তায় নেমে আসে এবং কয়েকটি গাছের সঙ্গে ধাককা লাগে। কাঁচা রাস্তাটি আমাদের গাড়ীর বামদিকে। এরপর মাইক্রোটি এসে বাসের সামনের ডান দিকের চাকায় ধাককা মারে। বিকট আওয়াজ হয় ও মাইক্রোবাসটি চুরমার হয়ে যায়। ড্রাইভার ঘটনার পরপরই উধাও হয়ে যায়।..... ”

OPW-5 in his examination-in-chief stated that,- “মানিকগঞ্জের যোকা নামক স্থানে পৌছিলে দেখি সম্মুখ দিকে থেকে সাদা মাইক্রোবাস আসতেছিল। আমার ড্রাইভারকে বলি সামনে গাড়ী বায়ে চাপেন। বামে চাপাতে চাপাতে বাস গাছের সাথে ধা,া লাগে। দ্রুত গতিতে একটি মাইক্রোবাস আমাদের বাসের ডান সাইডে ধাককা মারে। মাইক্রোবাসের ৫(পাঁচ) জনলোক মারা যায়।..... ”

(3) PW-5 a police officer, in his examination-in-chief, stated that,- “জোকা সড়কে উপস্থিত হইয়া দেখি সড়কের উপর একটি মাইক্রো গাড়ী যাহার নং ঢাকা মেট্রো-চ ১৩-০৩০২ গাড়ীটি দুমড়ে মুচরে আছে এবং গাড়ীর মধ্যে ৫ (পাঁচ) টি মৃতদেহ দেখি। রাস্তার দক্ষিন পার্শ্বে একটি যাত্রীবাহী বাস চুয়াডাংগা ডিলাক্স পরিবহনের যাহার নাম্বার ঢাকা মেট্রো-ব ১৪-৪২৮৮ দেখিতে পাই। দুর্ঘটনায় কবলিত মাইক্রোবাসের পার্শ্বে মাইক্রোর যাত্রী মোঃ মনিস রফিক এবং উপস্থিত স্থানীয় লোকজনের নিকট জিজ্ঞাসাবাদে জানা যায় যে, মাইক্রোবাসটি আরিচা হইতে মাইক্রোবাসের লোকজনসহ ঢাকার উদ্দেশ্যে রওয়ানা হয় এবং চুয়াডাংগা ডিলাক্স পরিবহনের বাসটি ঢাকা হইতে যাত্রীসহ আরিচার উদ্দেশ্যে রওয়ানা হইয়া যাত্রীবাহী বাসটি ঘটনাস্হলের কাছাকাছি এসে দ্রুতবেগে বেপরোয়া গতিতে চালাইয়া বেলা অনুমান ১২.৩০ ঘটিকার সময় মাইক্রোবাসে সরাসরি আঘাত করে। যাহাতে মাইক্রোবাসটি দুমড়ে মুচড়ে যায় এবং মাইক্রোবাসের ছাদ উল্টাইয়া পিছনের দিকে যায়। ..... ”

PW-6 another police officer being the Investigating Officer of the criminal case relating to the accident, in his examination-in-chief stated that,- তদন্তকালে আমি বাসের MVI (Motor Vehicle Inspection) টেস্ট করাই। রিপোর্ট পর্যালোচনায় দেখা যায় বাসের স্পিড গভর্নর সিল (গতি নিয়ন্ত্রক) টেম্পার্ড করা অর্থ্যাৎ বাস তৈরির কোম্পানী কর্তৃক নিদিষ্ট গতি সীমা রেখে গাড়ী চালানের যে বাধ্যবাধকতা ছিল তাহা নষ্ট করা হয়। এক্ষেত্রে স্পিড গভর্নর সিল (গতি নিয়ন্ত্রক) না থাকার কারণে বাসের গতি নিজ ইচ্ছামত বাড়ানো কমানো সম্ভব। যদি স্পিড গভর্নর সিল (গতি নিয়ন্ত্রক) টেম্পার্ড করা না থাকত তাহলে কখনই

বাসের নির্দিষ্ট গতির বেশি গতিতে বাস চালানো সম্ভব ছিল না। তদন্তকালে দেখা যায় বাসের ফিটনেস মেয়াদ উত্তীর্ন ছিল। বাসের ড্রাইভার জমির হোসেনের ড্রাইভিং লাইসেন্স এর মেয়াদ বেশ কয়েক বছর পূর্বে উত্তীর্ন হয়। তিনি জানান যে, ড্রাইভিং লাইসেন্স নবায়নের জন্য বিআরটিএ কর্তৃপক্ষের কাছে ড্রাইভিং লাইসেন্স জমা আছে এই মর্মে একখানা কাগজ প্রদর্শন করিলে তদন্তকালে দেখা যায় ঐ কাগজটি ভুয়া। ..... ” এবং ঘিওর থানাধীন জোকা নামক স্হানে অনুমান ১২.৩০ মিনিটে পৌছায় এবং দুর্ঘটনা ঘটায়। .....ঘটনাস্হল থেকে মহাসড়ক এর ১৭৫ ফুট পূর্বে একটা বাক আছে। ঘটনাস্হল থেকে মহাসড়কের পূর্বে ৪৫০ ফুট দুরত্বে আর একটা বাক আছে। ৪৫০ ফুট বাক থেকে আরিচার দিকে যাওয়ার পথে ১৭৫ফুট দুরে আর একটি বাক থাকায় পরপর দুইটি বাকে বাসের গতি নিয়ন্ত্রন না করার কারণে সাদা মার্কিং করা রোড ডিভাইডার পার হয়ে মাইক্রোবাসকে আঘাত করে পুনরায় বামে ৭০ ফুট পশ্চিমে যাওয়ার পর মহাসড়ক হইতে বাসটি কাচা রাস্তায় নেমে যায় এবং মোট ১২৬ ফুট যাওয়ার পর বাসটি পরপর ৩ টি গাছের সাথে ধাক্কা খেয়ে থেমে যায়। বাসের গতি যদি নিয়ন্ত্রনে থাকত তাহলে ১৭৫ ফুট, ৪৫০ ফুট এবং দুর্ঘটনার পর ১২৬ ফুট পরে ৩টি গাছের সাথে ধাক্কা খেত না।

In his cross-examination, this witness (PW-6) stated that,-“…….. মাইক্রোবাসের মটর ভিহিক্যাল প্রতিবেদন অনুযায়ী কোন টেম্পার্ড হয়নি।.....”

Upon careful scrutiny of the deposition of the above noted witnesses, our findings on the accident scenario are as follows:-

(a) On the date of accident, the Bus was running on a Highway without fitness certificate and the Bus-driver had no valid driving license on that day and his driving license had expired a few years back and he submitted a renewal slip/token which was found to be fictitious (*ভুয়া*).

In this respect, the testimony of PW-6 is credible, simply because it has not been refuted by the opposite-parties by producing the fitness certificate of the Bus or driving license of the Bus-driver.

On the contrary, it is in evidence of PW-1 that, due to the death of Microbus-driver Mostafiz and Tareque, the driving license of driver Mostafiz and fitness certificate of the Microbus could not be produced by the claimants, which is natural in the facts and circumstances of the case.

(b) As stated by PW-2, a passenger of the Microbus, and by OPW-1, the driver of the Bus and also by PW-6, the police officer, the Bus, before reaching the accident spot, had to pass a curving point on the road. According to PW-6, the distance of the curving point from the accident spot is 175 feet and the Bus, after the collision with the Microbus, further moved forward by 126 feet from the accident spot and collided with three trees. The statement of PW-6 about collision of the Bus with the trees after it got down to the Kancha road is corroborated by the driver, supervisor and helper of the Bus (OPWs-1, 4 and 5) who stated that the Bus had collision with several trees while it was driven through the Kancha road.

It follows that at the time of hitting the Microbus or collision with the Microbus, the Bus was being driven at a very high speed.

The statements of the Bus-driver and other OPWs with regard to the manner in which the Microbus was being driven are not believable, because- **firstly,** the Bus-driver stated that the Microbus was running in a zigzag manner, but the other witnesses i.e. OPWs 3, 4 and 5 are totally silent on this aspect, **secondly,** the helper of the Bus stated that the Bus-driver blew horns several times, but the Bus-driver himself made no such statement, **thirdly,** if the Bus was stopped beside the road and the Microbus collided with the Bus, as stated by the OPWs., there was no reason why the Bus would move forward 126 feet, far from the accident spot. This distance as travelled by the Bus before it was stopped on the Kancha road clearly shows that the Bus was not being driven at a low speed or in the correct lane.

(c) The actual picture of the moment of collision is partly revealed from the testimony of PW-6 who stated that, during investigation of the criminal case, he found that the Bus, after hiting the Microbus, proceeded through the Highway and took the left lane i.e. the Kancha road and after moving forward 70 feet collided with three road side trees, which is 126 feet away from the accident spot. This aspect of the scenario is corroborated by PW-1 and PW-3 who stated that the Bus, after hitting the Microbus, pushed the Microbus for about ten seconds. PW-1 further stated that, after the accident, when she was leaving the place of accident for going to hospital, she found the Bus far away from the Microbus on the south side of the Highway.

(d) The above findings read with the statement of the first police officer, PW-5, that he found part roof of the Microbus torn lead us to believe that the testimony of PW-2 is credible and, as such, we hold that for overtaking another vehicle, the Bus was being driven at a high speed through the wrong lane resulting in a head-on collision with the Microbus, which was running through the correct lane on its left side.

The evidence on record with regard to the accident scenario lead us to conclude that the Bus-driver was driving the Bus recklessly at a high speed through a wrong lane. He is directly responsible for the accident causing the death of Tareque and four others and injuries to some others including Catherine (P.W.1).

We further conclude that the operators of the Bus—opposite-party Nos. 2 and 3 and also the Bus owner—opposite-party No. 4 had full knowledge about the condition of the Bus itself being operated on the Highway without a fitness certificate and also about ineligibility of the Bus-driver. Opposite-party No. 1 (the Bus

driver) was engaged by the operators of the Bus with endorsement of the owner of the Bus. So, they are vicariously responsible for the loss suffered by the claimants.

Accordingly, we decide the responsibility part of issue No. 5 that opposite-party Nos. 1 to 4 are jointly responsible for the accident and are liable to pay the compensation as determined by us on the aspect of quantum thereof.

The liability of Reliance, as insurer, in relation to compensation has been discussed in the later part of this judgment under a separate heading.

## Liability of Reliance, the Insurer

Reliance admits that it has issued an Insurance Policy covering the risk of an accident in which the Bus may be involved. But Reliance claims that, by issuing the policy, it has undertaken to pay specified amount of compensation on four aspects of such an accident, namely,- (1) Tk. 20,000/- against death of a person, (2) Tk. 10,000/- in case of serious injury to a person, (3) Tk. 5,000/- in case of simple injury to a person and (4) Tk. 50,000/- against damage to property resulting from an accident.

Reliance claims that, as per claim of the Bus owner/operators, it has discharged its liability under the policy as against the Bus and that since as the claimants never approached for

any compensation as noted above, it has not paid any compensation to them. However, Reliance agrees to pay the above mentioned compensation to the claimants.

Reliance denies its liability to pay the compensation as claimed in this case on different heads.

**So, the issue before us is whether Reliance, as the insurer, has any liability to pay compensation beyond the limit admitted by it and, if so, to what extent**.

We have gone through the Insurance Policy document (Exbt.-B) and the relevant clause/portion thereof. This document under the heading "COMMERCIAL VEHICLE POLICY SCHEDULE" specifies the amounts of compensation in the following terms:-

> "*Limit of the amount of the Insurer's liability under Section II-1(ii) in respect of any one claim or series of claims arising out of one event as under:*
>
> | | |
> |---|---|
> | *1) Death* | *Tk. 20,000/-* |
> | *2) Permanent total disablement by Grievous hurt* | *Tk. 10,000/-* |
> | *3) Temporary disablement by other hurt and requires medical attention not exceeding* | *Tk. 5,000/-* |
> | 4) *Property Damage* | *Tk. 50,000/-*" |

The Policy document contains a further condition under heading *"Important Notice to the Policy"* as under:-

> *"The insured is not indemnified if the Vehicle is used or driven otherwise than in accordance with this Schedule.* ***Any payment made by the Company by reason of wider terms appearing in the certificate in order to comply with the Motor Vehicles Act is recoverable from the insured.***
>
> *See the clause headed 'AVOIDANCE OF CERTAIN"*

The *"Avoidance of Certain Terms and Right of Recovery of the Policy"* reads as under:-

> *"Nothing in this policy or any endorsement hereon shall affect the right of any person indemnified by this policy or any other person* ***to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1991****.*
>
> *But the insured shall repay to the insurer all sums paid by the insurer which the insurer would not have been liable to pay but for the said provisions."*

On scrutiny of the Insurance Policy produced before us, it is evident that it does not directly refer to the claims of the nature as raised by the claimants/petitioners, for example the probable income that might be earned by the deceased victim, quantification of the loss of love, affection, care, etc. sustained by his heirs/dependants.

However, the Insurance Policy under heading *"Avoidance of certain terms and Right of Recovery"* vaguely recognizes the right

of “a person indemnified by the Policy or any other person” to recover compensation under or by virtue of the Motor Vehicle Act, 1991. This clause stipulates that if the insurer (Reliance) has to pay compensation under the MV Act, 1991, Reliance may recover it from the insured. In other words, the principal liability to pay compensation under the Motor Vchicle Act, 1991 is to be borne by the insured.

It is noted that the Motor Vehicle Act, 1991, by itself is not the principal legislation on the subject, rather it is an amending Act, titled Motor Vehicles (Amendment) Act, 1991 incorporating certain amendment to the MV Ordinance.

On examination of the MV Ordinance and the MV Rules, we find that these statutes do not contain any provision relating to the amount of compensation to be paid by the insurer covering the risk of a third party.

The learned Advocates for both sides admit that the statutes are silent about the said amount and there is no case law on this subject in our jurisdiction. So, they have referred to the principles of law enunciated by various superior courts of India in various cases.

We have gone through and considered the principles laid down in Indian cases, with regard to the liability of the insurer in relation to third party claim.

It be noted that this issue arose in the Indian cases in view of requirement of obtaining insurance policies to cover the risks in operating various kinds of motor vehicles and the extent of liabilities under such insurance policies. It is further noted that section 95 of the Motor Vehicles Act, 1939 of India is substantially similar to section 110 of our MV Ordinance on the matter of requirements of policies and limits of liabilities.

Indian Supreme Court, in interpreting section 95 of the Motor Vehicles Act, 1939, has taken two different lines of approach as follows:-

(a) In the case of Amit Lal Sood and another vs Smt Kaushalya Devi Thapar and others {AIR 1998 (SC) 1433} it was held that insurer is liable to pay the entire award amount and then may recover the amount paid through court process.

The above noted view was followed by the Indian Supreme Court in the case of New Indian Assurance Limited vs Vimal Devi and others (MANU/SC/1087/2010).

(b) However, in the case of New India Assurance Compnay Limited vs C.M. Jaya and others (2 SCC 278), the above noted view taken in the aforesaid two cases and also the view taken in other cases, namely, Santi Bai case, Juglal Keshoris case were re-examiend by a Larger Bench of Indian Supreme Court, the issue of insurer's liability, observed and found as follows:-

" …….

***The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself.*** *However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be.* ***In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the statute or the contract of insurance which is not permissible.***

*In the light of what is stated above, we do not find any conflict on the question raised in the order of reference between the decisions of two Benches of three learned Judges in Shanit*

*Bai and Amrit Lal Sood aforementioned and,* ***on the other hand, there is consistency on the point that in case of an insurance policy not taking any higher liability by accepting a higher premium, the liability of the Insurance Company is neither unlimited nor higher than the statutory liability fixed under Section 95(2) of the Act.*** *In Amrit Lal Sood case the decision in Shanti Bai is not noticed. However, both these decisions refer to the case of Jugal Kishore and no contrary view is expressed.*

*In new India Assurance Co. Ltd. v. Ram Lal looking to the insurance policy that* ***the appellant had undertaken to indemnify the insured to the extent of Rs. 50,000 only****, it was held that the High Court was in error in holding that the appellant was liable to pay the* ***entire amount of compensation which was more than*** *Rs 50,000 and that the liability of the appellant was limited to Rs 50,000.*

*In a recent judgment in National Insurance Co. Ltd. v. Nathilal this Court, following the case of Jugal Kishore aforementioned,* ***held that in view of the fact that no extra premium was paid towards unlimited liability as could be seen from the policy produced, the liability of the Insurance Company was limited to Rs. 15,000. The Court set aside the award to the Tribunal*** *and affirmed by the High Court.*

*(c) In the premise, we hold that the view expressed by the Bench of three learned Judges in the case of* ***Shanti Bai is correct and answer the question set out in the order reference in the beginning as under****:*

***(d) In the case of the Insurance Company not taking any higher liability by accepting a higher premium for payment of compensation to a third party, the insurer would be liable to the extent limited under Section 95(2) of the Act and would not be liable to pay the entire amount***

***.....***

***.....***

*It is not in dispute from the admitted copy of the insurance policy produced before the Court that the* ***liability of the appellant is limited to Rs 50,000 in regard to the claim in question. The relevant clause in the policy relating to limits of liability reads:***

*……..*

***It is also not the case that any additional or higher premium was paid to cover unlimited or higher liability than the statutory liability fixed as found in the term of the policy extracted above. In the light of the law stated above, it necessarily follows that the liability of the appellant is limited to Rs 50,000 as was rightly held by the Tribunal. The High Court committed an error in taking the contrary view that the liability of the appellant was unlimited***

> ***merely on the ground that the insured had taken a comprehensive policy.***
>
> **……**
>
> *In the circumstances, we hold that the liability of the appellant-Insurance Company is limited to Rs 50,000, as held by the Tribunal.*
>
> ……
>
> *The appeals are, therefore, allowed to the extent of limiting the liability of the appellant–Insurance Company to Rs 50,000, making* ***it clear that it does not affect in any manner the liability of Respondents 4 and 5 (the truck-owner and the driver) to pay the full amount of the award……"***

In the instant case, it is in evidence that the insurer has undertaken to cover the risk of the accident to the extent of specified amount, as stated earlier. It is also in evidence that the Insurance Policy holders being the United Commercial Bank, Jhanaidah Branch, Jhanaidah, as mortgagee and Jahangir Kabir (Tuhin), Proprietor of M/S. Ruhin Motors as mortgagor, have not paid any additional amount of premuiem under the Insurance Policy (Exbit-B)

Thus, undoubtedly the Insurance Policy was issued covering limited liabiltity.

The provisions under title “the Avoidance of Certain Terms and Right of Recovery in the Insurance Policy” contains a rather vague indemnity clause in relation to “any other person,” but only with reference to “Motor Vehicles (Amendment) Act, 1991, which does not contain any provision relating to the amount to be paid for covering the risk of a third party.

Thus, in the given situation of these facts, we can safely follow the principle laid down by the Indian Supreme Court.

Accordingly, we hold that Reliance has a limited liability to the exten of the stipulation in the Insurance Policy.

## Liability of the Bank, if any

From the evidence of the witnesses as discussed hereinbefore, it is evident that Jahangir Kabir (Tuhin), by obtaining loan from the Bank (opposite-party No. 6), had purchased the Bus and the Bank was never in control and supervision of the Bus and it was not also responsible for operation of the Bus. The Bus was purchased by taking loan from the Bank by keeping it under mortgage. Therefore, the Bank is not responsible for payment of any compensation.

## Joint Liability to Pay Compensation

Considering the entire evidence on record, we are of the view that opposite-party Nos. 1 to 5 are responsible for payment of

compensation and that the insurance company i.e. Reliance's liability is limited to the extent as provided in the Insurance Policy. We are of the further view that the Bank is not liable to pay any compensation to the petitioner-claimants.

## Quantum of Compensation

Now we need to determine the quantum of compensation to which the claimants are entitled to and the extent of the liability of opposite party Nos. 1 and 2-operators of the Bus, opposite party No. 3-the owner of the Bus, opposite party No. 4-the driver of the Bus and opposite party No. 5-Reliance, the Insurer of the Bus.

Neither the MV Ordinance nor the MV Rules nor any other statute prescribes any criteria or guideline in determining the quantum of compensation payable in case of a road accident except filing a claim case in exercise of power conferred by section 136 of the MV Ordinance, further amendment was made in the Motor Vehicles Rules, 1940 and a Form is included in the MV Rules and published **under section 173(1) of the MV Ordinance** in the Bangladesh Gazette (Extra Ordinary) on 7th July, 1984. So, we can safely follow the principles as laid down by the Superior Courts of this sub-continant in various cases.

In the case of *Sri Manmath Nath Kuri vs. Mvi. Md. Mokhlesur Rahman and another, reported in 22 DLR (SC)(1970)*

*51* their lordships of the Supreme Court of Pakistan observed as under:-

> *"26-**Assessment of damages in such a case must, therefore, necessarily be to some extent of a rough and approximate nature based more or less on guess work, for it may be impossible to accurately determine the loss which has been sustained by the death of a husband, wife, parent or child.***
>
> *27-No definite or hard and fast rule can, as such be laid down as to the matters which should be taken into account. But **this much can be said that only such damages can be given as can be shown to have been financially suffered by those who bring the action.** In estimating such damages the Court will, no doubt, take into account **the age of the deceased, his or her health, earning capacity and even the chances of advancement.** There must, however, be evidence of **"reasonable expectation of pecuniary advantage" and not of a "mere speculative possibility"**. Thus parents may recover for the loss of the probability that the deceased child would have contributed towards their maintenance and **children may recover for the loss of education, comfort and position in society which they would have enjoyed if the father had lived and maintained the income which had died with him.** The basis of the assessment is not the requirement of plaintiff but the money value of the assistance which the deceased might probably have given had he continued to live."*

The case of *Bangladesh Beverage Industries Limited vs Rawshan Aktar and others, reported in 69 DLR (AD) 196* arose from Money Suit No. 03 of 1991 in which claim for compensation was made by the relatives of the deceased victim of a road accident, endorsed the view taken by the Pakistan Supreme Court in the case of Sri Manmath Nath Kuri vs. Mvi. Md. Mokhlesur Rahman and another as quoted above.

The Appellate Division recorded the following findings in the said Bangladesh Beverage case:-

> *"……*
> *……*
>
> *In the instant case the High Court Division having considered the material evidence on record was of the view that plaintiff-respondents are entitled to the compensation under claim Nos. 2 and 3. The High Court Division observed that pain, agony, suffering and loss of expectation of life as claimed in item Nos. 2 and 3 are tortuous and can be awarded. The High Court Division rightly observed that in respect of claim Nos. 2 and 3 affection, pain, suffering, mental agony, physical incapability and emotion are not calculable and if the court is satisfied that plaintiff is entitled to any compensation that can be only in lump sum and not on calculation. The High Court Division held that there is no subjective value in giving compensation on these to claims and it is the court which has to decide the compensation in lump as such. Accordingly, the High Court Division rightly*

*underlined the standard of estimating the amount of damages as stated below:*

> *"It has already seen that there is no subjective value in giving compensation on these two claims i.e. item Nos. 2 and 3 and it is the court who will decide the compensation in lump as such. It needs to be emphasized that the standard for estimating the amount of damages in case of actionable negligence resulting in death must not be a subjective standard but an objective one and regard in this behalf is to be had to the earnings of the deceased at the time of his death, his future prospects, his life expectancy, the amount he would have spent on himself and on the support of his dependants, the economic condition of the country, the property left by him and the like. On this court ends of justice would be met if we award compensation to the tune of Taka 1,50,00,000 on these two claims/items. This money on the fact of the given case, according to us is not unreasonable but good.……*
>
> *…….*

*The plaintiff-respondents proved that the victim* ***Mozammel Hossain Montu was the only earning member of the family who used to receive salary of Taka 5,968 per month as a journalist of the Daily Songbad and he used to write articles, poetry and scripts for play in the theatre and also earned Taka 5,000 (Five thousand) per month approximately.*** *The*

*victim died at the age of 44 years and he would have served in the news paper industry as a journalist till he attains the age of 57 years. The victim would have received increments in each year and, as such, at the time of retirement the victim would have received Tk. 10,000 per month as salary. He would have earned more money by subscribing articles in different papers, magazines, periodicals and weeklies as such for 13 years. He would have received in all Taka 19,07,008 as the total salary as News Editor till his retirement……..”*

In the Bangladesh Beverage case, the Appellate Division recorded further observation and findings as follows:

*“……..*

*It is the consistent view of the apex courts of the Sub-Continent and also of the courts of the United Kingdom that assessment of damages in such cases necessarily be to some extent of rough and approximate nature based more or less on guess work because it would be impossible to accurately determine the loss which has been sustained by the death of the victim who happened to be the husband and the father of the plaintiffs. It has also been observed in the decision reported in 22 DLR (SC) 51 at page 59 that although no rule of mathematical calculation can be adopted in every case yet it is the duty of the plaintiff to adduce some evidence to afford the court a reasonable basis for the ascertainment of the damages suffered. The Supreme Court of Pakistan*

*in the decision reported in 22 DLR (SC) 51 held that merely because some element of guess work has been introduced in the calculation it cannot be said that there has been any departure from the principles laid down in the decided cases for determining the quantum of damages in such cases.*

*In the instant case we do not find any illegality in granting damage in item No. 1 to the tune of Taka 19,07,008 and in item No. 4 to the tune of Taka 32,40,000 by the High Court Division. As regards the amount of damages granted by the High Court Division in item Nos. 2 and 3 to the tune of Taka 1,50,00,000 [One crore fifty lacs] only we are of the view that there is no illegality in granting damages in item Nos. 2 and 3 but we find it difficult to agree with the amount of damages granted by the High Court Division because the wife working as an Associate Professor has been earning a remuneration which is relevant to meet the loss she would suffer and accordingly, her remuneration has to be adjusted in the assessment of damage under item No. 3. We have already noticed that assessment of damages in such a case must necessarily be to some extent of a rough and approximate nature based more or less on guess work. Considering the facts and circumstances of the case we are of the view that ends of justice would be best served if the damages granted in item Nos. 2 and 3 of their claim be reduced to the tune of Taka 1,20,00,000 (one crore twenty lac) only. In view of the foregoing discussions and findings plaintiffs-respondents be*

*awarded a decree to the tune of Taka 1,71,47,000 as compensation in respect of the following items:*

| | | | |
|---|---|---|---|
| *i)* | *For item No. 1* | *Tk.* | *19,07,008* |
| *ii)* | *For item Nos. 2 and 3* | *Tk.* | *1,20,00,000* |
| *iii)* | *For item No. 4* | *Tk.* | *32,40,000* |
| | *Total:* | *Tk.* | *1,71,47,008"* |

(Bold and underlined, to put emphasis)

Following the principles quoted above, the Appellate Division in Bangladesh Beverage Industries Limited case reported in 69 DLR (AD) 196 decided the quantum of compensation on the 4 items of claims as follows:

i) For item No.1, loss of salary income- Tk. 19,07,008
ii) For item No. 2 and 3, pain and suffering caused to two minor sons and wife- Tk. 1,20,00,000
iii) For item No. 4, loss of gratuity Tk. 32,40,000

Total = Tk. 2,01,47,008

In the instant case, claimants have claimed compensation on nine items i.e. (1) loss of income Tk. 2,40,00,000/-, (2) loss of dependency suffered by claimant Nos. 1 and 2, the minor Tk. 2,50,00,000/-, (3) loss of dependency suffered by claimant No. 3, represented by Abu Tayab Masud Tk. 10,00,000/-, (4) loss of future advancement Tk. 10,00,000/-, (5) loss of estate Tk. 10,00,000/-, (6) loss of love and affection suffered by claimant Nos. 1 & 2 Tk. 2,50,00,000/-, (7) medical expenses of Claimant No. 1 Tk.

2,18,04,646/-, (8) funeral expenses Tk. 1,00,000/- and (9) damage to property (Microbus) Tk. 5,00,000/- in Total= Tk. 9,94,04,646/-.

Out of the above noted items, Item No.1, in our view, is not justifiable, simply because the death of Tareque has not resulted in the loss of income of the claimants, rather their security on account of their dependence on Tareque's income has been lost. Accordingly, we hold that all the 3 (three) claimants being wife, minor son and old mother are entitled to get compensation on item No. 2 under heading Dependency Suffered.

With regard to quantification of this item, we accept the evidence led by the claimants as credible. The claimants have produced the USA Income Tax Return (marked as X for indentification) showing that Tareque and Catherine had a combined monthly income of USD 76,944, equivalent to Tk. 5,00,000/- (five lacs). Therefore, Tareque's monthly income was Tk. 2,50,000/-. Tareque and Catherine Jointly used to maintain a Microbus with a driver and also used to live in a house in Dhaka. It is also in evidence that Tarque was an active man of 54 years pursuing his profession as a renowned film-maker. There is nothing on record to show that he had any health problem.

So, the principle followed in Bangladesh Beverage case and the criteria applied was the potential income of the deceased victim, as salaried person upto his retirement. Following similar criteria in

this case, we hold that the quantum of compensation claimed by claimant No.1 Catherine and claimant No. 2 Nishaad Binghamputra Masud on account of loss of their dependancy is reasonable, in that Tareque had a monthly income of Tk. 2,50,000/- and the claim is for 100 (one hundred months) i.e. total amount of Tk. 2,50,00,000/-.

Similarly, the compensation claimed on account of loss of dependency of Tareque's old mother Nurun Nahar (claimant No. 3) amounting to Tk. 10,00,000/- only is also reasonable.

Now comes up the other item being compensation on account of loss of love and affection. This is a sensitive item and there is no concrete and strict principle for quantifying love and affection in terms of money. So, compensation on this account (item No. 6) is in the nature of consolation.

We hold that in quantifying the compensation on account of loss of love and affection, the basic criteria is the relationship between the victim and the claimants. The evidence on record shows that the claimants were not only close and/or blood related persons, but had a continuous and visible manifestation of love. They used to live together and they were fully dependant on deceased victim Tareque.

In the Bangladesh Beverage case the Appellate Division allowed to the wife and minor children of the deceased victim an

amount of Tk. 1,20,00,000/- against the claim of Tk. 3,00,00,000/- for the accidental death in 1991.

Considering the downward trend in purchasing power of taka as a currency, we hold that Tk. 2,00,00,000/- as against Tk. 2,50,00,000/- claimed in this case would be justified.

With regard to claim in item No. 4 (Loss of future Advancement) Tk. 10,00,000/-, we hold that this item is a remote one and it is merged with the compensation on account of loss of dependency. Therefore, we hold that this claim should not be allowed.

With regard to claim in item No. 5 (Loss of Estate) no evidence was led by the claimants so that compensation in this item can be allowed.

With regard to claim in item No. 7 (Medical Expenses of Catherine) for an amount of Tk. 25,452/-, we hold that this aspect is proved by P.W. 1 Catherine.

However, claim of the additional expenses incurred in USA by Catherine for treatment of damage caused to her eye and the claim on account of future expense of Tk. 2,17,79,194/- is not acceptable to us because P.W.7 Dr. Niaz Abdur Rahman, stated in his evidence that "…… It is true that it is written in the US medical report dated 7th March, 2017, ……**patient states**

**July, 2011 her son was playing with plastic shovel and was poked with it in the OD (right eye), states she had pain short after.**" This report is available in the record, though not marked as exhibit from the claimants' side. So, Catherine could not prove that epi-retinal membrane was due to the result of the accident.

With regard to claim in item No. 8 (Funeral Expenses) for amount of Tk. 1,00,000/-, we hold that the death of victim Tareque in the accident justifies this claim.

With regard to claim in item No. 9, damage to property (the Microbus), we hold that an amount of Tk. 50,000/- is justified out of the claimed amount.

It is noted that the evidence on record, as discussed hereinbefore, shows that the insurance of the Microbus itself expired. Had the Insurance Policy of the Microbus been valid on the date of accident, the concerned insurance company would have been liable to pay the entire compensation relating to the damage of the Microbus.

Since we have held that the damage to the Microbus was caused as a result of the accident, in which the Bus is involved, Reliance as the insurer of the Bus,

is liable to pay compensation for the amount of Tk. 50,000/- under the Insurance Policy for the Bus. The Insurance Policy covers the risk of damage to the party, the Microbus owners.

In view of the discussions and findings made hereinbefore, the petitioner-claimants are entitled to the following compensations:-

| | | |
|---|---|---|
| (i) | Loss of Dependency suffered by petitioner-claimant Nos. 1 and 2 … … … … … … | Tk. 2,50,00,000/- |
| (ii) | Loss of Love and Affection by petitioner-claimant Nos. 1 and 2 | Tk. 2,00,00,000/- |
| (iii) | Loss of Dependency suffered by petitioner-claimant No. 3 | Tk. 10,00,000/- |
| (iv) | Funeral Expenses for Deceased Tareque … | Tk. 1,00,000/- |
| (v) | Medical expenses for Treatment of petitioner-claimant No. 1-Catherine … … …… | Tk. 25,452/- |
| (vi) | Damage to the Property | Tk. 50,000/- |
| | Total | Tk. 4,61,75,452/- |

The total amount of compensation as fixed above shall be paid by the opposite party Nos. 1 to 5 as decided earlier. The distribution of the amounts are discussed below:-

(1) Out of the aforesaid amount, the insurance company i.e. opposite-party No. 5-Reliance as per the Insurance Policy (Exbt.-B) would pay Tk. 80,000/- being Tk.

20,000/- for the death of Tareque, Tk. 10,000/- for the injury caused to Catherine (P.W.1), and Tk. 50,000/- as damage caused to the Microbus.

It is in evidence that OPW-1, Md. Jamir Hossain, Driver of the Bus, has some property and a house but not in Dhaka. So, we are of the view that he should be directed to pay Tk. 30,00,000/- out of the total amount.

Opposite-party Nos. 1 to 3, the controller-supervisor-operators and owner of the Bus respectively, would equally pay the remaining amount of Tk. 4,30,95,452/-.

To avoid complication of calculation while making payment to each of the petitioner-claiments the payments are to be made following the ordering part of the judgment.

Issue Nos. 5, 6 and 7 are decided as above.

Accordingly, it is

Ordered that

(1) the Transferred Miscellaneous Case No. 01 of 2016 arising out Miscellaneous Case No. 01 of 2012 (Manikganj) (Claimed Case) is allowed on contest in part with costs against opposite-party Nos. 1 to 5 and dismissed on contest without cost against opposite-party No. 6;

(2) Opposite party Nos. 1 to 3 shall jointly pay an amount of Tk. 4,30,95,452/- to the petitioner-claimants. Out of this amount, Tk. 10,00,000/- is to be paid to claimant No. 3 and the rest to claimant Nos. 1 and 2;

(3) Opposite-party No. 4 Jamir shall pay an amount of Tk. 30,00,000/- to the petitioner-claimant Nos. 1 and 2;

(4) Opposite-party No. 5 Reliance shall pay Tk. 80,000/- to the petitioner-claimant Nos. 1 and 2;

(5) The opposite-party Nos. 1 to 5 are directed to pay the aforesaid amounts within six months from date, failing which the claimants are at liberty to realize the same through court process in accordance with law.

**Kazi Md. Ejarul Haque Akondo, J.**

I agree

Abdul Hasib Khan, B/O