

*Before K. Kannan, J.*

**NEW INDIA ASSURANCE COMPANY LTD.—Appellant**

*versus*

**SOHAN LAL AND OTHERS—Respondents**

**FAO No. 72 of 1994**

December 10, 2012

*Motor Vehicles Act, 1988 - Ss.2, 39, 61 & 147 - Accident between jeep and tractor attached with Trailer/Trolley - The Tribunal found the negligence of the driver of Tractor and ordered compensation to be paid by the insurer of the Tractor - Insurance Company and the claimants filed appeals - Court held both the drivers are liable to the extent of 50% each - Insurance Company argued Policy Covers Tractor only and Trolley not insured - Since accident with Trolley so Insurance Company not responsible.*

*Held*, that the case that squarely raised the issue and the answer it found to require insurance for the trailer independently arose in *The Oriental Insurance Co. Ltd. Versus N. Chandrashekar and Ors.* 1997 ACJ 512. The court held after adverting to the definition of tractor and trailer "if the tractor draws a trailer and the accident is caused by such tractor-trailer then the vehicle causing the accident would not be a tractor but a goods vehicle. It is only if both tractor and trailer are insured the insurer would be liable to indemnify the owner against claims arising out of the use of tractor and trailer. This view would be in conformity with the other statutory provisions which require even a trailer to be insured."

(Para 10)

*Further held*, that the principle of 'pay and recover' also cannot be invoked. The liability would arise only when there is insurance in the first place but the insurer has a right of defence of violation in terms of policy to claim a right of recovery against the insured. It is not the same as pleading that there is no insurance at all to render it liable to the third party. I therefore find on the factual consideration of the trailer being responsible for the accident, there is no scope for making the insurer liable and the right of

enforcement of the claim is available for the claimants only against the owner of the tractor to the extent to which the driver is found responsible for the accident.

(Para 11)

L.M.Suri, Senior Advocate, with Neeraj Khanna, Advocate, *for the appellant.*

Sudhir Aggarwal, Advocate, *for the respondents.*

## **K. KANNAN, J. (ORAL)**

### **I. Vehicle involved in accident was tractor with trailer**

(1) All the appeals are connected as they arise out of the claim of compensation for death of a driver and a passenger in a jeep. The claims were at the instance of the respective representatives of the deceased persons. The accident was on account of a collision between jeep and a tractor attached to a trailer. The Tribunal found the negligence of the driver of the tractor as having been established and ordered compensation to be paid by the insurer of the tractor. The appeals by the New India Assurance Company are FAO Nos.135 and 72 of 1994 and FAO No.1677 of 1993 is the cross appeal by the claimants.

### **II. On facts: Case of composite negligence of both vehicles' drivers**

(2) The learned senior counsel for the Insurance Company points out from evidence that if the accident had been the result of a collision between two vehicles coming from opposite directions, the manner in which the accident has been spoken to by the eyewitness PW-5, showed that the impact was not against the tractor itself but it was only with the trolley. PW-5 had stated that after the accident, the jeep was pushed towards the left side of the road and had fallen in a ditch and the left side front portion of the trolley had hit the jeep. The learned counsel would argue that if the left side front portion of the trolley had been the point of impact coming from the opposite direction, then it meant that the jeep driver had driven himself much to the right side of the road to cause the collision with the left front side of the trolley. The counsel for the respondents would explain that the vehicle tractor was being driven in a zigzag manner and, therefore, the left front portion of the trolley was exposed for the point of impact with the

jeep. Even if I should strain the expression "zigzag" to mean a complete right turn by the tractor coming on the right side, it cannot result in collision with the left side of the tractor unless the jeep driver himself had swerved to the right and dashed to the left side portion of the tractor. It was also a matter of evidence (that was indeed a matter of common sense, as well) that the speed of the tractor was less than the speed of the jeep. I cannot find the driver of the tractor alone to be responsible, but I would hold by the point of impact on the trolley as not on any front portion of the tractor that there had been some error in judgment of the driver of the jeep also. I would apportion the liability equally and take the driver of the jeep himself as having contributed to the accident to the extent of 50% and would take the liability of the driver of the tractor to be 50%.

### **III. Liability of insurer: The points of rival contentions**

(3) The other point that is urged by the learned counsel for the Insurance Company is that it was brought out in evidence that the insurance policy had a cover to an accident involving the tractor only and the trolley that was attached to the tractor had not been insured. The contentions on behalf of the insurer were: Since the accident itself was by the result of a collision with the trolley, the Insurance Company could not be stated to be responsible for the consequences of the accident involving the trolley; A tractor itself is a mechanical contrivance that cannot carry persons or goods without a trolley being attached to it. The liability for an insurer for any accident that involves the use of the tractor and trolley would arise appropriately only in situations where both the tractor and the trolley are insured and premium paid as per the IMT. In this case it has been brought on record that the premium had not been paid and the insurance had not been taken for a trolley attached to the tractor. This, in the manner canvassed by the learned counsel for the respondents, will have a bearing for consideration of the issue of liability particularly of the application of the principle to indemnify the insured. The learned counsel for the claimants contended that so far as the claim emanates from a third party who is entitled to proceed against the Insurance Company in every situation where the insured's vehicle is involved, the benefit that the Insurance Company could obtain would be only to deny to the insured a right of indemnity and allow for recovery of the claim from the insured. As far as the third parties are concerned, the respondents' counsel would argue that they shall be entitled

to enforce the claim against the insurer and the insurer in turn will have a right to obtain recovery of the amount to the extent to which it is indemnified.

**IV. Relevant provisions of MV Act regarding Tractor and trailer trolley**

(4) Some of the provisions of the Motor Vehicles Act are required to be examined to identify whether a trailer which is attached to the tractor is statutorily required to be registered with the authorities under the Act to secure a distinct registration number and whether there is any necessity for having a policy of insurance for a tractor attached to a trailer. The definition of the "tractor" and the "trailer" are also essential to know the particulars of use as the Act contemplates. "Tractor" is defined under Section 2(44) of the Motor Vehicles Act which is reproduced as under:-

"Tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a roadroller."

It will be evident that it is not designed to carry load. A tractor by itself cannot therefore be a goods vehicle. It is possible in many instances that a tractor is fitted with harvester combine for carrying agricultural operations in agricultural fields. The user of the tractor in such circumstance is not for the purpose of carrying goods but it is only for the agricultural purpose. In such situations, the tractor could be used in agricultural lands and the policy of insurance that is required should be taken as statutorily mandated under Section 147 in so far as the vehicle is put to use in a public place. "Trailer" is brought through a distinct definition under Section 2(46) which is reproduced as under:-

"Trailer" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle."

The trailer cannot propel itself and it is invariably attached to a mechanically propelled contrivance. In the context of a trailer attached to the tractor, it becomes capable of carrying goods. "goods carriage" is defined under Section 2(14) and it is required to be reproduced as under:-

"goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods."

Since the definition contemplates a motor vehicle used for the purpose of carriage of goods, irrespective of the nature of construction or adaptation, a tractor being incapable of carrying goods by its definition could become a goods carriage only if a tractor is attached to a trailer which is so designed to carry goods also. If the tractor by its attachment to a trailer becomes a goods carriage, it becomes a transport vehicle as well, as brought out through the definition under Section 2(47) that is defined as follows:-

“transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.”

Because a transport vehicle includes a goods carriage, a tractor with trailer becomes a goods carriage. The manner of treatment of a vehicle has an immediate bearing for four aspects: (i) for the purpose of the licence that is required for a person, who is competent to drive the said vehicle under Section 3; (ii) for understanding the requirement under Chapter IV of the Act prescribing the procedure for registration of every motor vehicle. A tractor is undoubtedly a motor vehicle also as defined under Section 2(28), since it is a mechanically propelled vehicle adapted for use upon roads; (iii) for the purpose of Chapter V relating to control of transport vehicles requiring the permits to be obtained for carriage of goods; and (iv) as regards the nature of insurance that is possible for the owner of a tractor to purchase to cover the risk arising on account of the accident involving a tractor.

(5) Section 39 of the Motor Vehicles Act requires that no person shall drive any motor vehicle unless it is registered in accordance with the Chapter. The assumption that is made in many cases is that since Section 39 talks about registration of only a motor vehicle, a trailer which is not mechanically propelled by itself does not require registration. This is not correct, as will be evident from the requirement by distinct provision brought through Section 61 of the Motor Vehicles Act, which reads as under:-

**“61. Application of Chapter to trailer.-**(1) The provisions of this Chapter shall apply to the registration of trailers as they apply to the registration of any other motor vehicle.

(2) The registration mark assigned to a trailer shall be displayed in such manner on the side of the drawing vehicle as may be prescribed by the Central Government.

(3) No person shall drive a motor vehicle to which a trailer is or trailers are attached unless the registration mark of the motor vehicle so driven is displayed on the trailer or on the last trailer in the train, as the case may be, in such manner as may be prescribed by the Central Government.”

This Section will make it clear that this is independent as a requirement of registration of a motor vehicle contemplated under Section 39. It will be evident through Section 61 itself that separate registration mark is assigned to a trailer and to the extent to which Section 61 itself reads that the provisions of the Chapter are applicable to trailer also, it shall also be impermissible for any person to use a trailer and attach it to a tractor without registration. The Central Government Rules brought under the Act called as the 'Central Motor Vehicles Rules' stipulates some special brakes and safety requirements for a trailer as well. Rule 97 of the Central Motor Vehicles Rules of 1989 prescribes specific rules for brakes that would require to be attached to a trailer. A tractor drawn trailer less than 500 kilograms of weight would not require braking provisions to be applied but every other trailer exceeding 500 kilograms weight shall have an efficient braking system. Rule 104 requires fitment of reflectors of trailers and semi-trailers.

**V. The imperatives of insurance for trailer, if accident is the result of trailer**

(6) The provisions relating to compulsory insurance are contained under Section 147 and by the language of Section 147, different types of vehicles are contemplated. Section 147(1)(b)(i) & (ii) refer to a liability arising out use of the vehicle in public place. The proviso sets out the classes of workmen who are required to be covered under the Workmen's Compensation Act, viz., in clause (a) engaged in driving the vehicle; (b) engaged as a Conductor in a public service vehicle; (c) carried as a goods carriage (in so far as it is relevant to a tractor with trailer, which we are examining in this case). The law requires that a load man who is being carried in a trailer is required to be covered for risk as a workman liable to such cover under the Workmen's Compensation Act. The 'use' of a 'vehicle' under Section 147 is to be used synonymously as use of a 'motor vehicle' as well, since the definition under Section 2(28) of the Motor Vehicles Act

uses the expression motor vehicle or vehicle synonymously. The only exception to the definition contained under Section 2(28) is a vehicle run upon fixed rails and the contrivance used in factories or other enclosed premises or vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic centimeters. A trailer which is attached to a tractor that is capable of being mechanically propelled by its attachment becomes therefore a motor vehicle or a vehicle under the Act. Coupled with the provisions relating to the goods carriage, the Insurance Company would become liable for a third party, if there is an insurance made in relation to that vehicle. Only because the insurance is compulsory, an Insurance Company does not become liable. It makes certain obligations on the owner of the vehicle for an exposure of a possible risk to a third party, driver or workman, by the user of such vehicle. The provisions relating to liability of the Insurance Company must therefore be understood in the context that in the first place an insurance for that vehicle exists to make the Insurance Company liable. If a tractor is attached to a trailer and the tractor is involved in an accident that causes death or injury to a third party, the owner of the tractor will be liable, but he will have the benefit of shifting that liability to his insurer if his vehicle was duly insured. The insurance that one may be looking to, is whether the tractor was insured or not, if the accident was by the driving of that tractor. The instance where the non-insurance of a trailer would not make a difference would be when the driving of a tractor principally causes damage or injury. However, if no part of the tractor was involved in the accident, but the trailer was involved in an accident, such as when a trailer capsizes and causes an accident to a workman who is carried in the trailer or when the trailer unhinges itself from the tow by accident and causes injury to a person or damage to any vehicle, the question of liability of an insurer would arise only if the trailer was also insured, for, that would mean the risk caused by the trailer which was insured makes possible a right of indemnity to the owner of the tractor who had also availed of an insurance cover for the trailer attached to the tractor.

(7) Keeping in mind these distinct provisions, the insurance motor tariffs which are calculated on the basis of recommendations of the Tariffs Committee are to be examined. The Insurance Motor Tariff Advisory Committee (IMT, as it is called), a statutory body established under the Insurance Act under Part 2B makes separate stipulations for tariffs for

insurance for trailers independently of the tariffs for insurance of a tractor or a motor vehicle. The relevant IMT provisions are reproduced:

IMT. 30. TRAILERS. (Applicable to Private Cars Only)

In consideration of the payment of an additional premium it is hereby understood and agreed that the indemnity granted by this policy shall extend to apply to the Trailer (Registration No.....)"

Provided always that -

1. \*the IDV of such Trailer shall be deemed not to exceed  
...\*\*

2. the term "Trailer" shall not include its contents or anything contained thereon.

3. such indemnity shall not apply in respect of death or bodily injury to any person being conveyed by the said Trailer otherwise than by reason of or in pursuance of a contract of employment.

Subject otherwise to the terms, conditions limitations and exceptions of this Policy.

\* Delete in the case of Liability to the public Risks only policies.

\*\* Insert value of trailer as declared at inception of insurance or any renewal thereof

IMT.48. Agricultural and Forestry Vehicles And Other Miscellaneous vehicles with Trailers attached - Extended Cover

It is hereby declared and agreed that in consideration of an additional premium of Rs....., the indemnity provided by this Policy shall apply in respect of any trailer (including Agricultural Implements such as Ploughs, Harrows and the like) described in the under noted Schedule of trailers as though it were a vehicle described in the Schedule and had set against it in the Schedule the value set against it in the under noted Schedule of trailers.

Provided that the Insurer shall be under no liability under Section I of the Policy in respect of breakage of any part of the agricultural trailer or implements caused by ground obstructions.



### Schedule of Trailers

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\* Description

Insured's Declared value (IDV)

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\* Insert make, number or some other means of identification. Threshing Machines, Drums, Bailing Machines, Trusses and Tiers must be identified as such.

Subject otherwise to the terms, exceptions, conditions and limitations of this Policy.

**NOTE :**

In the case of Liability only Policies, the Endorsement must be suitably amended.

IMT

**IMT.53. Specified Attachments (Special Type Vehicles)**

It is hereby declared and agreed that while any attachment in the under noted "Schedule of attachments" is attached to the Motor Vehicle or is detached and out of use the indemnity provided by this Policy shall apply in respect of any such attachment as though it were the Motor Vehicle and had set against it in the Schedule the value set against it in the under noted "Schedule of Attachments

### Schedule of Trailers

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\* Description

Insured's Declared value (IDV)

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\* Insert make, number or some other means of identification.

**NOTE :**

In the case of pedestrian controlled tractors insert in "Description" in the Schedule of Attachments "any standard attachment of the ... Tractor supplied by the makers."

**IMT.56. Trailers (Road Transit Only)**

In consideration of the payment of an additional premium it is hereby understood and agreed that insurance by Section I and II of this Policy shall extend to the Motor Vehicle (mechanically propelled or otherwise) attached to the Motor Vehicle for the purpose of being towed

Provided always that

1. the insurer shall not be liable under this Policy in respect of damage to property conveyed by the towed vehicle.
2. the insurer shall not be liable under this Policy in respect of accident loss damage and/or liability caused sustained or incurred whilst the vehicle insured is towing a greater number of vehicles than is permitted by law.

These provisions identify distinct types of trailers that could be used, some as purely goods carriages, some for agricultural operations and some merely declared as special attachment. A special relevance for us is IMT 53 and IMT 56 which deal with use of trailers for distinct purposes. The actual tariffs payable as premiums to cover the risk to persons who are carried in the trailers or to whom death or injury occurs by the use of trailer are notified through independent provisions, which are not reproduced here because they undergo periodical changes from time to time. IMT 56 contemplates payment of an additional premium as it is understood by Sections I and II of the policy dealing with the liability to third parties and own damage respectively would be applicable to these attachments as well. The proviso under IMT 56 contemplates two situations: (i) that the liability of the insurer cannot arise in case of damage to the trailer; (ii) when the vehicle, say, such as a tractor is towing a greater number of vehicles than what is permissible by law. Having set down all the relevant provisions relating to the user of a trailer attached to a tractor, it becomes relevant for us to also examine some of the cases which have dealt with accidents caused involving a trailer.

#### **VI. Precedents relating to accidents involving tractor and trailer**

(8) In *New India Assurance Co. Ltd. versus Ansuya and others (1)*, the compensation was sought for death of certain persons travelling in

the trailer insured under contract of insurance of the Company. The trailer was actually transporting sand to the field of the owner and the deceased was a labourer travelling in the trailer, who fell down and died. The issue was whether he was competent to travel in the trailer and therefore, the insurer would become liable for compensation under the Workmen's Compensation Act. The case was dealt with under the Motor Vehicles Act of 1939 and the relevant definitions under the old Act for tractor was Section 2(30); Section 2(32) for trailer and Section 2(8) for goods carriage. Rules stipulated limitation of the manner of use of trailers and the impermissibility of carrying passengers. The Karnataka High Court held that when an accident occurred when labourers/coolies were engaged to load or unload goods, due to rash and negligent driving of the driver of the tractor, such persons must be taken as persons, who travel for purposes incidental to agricultural operation which was the purpose of use that was stipulated in that particular policy of insurance. It was in that context, the Court held that the Insurance Company would be liable under the Workmen's Compensation Act. This judgment can be used only for the purpose of seeing that the permissible occupant in a trailer could be a loadman and a claim could be pursued against the insurer under the Workmen's Compensation Act for any bodily injury on such a person. In *Parsottambhai Eanbhai and others* versus *Panchiben alias Ratanben and others* (2), the Division Bench of Gujarat High Court was actually considering the issue of necessity of having to take a policy of insurance for the trailer as well. The relevant portion of the said judgment is reproduced as under:-

“10. As the law imposes an obligation for taking out insurance against third party risks in respect of a motor vehicle, it became necessary to take insurance in respect of the tractor and trailer. The peculiar argument that Mr. Chhatrapati has developed arises from the fact that the owner of the tractor and trailer being the same person, yet he chose to take insurance in respect of the tractor from one insurance company and in respect of the trailer from the other insurance company. If this contention was put forward before the Tribunal, a very interesting question would have been argued about the inter-se liability of both the insurance companies or one against the other. But we are called upon to examine this question on the facts placed

before us. The liability to compensation arises from the use of the motor vehicle. The contract of insurance is a contract of indemnity. When in this case, both the tractor with the attached trailer were moving along the road, both the vehicles were used in a public place. The accident occurred in a public place. The trailer at that time was attached to the tractor, as would be presently pointed out while examining the contention of Mr. Chhatrapati on the question of negligence. It would be worth-while to keep in mind the finding of the Claims Tribunal that it was the trailer which knocked down the deceased (underlining by me). If the trailer was possibly not attached, the gruesome accident would as well have been avoided. This would become clear when we examine the next contention. Suffice it to say here that the liability to compensation of the insured has arisen by the use of both of the tractor and the trailer and both the insurance companies in the facts and circumstances of this case would be liable to satisfy the claim of the claimants. What is being examined is the contention of Mr. Chhatrapati that the trailer being not a prime-mover, not having locomotion, the insurance company of the trailer would not be liable as the accident occurred when the trailer was being pulled by the tractor and the driver of the tractor was shown to be negligent. It is a very interesting argument for this reason that, if Mr. Chhatrapati is wholly right, then the trailer need not be insured at all. A trailer can never be driven by itself. It has no locomotion. It can be attached to a tractor. It can be attached to something which can pull it. The driver would always be on that part of the vehicle which provides motion to the trailer. Therefore, the trailer by itself cannot be used in a public place and by its use, no accident can occur and if some accident occurs, it would not be on account of the fault of the driver because the trailer would have no driver of its own. We fail to follow and where to go. Therefore, it is not possible to accept the contention of Mr. Chhatrapati and it must be negatived."

In that case, the claim arose out of the accident when the rider of a motorcycle collided with a tractor when the driver of the trailer suddenly swerved to the left projecting the right side of the trailer which knocked down the motorcyclist. The Tribunal's analysis of all the evidence led to recording a finding that the accident was the outcome of rashness of the

driver of the tractor (and therefore of the trailer) that knocked down the deceased. If there was no trailer, possibly the tractor would have moved away and there would not have been even an accident. The Court reasoned that because the trailer was directly involved in the accident, it must be taken the driver of the tractor was *ipso facto* the driver of the trailer as well. In that case, the tractor had been insured with the Hindustan Ideal Insurance Company, while the trailer had been insured with the Skandia Insurance Company. The Tribunal had passed an award against the Insurance Company for the trailer and had exonerated the Insurance Company of the tractor. The appeal had been filed by the insured by joining the insurer of the trailer and the Court was finding that the insurer of the trailer was liable. This judgment is cited only for bringing out the legal and judicial approach for requirement of having to take a policy of insurance for the trailer and the liability that may be fastened on the insurer of the trailer although the accident could have been caused by the driver of the tractor, for, there really is no distinction between the driver of the tractor and the driver of the trailer.

(9) In *Oriental Insurance Co. Ltd. versus Hanumantappa and others (3)*, the Bench of the Karnataka High Court dealt with the issue under the Motor Vehicles Act of 1939. The deceased persons were loadmen travelling in the trailer and there was insurance both for tractor and trailer. Tractor with trailer was treated as motor vehicle to find the insurance company liable. This case does not really help us, since it was a case where there was insurance and there was no requirement for an adjudication whether the trailer was required to be covered for insurance for risk arising out of its use. The point directly arose in the decision before the A.P. High Court in *Gunti Devaiah and others versus Vaka Peddi Reddy and others (4)*, where the claimants travelled in a trailer as coolies and on account of rash and negligent driving of the driver of the tractor, the trailer turned turtle and all the coolies were injured. There was insurance only for the tractor and no insurance for the trailer. The Court held that insurance company would still be liable. The Court was leaning on the judgment of the Supreme Court in *Nagasetty versus United India Co. (5)*, which had held that a tractor with trailer is not a goods vehicle and hence the driver

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(3) 1992 ACJ 1083

(4) 2004 ACJ 1881

(5) 2001(4) RCR (Civil) 597 (SC)

did not require transport vehicle endorsement in his licence to hold that the attachment of a trailer did not make a difference to the tractor being seen as responsible for the accident and the injury to the persons travelling in the trailer must therefore be seen only as resulting by its tow to the tractor and insurance for the tractor would save the day for the claimants against the insurer. *Nagasetty* is a one-off judgment on the effect of a tractor with trailer and the future course of decisions will decide more decisively on the nature of licence that is necessary to drive a tractor with trailer. It is straining the law a little too much to say that the decision of the Supreme Court in *Nagasetty* would support a position that there is no requirement for insurance for the trailer. The Supreme Court was not in the first place considering the issue of whether the insurance was necessary for the trailer. There was consequently no consideration of the provisions of the MV Act regarding the trailer or the tariff regime for trailer brought out above. I find myself unable to subscribe to the AP High Court view in *Gunit Devaiah* and make my respectful disagreement with the reasoning in the decision. I hold that the absence of an insurance cover for the trailer when the trailer was seen as directly involved in the accident cannot make the insurer liable.

(10) The case that squarely raised the issue and the answer it found to require insurance for the trailer independently arose in *The Oriental Insurance Co Ltd Versus N. Chandrashekar and Ors.* (6). The court held after advertng to the definition of tractor and trailer "if the tractor draws a trailer and the accident is caused by such tractor-trailer then the vehicle causing the accident would not be a tractor but a goods vehicle. It is only if both tractor and trailer are insured the insurer would be liable to indemnify the owner against claims arising out of the use of tractor and trailer. This view would be in conformity with the other statutory provisions which require even a trailer to be insured."

**VII. Principle of pay and recover could apply only if there exists in the policy of insurance for the particular vehicle that caused the accident**

(11) The principle of 'pay and recover' also cannot be invoked. The liability would arise only when there is insurance in the first place but the insurer has a right of defence of violation in terms of policy to claim

a right of recovery against the insured. It is not the same as pleading that there is *no* insurance at all to render it liable to the third party. I therefore find on the factual consideration of the trailer being responsible for the accident, there is no scope for making the insurer liable and the right of enforcement of the claim is available for the claimants only against the owner of the tractor to the extent to which the driver is found responsible for the accident.

### **VIII. Quantum of compensation and parties liable for treatment**

(12) As regards the claim for compensation, the Tribunal took the income at Rs. 1,000/- provided for a 1/3rd deduction and applied a multiplier of 20 to assess the compensation at Rs. 1,60,000/- as payable to the claimants. The accident had taken place in the year 1991 and considering the fact that the deceased was aged 27 years, I would provide for a prospect of increase in salary and take the average income at Rs. 2,000/-. Considering the fact that the deceased was supporting a large family of widow, 5 minor children and parents, I would take the deduction towards personal expenses to be Rs. 250/- and take the contribution to the family at Rs. 1,750/-. I would adopt a multiplier of 17 and find the loss of dependency at Rs. 3,57,000/-. I would also add the conventional heads of claim like loss of consortium and loss of love and affection for the minor children at Rs. 20,000/- and towards loss to estate and funeral expenses, add an additional sum of Rs. 5,000/-. In all the total amount of compensation would come to Rs. 3,82,000/-. Since I have already found that the driver of the jeep himself had contributed to the accident to the extent of 50%, I would allow for a deduction of 50% and the amount that would become payable to the representatives would be Rs. 1,91,000/-. The amount in excess of what has been already awarded by the Tribunal will attract interest at 7.5% from the date of petition till date of payment. This amount could be claimed only against the owner/insured and not against the insurer.

(13) As regards the assessment of compensation for death of a bachelor where the claim is at the instance of the parents, the Tribunal had taken the income at Rs. 1,000/- and determined the compensation at Rs. 1,28,000/-. The claim was at the instance of the parents and the income was assessed by providing for 1/3rd deduction and applying a multiplier of 16, I will take the average income at Rs. 2,000/- per month and if a

1/3rd deduction were to be applied and a multiplier was to be taken suitable to the age of the parents, the amount towards loss of dependence would be Rs. 2,56,000/-. No part of the compensation shall abate, for, from his perspective, it was a case of composite negligence and the representatives are entitled to enforce the claim against anyone of the tortfeasors, but this will still have a relevance for the respondent to secure a right of contribution of 50% of the amount already determined from the owner/insured of the jeep. The insurer and the owner of the jeep are not parties before the Court and such a right could be exercised for independent proceedings, if so advised by the owner of the tractor. In both cases, therefore the liability for payment through this judgment is only on the insured/owner of the tractor and not on the insurer.

(14) The award stands modified and the appeals at the instance of the insurer are allowed to the above extent.

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*A. Jain*