
(2009) 07 MAD CK 0328

In the Madras High Court

Case No : C.M.A. No's. 73 and 948 of 2002

A. Raja Mohammad and United India Insurance Co. Ltd.

APPELLANT

Vs

Minnalkodi and Others, Rajakumar, Rajendrakumar and
Sarasu

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 147, 149, 163A, 166

Citation : (2010) ACJ 2325 : (2010) 1 LW 587 : (2009) 6 MLJ 449

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : A. Muthukumar, in CMA 73/2002 and M.B. Gopalan, in CMA 948/2002, for the Appellant; K. Gandhikumar, for R1 to R4, A. Muthukumar, for R5 in C.M.A. No. 948/2002 and M.B. Gopalan, for R5 in C.M.A. No. 73/2002, for the Respondent

Judgement

P.R. Shivakumar, J.—These two civil miscellaneous appeals arise out of the judgment and award of the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur dated 21.08.2001 made in M.C.O.P. No. 316/1999. The first respondent (owner of the vehicle) in the above said MCOP has filed C.M.A. No. 73 of 2002. The second respondent (Insurer) in the MCOP has preferred C.M.A. No. 948/2002. The claimants before the Tribunal have been arrayed as respondents 1 to 4 in both the appeals. The appellant in C.M.A. No. 73/2002 figures as the respondent No. 5 in C.M.A. No. 948/2002, whereas the appellant in C.M.A. No. 948/2002 figures as the respondent No. 5 in C.M.A. No. 73/2002.

2. Mr. Rajendran, the husband of the first respondent and also the father of minor respondents 2 to 4 in both the appeals died in an accident that occurred at about 1.30 a.m on 13.02.1992 while he was travelling in a tractor bearing Regn.No.TN-45 7871 belonging to the appellant in C.M.A. No. 73/2002/first respondent in MCOP No. 316/1999. The accident is said to have taken place near Jayankondam Pudhu Chavadi. Contending that the above said deceased Rajendran, while travelling in the said tractor along with his goods after loading

his paddy bags in the tractor suffered a fatal fall from the tractor as the same was driven by its driver in a rash and negligent manner, the respondents 1 to 4 herein as dependents of the deceased made a claim before the Tribunal for a sum of Rs. 2,00,000/- as compensation. The claim was made against the appellants in both the appeals, who figured as respondents 1 and 2 in the MCOP, on the ground that the appellant in C.M.A. No. 73/2002 was the owner and the appellant in C.M.A. No. 948/2002 was the insurer on the relevant date of the above said tractor involved in the accident.

3. The claim was resisted by the insurer, namely the appellant in C.M.A. No. 948/2002 contending that the petition was bad for non-joinder of necessary parties as the owner and insurer of the trailer bearing Regn. No. TN-31 1022 were not made parties to the MCOP and that the said appellant (insurer) was not liable to reimburse the owner of the tractor as the trailer was not covered by the insurance policy issued by the appellant in C.M.A. No. 948/2002. It was also contended therein that the deceased person travelled along with 32 others in the above said trailer attached to the tractor insured with the appellant in C.M.A. No. 948/2002 and that hence the said appellant could not be mulcted with the liability to reimburse the owner of the tractor to the extent of the compensation he might be directed to pay to the claimants.

4. The appellant in C.M.A. No. 73/2002, who figured as the first respondent in the MCOP admitted that his tractor alone was insured with the United India Insurance Company (appellant in C.M.A. No. 948/2002). However, the appellant in C.M.A. No. 73/2002 (first respondent in the MCOP) contended that there was no negligence on the part of the driver of the tractor and hence the claimants (respondents 1 to 4 in the appeals) were not entitled to claim compensation on the basis of fault u/s 166 of the Motor Vehicles Act. It was the further contention of the owner of the vehicle (appellant in C.M.A. No. 73/2002/first respondent in the MCOP) that even assuming that there was negligence on the part of the driver, since the tractor stood insured with the second respondent in the MCOP (appellant in C.M.A. No. 948/2002), as per the terms of the contract of insurance the entire liability should be shouldered by the insurer. The said stand was taken by the owner of the vehicle based on his contention that though the tractor and trailer were assigned separate registration numbers, they could not be construed to be two different vehicles as the trailer itself could not move without being pulled by the tractor and that on being attached to the tractor, it became part of the tractor itself.

5. The Tribunal, after considering the evidence brought before it on either side, came to the conclusion that there was negligence on the part of the driver of the tractor and hence the first respondent in the MCOP (appellant in C.M.A. No. 73/2002) was liable to pay compensation to the dependents of the deceased (respondents 1 to 4 in the appeals). The Tribunal assessed the quantum of compensation at Rs. 1,51,200/-. It also came to the conclusion that the tractor alone had been insured with the second respondent in the MCOP (appellant in

C.M.A. No. 948/2002) and hence the liability of the insurer to reimburse the owner should be restricted to 50% of the total amount of compensation. Thus the Tribunal passed an award directing the second respondent in the MCOP (appellant in C.M.A. No. 948/2002) to pay a sum of Rs. 75,600/- being 50% of the total amount of compensation in discharge of its liability as per the terms of the insurance contract and directed the first respondent in the MCOP/appellant in C.M.A. No. 73/2002 (owner of the vehicle) to pay the balance from his pocket.

6. The respondents 1 to 4 in the appeals as claimants before the Tribunal had made a claim of Rs. 2,00,000/- alone as compensation. The deceased was aged about 25 years at the time of his death. The amount claimed by the respondents 1 to 4 in the appeals (claimants) in fact was only a meagre amount. However, the Tribunal chose to reduce the said amount and fix the total amount of compensation at Rs. 1,51,200/-. The respondents 1 to 4 in the appeals (claimants) have not chosen to air their grievance regarding the quantum of compensation awarded by the Tribunal by filing a separate appeal or cross-objection. The owner and the insurer alone have chosen to prefer these appeals on the question of the claimants' right to make a claim for compensation on the basis of fault and also on the question of the extent of the liability of the insurer.

7. As the claim was resisted by the insured, namely the owner of the vehicle on merits, the insurer, namely the appellant in C.M.A. No. 948/2002 (second respondent in the MCOP) cannot maintain the appeal on the question of negligence or quantum of compensation. In fact the insurer (appellant in C.M.A. No. 948/2002) has not challenged the award on the question of negligence or on the ground that the total amount of compensation awarded was excessive and hence unjustifiable. The only issue raised in the appeal filed by the insurer in C.M.A. No. 948/2002 is whether the Tribunal was right in fastening 50% of the liability on the insurer when the tractor alone and not the trailer was covered by the insurance policy issued by it.

8. On the other hand, the appellant in C.M.A. No. 73/2002 (first respondent in MCOP No. 316/1999) has challenged the award on the following grounds:

- i) The accident took place due to the negligence on the part of the deceased and there was no rashness or negligence on the part of the driver of the vehicle; and
- ii) The tractor having been insured with the second respondent in the MCOP by a valid insurance policy wherein extra premium had also been collected for covering the risks involved to persons engaged in loading and unloading., the entire liability to pay compensation to the dependents of the deceased should have been fastened on the insurer, namely the second respondent in the MCOP (appellant in C.M.A. No. 948/2002).

9. The arguments advanced by Mr. A. Muthukumar, learned Counsel for the appellant in C.M.A. No. 73 of 2002, by Mr. M.B. Gopalan, learned Counsel for the appellant in C.M.A. No. 948 of 2002 and by Mr. K. Gandhikumar, learned Counsel for the respondents 1 to 4 in both the appeals were heard. The materials

available on record, including the judgment of the tribunal and the memorandum of appeal were also perused.

10. Even though the owner of the tractor has chosen to challenge the award of the Tribunal based on the contention that there was no negligence on the part of the driver of the vehicle and that the deceased fell down from the tractor due to his own negligence, the plea of the owner of the vehicle in this regard is not free from ambiguity. The claimants have also framed the claim petition without disclosing the fact that, at the time of accident the tractor bearing Regn.No.TN-45 7871 was driven with a trailer bearing Regn.No.TN-31 1022 attached to it. Recitals have been made in the claim petition to the effect that the deceased, after loading his paddy bags in the tractor, was travelling in the said tractor along with the paddy. There is want of pleading as to in which portion of the tractor the paddy bags were loaded and whether the deceased was travelling sitting on the tractor portion or trailer portion of the composite vehicle. However, during trial, evidence was led through P.W.1 as if the deceased was travelling seated in the tractor portion of the composite vehicle and he was thrown from the said tractor following which the rear wheel of the trailer ran over him.

11. R.W.1 has also stated in his evidence that the deceased Rajendran was travelling sitting on the engine portion of the tractor. He was examined on behalf of the first respondent. He would admit during cross-examination that he was aware of the rule that no other person except the driver can travel in the engine portion of the tractor. However, he would state that despite his warning that he should not be seated on the engine portion of the tractor, the deceased sat on the engine and travelled. Ex.A1 is the certified copy of the FIR registered by the police regarding the accident concerned in this case. In the complaint given to the police, it has been stated that the informant and 32 others were travelling from Neduncheri to Sirukalathur in the tractor bearing Regn.No.TN-45 7871; that the said tractor was driven by its driver at a high speed and was swerved towards left applying sudden brake on seeing the lorry coming in the opposite direction as a result of which the deceased Rajendran was thrown from the vehicle and was run over by the front and back wheels of the trailer attached to the tractor. It has also been stated therein that the tractor could not be stopped immediately after the deceased was thrown from the tractor and the tractor travelled for about 240 feet before it could be stopped by the driver. The said particulars are reflected in the testimony of P.W.2 also.

12. In Ex.A1 it is not made clear as to in which part of the tractor the deceased was seated when the accident took place. On the other hand, P.W.2 and R.W.1 would state that the deceased was seated on the engine portion of the tractor. Perhaps the said stand was taken keeping in mind that the trailer had not been insured as on the date of accident. Admittedly, the tractor as well as the trailer belonged to the appellant in C.M.A. No. 73/2002 (first respondent in the MCOP). It is also admitted that there was insurance coverage for the tractor alone and not for the trailer as on the date of accident. However, on 17.02.1992, four days

after the accident the appellant in C.M.A. No. 948/2002 has chosen to get an endorsement in the original policy by paying additional premium of Rs. 500/-. Copy of the endorsement dated 17.02.1992 in respect of the original policy has been produced and marked as Ex.R2. The original policy is Ex.R1. The claim form submitted by the appellant in C.M.A. No. 73/2002 to the insurance company has been produced and marked as Ex.R3. In the said claim form signed by the appellant in C.M.A. No. 73/2002 (owner of the vehicle), it has been stated that totally 17 persons including the deceased, hired the tractor attached with the trailer for transporting their paddy and thus 17 persons who were coolies. It was also stated therein that the deceased Rajendran who was in the trailer, due to slumber slipped down and died on the spot.

13. There is a material contradiction regarding the number of persons transported in the tractor/trailer between the evidence of P.W.2 and the particulars found in Ex.R3. P.W.2 would state that totally 7 or 8 persons were travelling in the vehicle, whereas R.W.1 would admit in his evidence that as many as 32 persons travelled in the vehicle. He has also state in Ex.R3 that the deceased and others were travelling only in the trailer portion. However, a contradictory version has also been given by him to the effect that the deceased travelled sitting on the engine portion of the tractor despite his advice not to do so. The particulars found in the claim form marked as Ex.R3 to the effect that the deceased due to slumber fell down from the trailer has also been denied by R.W.1. The same results in utter confusion regarding the plea taken by the owner of the vehicle (appellant in C.M.A. No. 73/2002)/first respondent in the MCOP regarding how the accident took place. Under such circumstances alone, the Tribunal has taken the view that there was negligence on the part of the driver of the vehicle, which alone resulted in the unfortunate accident. Even though the appellant in C.M.A. No. 73/2002 would have taken a stand in the grounds of appeal that there was no negligence on the part of the driver of the vehicle and it was due to his own negligence the deceased fell down from the tractor and died, because of the above said contradictions found in the evidence, the learned Counsel appearing for the appellant in C.M.A. No. 73/2002 was content with making only a passing reference to such a stand taken in the appeal memorandum without seriously pressing that point. There is clear evidence in the form of the particulars found in the FIR marked as Ex.A1 and the evidence of P.W.2 that the deceased fell down from the vehicle because of the rash and negligent driving of the vehicle by its driver and that the vehicle was stopped only after covering a distance of nearly 250 feet from the place wherein the deceased fell down from the vehicle. The same would go to show that the vehicle was driven by its driver at uncontrollable speed and with negligence which alone resulted in the accident. Therefore, this Court comes to the conclusion that the finding of the Tribunal that the accident took place due to the rashness and negligence on the part of the driver of the vehicle involved in the accident is based on proper appreciation of evidence and that the challenge made to the said finding by the appellant in C.M.A. No. 73/2002 is bound to fail. Accordingly,

the said finding of the Tribunal is hereby confirmed.

14. As pointed out supra, the deceased was aged about 25 years at the time of his death. Though there is no proof of his earnings, we cannot assess his annual income below the notional income as found in the Second Schedule r/w Section 163-A of the Motor Vehicles Act. If the notional income of Rs. 15,000/- per annum is adopted and Rs. 5,000/- representing 1/3rd of the amount is deducted from the same, the compensation for loss of dependency alone will be Rs. 1,70,000/- i.e. more than Rs. 1,50,000/- as it is possible to use the multiplier 17. Apart from that for loss of consortium, loss of love and affection and for funeral expenses some amount could have been awarded. But, unfortunately the Tribunal has not awarded any amount on the above said headings. Therefore, the contention raised on behalf of the appellant in C.M.A. No. 73/2002 (first respondent in the MCOP) that the amount awarded as compensation is excessive cannot be accepted at all. The total amount awarded by the Tribunal is even below the reasonable amount that can be awarded as compensation. It is a fit case in which enhancement can be ordered. But, unfortunately the claimants have not chosen to file any appeal or cross-objection. Therefore, this Court comes to the conclusion that the challenge made to the award of the Tribunal regarding the quantum of compensation also fails. This court does not see any reason or ground for reducing the compensation awarded by the Tribunal.

15. As the tractor alone had been insured with the second respondent in the MCOP (appellant in C.M.A. No. 948/2002), the Tribunal has chosen to restrict the liability of the insurer to 50% of the amount of compensation awarded by the Tribunal. The said part of the award is challenged by the insurer (second respondent in the MCOP/appellant in C.M.A. No. 948/2002) contending that the insurer shall be absolved of its liability to reimburse the insured in a case of accident caused by a tractor and trailer when the tractor alone was insured. It is not in dispute that the tractor alone was insured with the second respondent in the MCOP/appellant in C.M.A. No. 948/2002 as on the date of accident and that there was no coverage of insurance for the trailer. However, the owner of the vehicle (first respondent in the MCOP/appellant in C.M.A. No. 73/2002) has contended that though the trailer had not been insured it became an integral part of the tractor when attached with the tractor and hence in an accident involving the composite vehicle of tractor-trailer, the insurer of the tractor should be held liable to reimburse the owner to the entire extent. But the learned Counsel for the first respondent in the MCOP/appellant in C.M.A. No. 73/2002 is not in a position to cite any judgment of the High Court or the Supreme Court in support of his contention that the insurance company shall be liable to reimburse the owner to the entire extent in case of accident caused by the composite vehicle tractor-trailer, if the tractor alone had been insured. On the other hand, the learned Counsel for the appellant in C.M.A. No. 948/2002 has relied on a judgment of a single judge of this Court in Ramesh and Anr. v. Kamatchi Ammal and 4 Ors. reported in 2000(1) CTC 213. In the above cited judgment a learned single judge of this Court relying on another judgment of the Karnataka High

Court in *Oriental Insurance Co. Ltd. v. N. Chandrasekara and Ors.* reported in 1997 ACJ 512 has held, "the non-insurance of the trailer during the relevant point of time would indeed absolve the Insurance Company of its liability."

16. The pertinent question that arises in this case is whether the insurance company is liable to pay compensation to the dependents of the deceased in terms of the insurance policy. Admittedly, at the time of accident, the tractor alone stood insured with the appellant in C.M.A. No. 948/2002 and the trailer was not insured with either the said appellant or any other insurance company. Only subsequent to the date of accident an additional premium was paid for the insurance coverage of the trailer and an endorsement was obtained on 17.02.1992. A copy of the endorsement has been produced and marked as Ex.R2. From the original policy marked as Ex.R1 it is obvious that there was no insurance of the risk of any passengers carried in the vehicle. In fact definition of "tractor" found in Section 2(44) of the Motor Vehicles Act, 1988 will show that it is a motor vehicle which is not itself constructed to carry any load other than equipments used for the purpose of propulsion. When the said definition is strictly construed, one can easily arrive at a conclusion that no goods or passenger can be carried in the tractor. The deceased, according to the claimants, travelled in the tractor along with his agricultural produce, namely paddy bags. By making such a plea, the claimants have made an attempt to show that the deceased was travelling in the vehicle along with his goods as the owner of the goods. Such an attempt seems to have been made to show that the deceased was travelling in the vehicle as the owner of the goods transported therein. But since they were advised that they could not claim compensation from the insurance company with which the tractor alone stood insured, the claimants seem to have taken a stand that the deceased was travelling in the tractor and not in the trailer at the time of accident. As pointed out *supra*, the claimants have also made a conscious attempt to suppress the particulars of the trailer by ingeniously drafting the petition in which the registration number of the tractor alone was furnished. There is not even a whisper that the tractor was fitted with a trailer. The same seems to have been done with a purpose as the claimants should have been advised that they could not claim compensation from the insurer unless they take a stand that the deceased was travelling in the tractor and not the trailer.

17. Whether the deceased was seated on the tractor or was travelling either sitting or standing in the trailer portion, it makes no difference regarding the sustainability of the claim made against the insurer. It is quite obvious from the definition of tractor and also the evidence of R.W.1 that no one excepting the driver shall be seated in the tractor. It is also obvious from the insurance policy marked as Ex.R1 that the policy did not cover the risk involved to any person who would have chosen to travel in the tractor seated on it. Section 147 of the Act does not make it mandatory to have a policy covering the risk involved to any person carried in the tractor. When that is so, unless it is specifically covered by a contractual Clause in the contract of insurance, it can't be said that the

insurance contract shall cover the risk involved to any person carried in the tractor. Therefore, even if the contention of the claimants that the deceased was travelling seated on the tractor when he fell down and suffered the fatal injuries can be accepted to be true, the insurance company cannot be mulcted with the liability to reimburse the owner as the insurance policy did not cover such a risk. On the other hand, if it is assumed that the deceased was travelling in the trailer along with his goods that will not be enough to mulct the liability on the insurance company as the accident took place prior to the date on which the 1994 amendment came to force. Only by the amendment Act of 1994, the owners of goods vehicle are mandated to take a policy covering the risk involved to the owner of the goods or his authorised representative travelling along with the goods in the goods vehicle. The amendment alone made coverage of risk involved to the owner of goods transported in a goods vehicle or his authorised representative travelling along with the goods within the minimum requirement of the policy of insurance. The Hon"ble Supreme Court in *New India Assurance Co. Ltd. v. Satpal Singh* reported in 2000 ACJ 1 (SC) clarified the change made in Section 147 of the Motor Vehicles Act, 1988 with effect from 14.11.1994 in terms of the amending Act, Act 54 of 1994 and held that the mandatory requirement of having a policy covering the risk involved to the owner of the goods or his authorised representative carried in the goods vehicle was introduced with effect from the date on which the amendment was brought to force and that prior to the above said date the owner of the goods carriage was not obliged to take a policy covering the risk to such passengers. The Hon"ble Supreme Court in the said case held that the necessity to cover the risk involved to the owner of the goods or his authorised representative carried in the vehicle within the minimum requirement of insurance policy was made applicable prospectively alone and that the change made in 1994 in legal position was not to be given retrospective effect. The said view was followed in *Oriental Insurance Co. Ltd v. Devireddy Konda Reddy* reported in 2003 ACJ 468 (SC) in which the following observations has been made.

The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefore .

18. In the case on hand, admittedly the accident took place on 13.02.1992. Amendment to Section 147 brought by Act 54 of 1994 came into force on 14.11.1994. Therefore, even assuming that the tractor fitted with the trailer should be construed as a goods vehicle and that the deceased was travelling in the said vehicle along with his goods as owner of the goods transported in the said vehicle, the benefit of the Amendment is not available to the claimants as the amendment was not given retrospective effect. It is true that there is no prohibition for the owner of the vehicle to take a larger coverage than the minimum requirement found in Section 147. But such a larger coverage should be proved by the claimant or by the owner of the vehicle who wants to establish

such a larger coverage. The mere fact that the policy has been issued as a comprehensive policy or otherwise called "B policy", does not mean that it will cover all the risks which are not mentioned in the policy or in the endorsements. Any policy other than "Act only policy" shall be termed a comprehensive policy or "B" policy. In this case, additional premium was collected for own damage, for persons employed in connection with the operation and loading and unloading of motor vehicle and for unlimited coverage of third party property damage. Additional premium was not collected for coverage of risks to the persons carried in the vehicle as owners of the goods transported in the vehicle or their authorised representatives. Therefore, by no stretch of imagination it can be held that the risk involved to the deceased was covered by the insurance policy taken by the first respondent/owner of the vehicle. Taking into consideration the fact that large number of persons have been allowed to travel in the vehicle, it has to be construed that the vehicle was used for transporting passengers.

19. In yet another case, namely in *National Insurance Co. Ltd. v. Ajit Kumar* reported in 2003 ACJ 1931 (SC), the Hon"ble Supreme Court made the following observations:

The difference in the language of "goods vehicle" as appearing in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passenger" as contained in definition of "goods vehicle" in the old Act. The position becomes further clear because the expression used is "goods carriage" is solely for the "carriage of goods". Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the Old Act prescribing the requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that the compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to the liability under Workmen's Compensation Act, 1923. There is no reference to any passenger in a "goods carriage".

20. The effect of 1994 amendment was also considered in yet another case by the Hon"ble Supreme Court in *National Insurance Co. Ltd. v. Baljit Kaur* reported in 2004 ACJ 428. It was observed therein as follows:

It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to person other than the owner of goods or his authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent

of the benefit of insurance to such category of persons.

21. In *National Insurance Co. Ltd. v. V. Chinnamma and Ors.* Reported in 2004(3) ACJ 1909 SC referring to the above said earlier judgment, the Hon"ble Supreme Court came to the conclusion that insurance of an owner of the goods or his authorised representative travelling in the vehicle became compulsory with effect only from 14.11.1994, the date on which the Amendment Act was brought into force and that the benefit of the said amendment would not be available to the victims or dependents of the victims of the accident that took place prior to the said date. In the said case the Hon"ble Supreme Court also made the following observations:

a tractor is not even a goods carriage. The "goods carriage" has been defined in Section 2(14) to mean "any motor vehicle construed 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" whereas "tractor" has been defined in Section 2(44) to mean "a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller". The "trailer" has been defined in Section 2(46) to mean "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle".

A tractor fitted with a trailer may or may not answer the definition of "goods carriage" contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise.

22. It was also observed therein that the tractor and trailer could not be used for carriage of goods by another person for his business activities. In the said case, the deceased, after purchasing vegetables was transporting the same to the market for the purpose of sale thereof when he met with an accident. Hence it was held that the tractor and trailer were not being used for agricultural purposes when the accident took place.

23. Of course, the particulars of the premium collected in the policy shows that a sum of Rs. 1,035/- was collected as premium for coverage of own damage and a sum of Rs. 120/- was collected towards liability to public risk. A sum of Rs. 15/- was collected towards the risks to persons employed in connection with the operations and/or loading or unloading of Motor Vehicle. For getting coverage to unlimited extent towards the damage caused to third party property a sum of Rs. 75/- was collected as premium. From the said particulars of the premium collected, it is quite obvious that no premium was paid towards the risk involved to the owner of goods or his representative carried in the vehicle. Therefore, it is quite obvious that the risk involved to the persons carried either in the tractor or in the trailer, either as a passenger or as the owner of the goods or his representative was not covered by the insurance policy obtained by the first

respondent in the MCOP/appellant in C.M.A. No. 73/2002. When there is no coverage of insurance regarding a particular person, there shall be no question of attaching the liability to the insurer either under the no-fault liability Clause (Section 140 of the Motor Vehicles Act) or under the fault theory with a right to recover the amount from the insured, after making payment to the claimants. Therefore, this Court is convinced that the stand taken by the insurer, namely the appellant in C.M.A. No. 948/2002/second respondent in the MCOP that there was no coverage of insurance so far as the deceased was concerned and that hence no liability could be attached to the insurer either u/s 140 or u/s 166 r/w Section 149 has got to be upheld. The Tribunal seems to have committed an error in apportioning the liability between the owner of the vehicle and the insurer at the ratio of 50:50. The said procedure adopted by the Tribunal is defective and infirm. The award of the Tribunal directing apportionment of liability between the owner and the insurer at the ratio of 50:50 cannot be sustained and the same deserves to be reversed. For the very same reason, the appeal preferred by the owner of the vehicle, namely C.M.A. No. 73/2002 deserves to be dismissed as having no merit in it.

24. For all the reasons stated above, this Court comes to the conclusion that C.M.A. No. 948/2002 shall be allowed and the award of the Tribunal shall be modified by mulcting the entire liability on the owner of the vehicle, namely first respondent in the MCOP and absolving the insurer, namely the second respondent in the MCOP from reimbursing the insured/owner of the vehicle.

25. In the result C.M.A. No. 73/2002 is dismissed and C.M.A. No. 948/2002 is allowed and the order of the Tribunal is modified by mulcting the entire liability on the owner of the vehicle, namely first respondent in the MCOP. There shall be no order as to costs.