
(1997) 01 KAR CK 0092
In the Karnataka High Court
Case No : M.F.A. No. 1642 of 1993

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Shivalingamma and Others		RESPONDENT

Date of Decision : 13-01-1997

Acts Referred:

Insurance Act, 1938 — Section 64 UC
Motor Vehicles Act, 1988 — Section 140, 141, 147, 149, 163 B

Citation : (1999) ACJ 1484

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : S.P. Shankar, for the Appellant; Shantha W. Joshi and A.N. Krishnaswamy, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 has been preferred by the present appellant, i.e., Oriental Insurance Co. Ltd., which has been respondent No. 5 in the main claim petition, challenging the order passed by Mr. V. Jaganathan, Addl. Distt. Judge, M.A.C.T. II, Mandya, disposing of the application u/s 140 of the Act and ordering that all the petitioners together are entitled for interim compensation of Rs. 25,000 u/s 140 of the Act with simple interest at the rate of 6 per cent per annum from the date of application till date of realisation. The Tribunal further found that the respondents, i.e., the owner and insurer of the tractor as well as the owner and insurer of the trailer are jointly and severally responsible to pay the sum of Rs. 25,000 to the petitioners.

2. In application it has been alleged that on 9.7.1991 the deceased Shanthu was going through "A" Circle, Malavalli Town towards Pete and he was moving on the road on correct side from "A" Circle. At that time the respondent No. 1 in the claim petition was coming on the tractor bearing No. MYN 5879 and the trailer No. 3910 driving that tractor and trailer in rash and negligent manner and hit the

deceased. The deceased fell down due to the accident and sustained several multiple head injuries and later died on the spot. Objection statement had been filed by all the respondents to the main petition u/s 166 of the Act as well as to the application u/s 140 of the Act. The respondents to the claim petition including present appellant and respondent Nos. 6 to 8 in the memo of appeal in their objections to Section 140 application stated that both the vehicles which were involved in the accident had been insured. The factum of the accident taking place on 9.7.1991 had also not been disputed. Respondent No. 4 in its objections stated that trailer bearing No. 3910 was not insured with respondent No. 4 to the claim petition, i.e., that it was insured with present appellant on the date of accident. Hence the respondent No. 4 denied its liability to pay compensation and alleged that deceased was hit by the trailer. In the objections filed by the respondent No. 5 it has been stated that:

Vehicle involved in the accident tractor No. MYN 5879 is insured with respondent No. 4 and the respondent No. 1 was the employee of respondent No. 2 who insured the tractor with respondent No. 4. The accident took place due to the act of respondent No. 1 for which respondent No. 2 is liable and respondent No. 4 is vicariously liable to pay any compensation to be awarded.

It is on the basis of these pleadings the present appellant who has been respondent No. 5 denied its liability. It has nowhere been alleged in this application that there was any breach of any condition of the policy of insurance.

3. The Tribunal on the basis of the pleadings of the respondents tentatively found that it is an admitted fact that both the vehicles, i.e., tractor and trailer were involved in the accident and that tractor and trailer have been insured motor vehicles with the insurance companies and it recorded the finding to that effect as well. It held that it has also been established that both the vehicles involved in the accident are insured and, therefore, the petitioner is entitled to interim compensation as per Section 140 of Motor Vehicles Act, 1988 on the principle of "no fault" It further observed that in the statement of objections of respondent No. 4, i.e., United India Insurance Co. Ltd., it has been stated that deceased was hit by trailer and respondent No. 4 is not liable to pay the compensation, and it observed that in view of the rival stands taken by respondent No. 4 that it is not necessary at this stage to enquire into the respective pleadings raised by respondent Nos. 4 and 5 and passed the order as referred to above, granting interim compensation u/s 140 of the Act to the tune of Rs. 25,000 and fastening the liability on two sets of insurers and owners of the vehicles involved and one set of owner and insurer relating to tractor and the other set of owner and insurer relating to trailer jointly and severally to the extent of 50 per cent each. Having felt aggrieved from this above-mentioned order, the Oriental Insurance Co. Ltd., respondent No. 5 in claim petition has come up in appeal before this Court challenging the extent of its liability to pay the compensation.

4. I have heard Mr. S.P. Shankar, the learned Counsel for the appellant as well as Mrs. Shantha Joshi appearing for the respondent Nos. 1 to 5 in the memo of

appeal, i.e., on behalf of the heirs of the deceased and Mr. Krishnaswamy, learned Counsel appearing for the respondent No. 8 in the appeal, i.e., respondent No. 4 in the claim petition. That on behalf of the appellant it has been contended that the tractor and trailer combination had caused the accident in law it is nothing but goods vehicle and insurer of tractor alone is liable to pay the interim as well as the final amount of compensation, i.e., the no fault compensation or the final compensation that may have to be discharged. Learned counsel further submitted that under the Motor Tariff Rules, 1989 as framed u/s 64-UC of the Insurance Act, 1938 the requirement is that both the tractor and the trailer must be insured with the same insurer and not with different insurers/Mr. Krishnaswamy submitted that in the present case, insurer of the two, i.e., tractor and trailer being different, the liability must be fastened on the appellant who insured only trailer and that the tractor which had caused the accident or even if the accident was caused by the combination of the two even then appellant is liable to pay. In this connection Mr. Shankar made reference to the decision of this Court in the case of Oriental Insurance Co. Ltd. Vs. Hanumantappa and others, . Mr. S.P. Shankar further made reference to the single Judge decision of this Court in the case of The Oriental Insurance Co. Ltd. Vs. N. Chandrashekaran and Others, . Mr. Shankar further submitted that tractor and trailer both are motor vehicles, combined together they may be called as goods vehicle and that tractor is attached with the trailer, combined together they become the "goods vehicle". Mr. Shankar submitted that in the case of Oriental Insurance Co. Ltd. v. N. Chandrashekara (supra), it has been laid down as a proposition of law that if the trailer is driven by the insured tractor but the trailer is uninsured and accident is caused by the trailer and not by the tractor then (sic) it is by the goods vehicle and it is in such a case and that if both are insured then the liability to indemnify the owner against the claim would arise out of use of tractor and trailer and insurance company may be bound and that if trailer is uninsured and tractor is insured the liability may not be fastened on the tractor's insurer. Mr. Shankar submitted on this analogy in the present case that as both are insured the liability of the insurance company will be of the tractor which was insured, viz., respondent No. 8 in the appeal, i.e., respondent No. 4. In support of his contention Mr. Shankar invited my attention to the provisions of Section 64U as contained in Part II-B of the Insurance Act, 1938 and submitted that u/s 64-U there is a provision for Advisory Committee to control and regulate the rates. Mr. Shankar further submitted that in view of Section 64-UC power is vested with the Advisory Committee to regulate the rates, advantages and terms and conditions and those terms and conditions are binding. Mr. Shankar submitted that as referred in the case of Oriental Insurance Co. Ltd. Vs. Hanumantappa and others, , particularly made reference to para 8 relating to the trailer, the necessity is for fastening the liability that the trailer towing vehicle should be insured with the same company and this not being the position in those cases, the insurers are not liable for payment of the interim compensation or what may be called no fault liability compensation which is fastened on the owner of the vehicles. This contention of learned Counsel for the appellant had

been hotly contested by Mrs. Shantha Joshi appearing for the claimants, i.e., heirs of the deceased. Mrs. Shantha Joshi submitted that the two motor vehicles, i.e., tractor and trailer both were involved in this accident when they were being driven, they were being used as a goods vehicle, both vehicles, i.e., trailer and tractor had been insured. The provisions of Motor Vehicles Act make no such provision that for fastening the liability on the insurers of both the vehicles, i.e., of the tractor and trailer, the tractor and trailer both should be insured with one and same company. She further submitted that as regards the liability to pay to the claimants-respondents is concerned that whether insurance companies are or either of two is liable to pay or not when both the trailer and tractor were insured, the provisions of the Motor Vehicles Act require that motor vehicle before being made to move on the road should be got insured. This provision in the Act is the beneficiary one and is for benefit of the dependants of the deceased, or for the benefit of the person injured in the road accident on account of the vehicles and is aimed to secure the real and early payment of compensation. The learned Counsel for respondents urged that it has to be interpreted in the manner beneficial to the injured, and in a manner beneficial to the legal representatives of the deceased, in a manner which may fulfil and fructify its object. Learned counsel submitted that the object of these provisions is to facilitate earliest possible recovery of compensation awarded by the Tribunal to those who have become destitute on account of the accident or who have suffered injury for that they may be compensated at the earliest because delay in realisation of the compensation money may frustrate the very object. That is why the motor vehicles are not allowed to be moved on the street unless they are insured. Learned counsel Mrs. Shantha Joshi further submitted that as such the Tribunal has rightly held that both the insurance companies are liable to pay the compensation to the heirs of the deceased proportionately u/s 140 in the present case. She further submitted that unless the insurance company proves that this was one of the terms and conditions under the insurance policy and incorporated in insurance policy as alleged by appellant company and unless it was proved and shown and brought to the notice of the insured, such term cannot be taken to be part of the term of the policy binding on the insured or adversely affecting the interests of the heirs of the deceased or the injured. She further pointed out, so far as the United India Insurance Co. Ltd., present respondent No. 8, i.e., respondent No. 4 in the claim petition has discharged its part of the liability by depositing 50 per cent of the amount awarded under the award passed u/s 140. The dispute is only with regard to liability to be discharged by the present appellant who was respondent No. 5 in the claim petition. On behalf of present respondent No. 8 Mr. Krishnaswamy also made submission and submitted that United India Insurance Co. Ltd. has already paid the sum which it was liable to pay under the interim award. He submitted that he does not want to take the technical objections to delay in the interest of the deceased nor wants in any way to hamper the course of beneficial provisions. I have applied my mind to the contentions made by the learned Counsel for the parties.

5. For the present u/s 140 the present appellant had taken the objection as to its liability to pay the compensation u/s 140 as well as to the final compensation on the ground that the tractor was insured with the United India Insurance Co. Ltd. and it was submitted that the trailer though it was insured with the appellant but accident even if it was caused by the goods vehicle or the tractor as the tractor was not insured with the present appellant (i.e., respondent No. 5 in the claim petition) it is not liable to pay in view of the provisions of Insurance Tariff Rules u/s 64-U. By Section 140 of the Act the doctrine of no fault liability to pay the compensation has been incorporated in the Motor Vehicles Act, 1988. Section 140 of the Act reads as under:

140. Liability to pay compensation in certain cases on the principle of no fault.-

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that Sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

The provisions of Section 141 reveal that this right is not in derogation of any other right, i.e., right to compensation under any other provisions of this Act (except Section 163-A) or any other law in force, but is a right in addition to other right to claim compensation under the provisions of this Act. That no person is entitled to claim compensation u/s 140 as well as u/s 163-A of the Act. Section 163-B of the Motor Vehicles Act, 1988, very clearly provides that out of the right to make claim provided by two remedies u/s 140 and Section 163-A, i.e., out of the remedies, the claimant has to prefer either of them and not under both the sections and this is very clearly provided by Section 141(1) of the Act also. Section 149 of the Motor Vehicles Act makes it the duty of the insurers to

satisfy the judgment and award against the persons insured in respect of third parties. Sub-section (1) of Section 149 provides that if after the certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of the person by whom policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147 being the liability covered by the terms of policy or under provisions of Section 163-A is obtained against any person insured by the policy then, in spite of the fact that insurer may have been entitled to avoid or cancel the policy or might have avoided or cancelled the policy, the insurer shall be liable to pay to the person entitled to the benefit of the decree in sum under necessity the sum assured and payable thereunder as if he were the judgment-debtor in respect of the liability together with the amount payable in respect of costs or any sums payable in respect of interest on that sum. This liability is subject to the other provisions of Section 149. Sub-section (2) of Section 149 provides certain conditions, i.e., it provides 2 conditions.

(1) That before the judgment or award is given in a proceeding the insurer must be given the notice of the proceeding before hand also that of the judgment and award when is to be given. The notice it is required should be given before the commencement of the proceedings. It further provides that if an appeal is filed from the award then if the execution is stayed also, then also the company is not liable. It has further been provided under this Sub-section (2) of Section 149 that a person may be made a party to such proceeding and may be entitled to defend the action on the grounds of defences mentioned in Sub-section (2). Sub-section (7) of Section 149 very clearly provides that no insurer to whom the notice is given as referred to in Sub-section (2) or Subsection (3) of the Act shall be entitled to avoid his liability to any person entitled to benefit of any such judgment or award as is referred to in Sub-section (1) or judgment referred to in Sub-section (3) otherwise than under the provisions of Sub-section (2) or the corresponding law of reciprocating country as the case may be. In view of Sub-section (7) the only defences that can be availed by the insurer are those that have been specified in Subsection (2). It will be proper to quote/ extract the portion from Sub-section (2) whereunder the grounds are:

149 (2) (a): that there has been a breach of a specified condition of the policy, being one of the following conditions, viz:

(i) a condition excluding the use of vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular.

The expression material fact and material particular used in Section 149(2) had been defined by Clause 6 of this Section. These are the only defences that are available to the insurer u/s 149(2) and the burden of the insurer is to make out a case of breach of specified condition or other grounds as mentioned in Section 149(2). No doubt Sub-section (1) where the liability is there, the limit of liability is controlled by expression of any sum not exceeding the sum assured payable thereunder, i.e., payable under the policy. The liability of insurance company subject to the limit of sum indicated in policy and as above, but sums along with that of main judgment-debtor (owner of vehicle). A reading of Section 140 with Section 149, reveals that if a defence under cover by Section 149(2) has not been raised in the objections, then insurer is also liable to the extent the owner of the vehicle is liable even in case of no fault liability. This interpretation further follows from the reading of Section 149 along with proviso to Section 140(5). The proviso to Section 140(5) provides that the amount of such compensation to be given under any other like provision shall be reduced from the amount of compensation payable under this section or u/s 163A. The claim u/s 166 of (sic.) and on this decision thereof from the amount awarded under this proceeding shall be reduced by or made payable by the owner u/s 140 or u/s 163A. The insurance company, the insurer having taken the liability u/s 147(1)(2) to pay and to indemnify the insured with respect to the amount awarded and u/s 149(1) has been made obliged to satisfy the judgment and award to the extent of the amount insured, if the amount paid by insured u/s 140 is less than the extent of amount of insurance and the amount awarded under the final award in pursuance to Section 166 then it is not open to the insurance company to allege or assert that it is not liable to indemnify the insured with reference to sums awarded u/s 140 or that it is to indemnify the insured only to the extent amount under final award exceeds the amount awarded u/s 140, and if such plea be held open to insurance company then the whole purpose of the provision of law u/s 146 of the Act lay emphasis and making it compulsory and obligatory for owner of vehicle to get the vehicle insured would be rendered infructuous with reference to the injured person or deceased person. What is the purpose of insurance or what is the purpose of Section 146 of the Act which requires or which emphasises the necessity of insurance? This aspect has been considered in some cases.

6. Here it will be proper to refer to the observations of their Lordships of the

Supreme Court made in the case of *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 , in the context of Section 94 of Motor Vehicles Act, 1939 (which is equal to Section 146 of Act of 1988) observed in para 13 as under:

In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third party risk by enacting Section 94. Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such a protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. To overcome this ugly situation the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force. To use the vehicle without the requisite third party insurance being in force is a penal offence. The legislature was also faced with another problem. The insurance policy might provide for liability walled in by conditions which may be specified in the contract of policy. In order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by the incorporation of exclusion clauses other than those authorised by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the insurance company to satisfy the judgment obtained against the persons insured against third party risks (vide Section 96). In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by

the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has, therefore, to be interpreted in the twilight of the aforesaid perspective.

Keeping this very object as laid and explained by their Lordships of the Supreme Court, when I look to Section 140 along with provisions of Section 149 it appears to me that even the compensation payable u/s 140 under no fault liability the insurance company is also liable to pay that amount no doubt to the extent of limit of liability covered by and under the terms of the policy. No doubt it may show that the insurance policy has taken the limited liability under the policy and that particular limit is to a particular extent which is lesser than the no fault liability u/s 140 or it is less than the final compensation. It may also show that there is no liability to pay in view of the conditions specified in Sub-section (2) of Section 149 of the Act. It may make strong prima facie to show at least at that stage and in the final trial it has to establish the material facts and particulars of defence which are allowed to be taken u/s 149(2) of the Act by the insurer. Subject to the above, only the insurer is as well liable to pay the amount of sum awarded under the award awarding compensation on the basis of the doctrine of no fault u/s 140. The definition clause contained in Chapter XI of the Act vide Section 145(c) defines the expression "liability" as used in Chapter XI. It provides and reads:

"Liability" whenever used in relation to the death of or bodily injury to any person, includes liability in respect thereof u/s 140.

7. Thus considered the contention of the appellant that it is not liable to pay or indemnify compensation awarded u/s 140 of the Act is without substance. That with reference to his contention that as both the tractor and trailer were not insured with one and same company so appellant is not liable to pay the amount awarded u/s 140 or to be awarded u/s 166 of the Act. Mr. S.P. Shankar, learned Counsel for the appellant made reference to the case of Oriental Insurance Co. Ltd. Vs. Hanumantappa and others, and pressed with emphasis that two vehicles are insured, i.e., trailer and tractor with different companies and not with the same company, it has no liability, that the company which insured the trailer is to pay compensation. It may be pointed out that in this case, certain portion has been quoted from old Tariff Rules which reads as under:

Class "A (3)"-Trailers, i.e., any truck, cart, carriage or other vehicle without means of self-propulsion including agricultural implements drawn or hauled by any self-propelled vehicle, policies may be extended or a separate policy issued to cover trailers at the following rates subject to such trailers and towing vehicles

being insured on identical terms with the same company. The premium must be calculated at the rate applicable to the highest rated class of vehicle that will tow the trailer(s) at any time.

I called upon the learned Counsel for the appellant to place before me the necessary tariff provisions. Learned counsel for the appellant Mr. S.P. Shankar pointed out that the tariff provisions that have been framed by the Tariff Advisory Committee, as called upon by the court, he is placing the tariff rules before the court but it is mentioned therein that these are private and confidential and meant for use by insurance company. Mr. Shankar, learned Counsel for the appellant, placed before the court the Indian Motor Tariff Rules which were effective in 1991, i.e., with effect from 1.8.1989. It is mentioned therein, that tariff rules are binding on all insurers and any breach of tariffs shall be breach of insurance vide the provisions of Section 64-UC, Sub-section (5), of the Insurance Act, 1938. It is mentioned at the bottom as private and confidential. This tariff is for the use of insurers only and is not for circulating or sale to public. Before I proceed further I am constrained to quote the following observations of their Lordships of the Supreme Court in the case of Lalji Bhikha Gajera Vs. Executive Engineer, Gujarat Electricity Board and Others, , in paras 5 and 6, their Lordships observed:

It is a fundamental principle of insurance law that utmost good faith must be observed by the contracting parties. Good faith forbids either party from concealing (non-disclosure) what he privately knows, to draw the other into a bargain, from his ignorance of that fact and his believing the contrary. Just as the insured has a duty to disclose, similarly, it is the duty of the insurers and their agents to disclose all material facts within their knowledge, since obligation of good faith applies to them equally with the assured.

The duty of good faith is of a continuing nature. After the completion of the contract, no material alteration can be made in its terms except by mutual consent.

The duty of good faith is of continuing nature. When the fundamental principle is of good faith and the duty of the insurers and their agents is to disclose all the material facts within their knowledge, the making of certain conditions by way of tariff rules and then keeping those tariffs as private and confidential and secret documents and mentioning therein to be made use of by the insurers only and with a further direction not to be circulated nor to be put in circulation nor to be put in sale to the public, then such documents or conditions cannot be said to be part of the contract of insurance. The insurance companies under the Insurance Act are expected to act in a good faith disclosing all material facts and if they want to take the benefit of their secret knowledge without disclosing these facts they cannot be permitted to take benefit thereof. I called upon the learned Counsel for the appellant to place before the court the policy to verify whether any such condition as referred to or as contained in the tariff rules or the provisions made u/s 64-U by the Tariff Advisory Committee, has mentioned or

shown in the policy and on the copy of policy being placed before the court and its perusal. I find from the perusal of policy that the document does not disclose or show that such a provision has been quoted or made part of the terms and conditions of insurance. That being the position such provisions of tariffs cannot be read to be the part of the terms and conditions of the insurance contract. A contract is an agreement entered between the insured and the insurer or his agent who must have the full knowledge of all the terms and conditions of that contract. No party can be allowed to plead such condition to be binding on other which has never been disclosed or made known to the other party. Thus considered firstly in my opinion the conditions as are provided in or which are relied with reference to the tariff rules framed u/s 64U of the Insurance Act cannot be read as terms and conditions of the insurance contract. I further examined with the consent of the counsel at page 121 of the Indian Motor Tariffs under head cover "Commercial Vehicles Tariff, it is mentioned as under:

II. Policies issued as above may be extended to cover trailers at the following rates subject to such trailers and towing vehicles being insured on identical terms. Endorsement No. 36 (for agricultural trailers) or endorsement No. 56 (for all other types of trailers) must be used. The following warranty must be inserted on the policy covering either the towing vehicles or the trailers.

"Warranty:

Warranted that the trailer/s to be towed by the vehicle/s specified in the Schedule of the policy and the vehicle/s towing any of the trailer/s specified in the Schedule of the policy shall be insured with the company and that the trailer/s and such towing vehicle/s be insured on identical terms".

Learned counsel for the appellant Mr. Shankar submitted that the expression "With the company" refers to company insuring either trailer or tractor then it should be the same and the terms and conditions will be same for both the vehicles. I am unable to accept this contention of the learned Counsel. If the intention had been to continue this idea of same company then the Advisory Committee would not have deleted/omitted from the Rules of 1989 the expression "the same company" which it had used in Tariff Rules prevalent earlier to 1989. In earlier rules it had used "the same company" while the expression "same company" has been omitted in Tariff Rules, 1989. This further makes me hold that there has been no necessity of the tractor and trailer being got insured by the one and same company. Apart from that a direction is also contained at page 119 of Tariffs that warranty must be inserted in the policy covering either the tractor or the trailer. The perusal of page 119 of Tariffs with reference to trailer it is provided there that the warranty must be inserted in the policy covering either the towing vehicle or the trailer. In the present case, the insurance certificate-cum-policy of the insurance company, a copy thereof has been produced before me, does not contain any such warranty. When such warranty is not contained it cannot be read to be part of the terms and conditions of insurance policy. In view of the facts and circumstances of the

present case as the trailer and tractor both are insured with two different companies, in my opinion the liability has rightly been fixed on both the companies u/s 140 as well. No doubt even if the tractor would not have been insured then in that case a contention could be made by the heirs of the deceased that appellant is liable for paying compensation because trailer is a vehicle which cannot be made use of without a motor vehicle being attached with it. The definitions of trailer and tractor very clearly exhibit them. u/s 2(44) "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." Trailer u/s 2(46) is defined as "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle." So when the trailer has to be used or intended to be used by a motor vehicle may be tractor or otherwise but whether this vehicle is one which is intended to be drawn or to be used by use of a motor vehicle, external or internal then definitely it may be argued that motor vehicle used with the trailer becomes part and parcel of the trailer when it is used as a goods vehicle. Entire liability may be fastened on the insurer of the trailer because when tractor is being insured it is always very much clear to the insurer that this vehicle has to be made use of with the motor vehicle to be attached with it.

8. Any way in the present, I do not express any final opinion on this aspect of the matter. The question may be considered at some other occasion. The trailer is a motor vehicle which has been so defined by the Motor Vehicles Act. This appeal is hereby finally disposed of and is hereby dismissed and the order passed by the Tribunal u/s 140 is affirmed. However, Mr. S.P. Shankar pointed out that appellant has deposited the amount, i.e., Rs. 12,500 in this Court. The amount is payable to the heirs of the deceased. Learned counsel for the respondents Mrs. Shantha Joshi submitted that office may be directed to transfer this amount to the Tribunal concerned for being paid expeditiously to the claimants who are the heirs of the deceased. While dismissing the appeal office is directed to transmit the amount so deposited by the appellant to the Tribunal and the Tribunal is hereby directed that the amount referred to above is to be paid off to the claimants, i.e., respondent Nos. 1 to 5 in the appeal at the earliest. It is expected that the Tribunal should also take steps to expeditiously dispose of the claim as the main claim petition is of 1991 and 7 years have passed. It is expected that claim will be disposed of at the most within six months period and not more.

Appeal is hereby dismissed and cost of appeal is to be borne by parties themselves respectively.