

the owner of the vehicle would (if the vehicle were identifiable) be legally liable to the claimant; provided that no greater amount shall be awarded than would be the measure of the legal liability of such owner if the vehicle were identifiable.

(14) It is an express term and condition of all proceedings pursuant to the provisions hereof and of every reference to arbitration as aforesaid—

- (a) That no award shall be made in favour of the claimant unless the claimant first proves to the satisfaction of the arbitrators all the matters referred to in clause (2) hereof, and that he has complied with the provisions of clauses (3) to (7) hereof inclusive, so far as applicable, and failing such proof as aforesaid the arbitrators shall have no power or jurisdiction to make an award in favour of the claimant;
- (b) That all such defences may be set up to the claim as would be available in an action in a Court of law against the driver, the owner, or any other person alleged to be liable in respect of the accident.

(15) It is an express term and condition of all proceedings pursuant to the provisions of Part I hereof, and of every reference to arbitration as aforesaid, that no award shall be made in favour of the claimant in respect of any claim against which an insurance company would not be liable to indemnify the owner of the vehicle under Part V of the Transport Act 1949, and any amendments thereof, if the vehicle were identifiable, and the arbitrators shall have no power or jurisdiction to make an award in favour of the claimant in any such case.

(16) Where the claim is made in respect of the death of any person, the amount (if any) that is awarded shall be divided among such persons in such shares as the arbitrators shall by their award determine, and where any such person is an infant the arbitrators shall by their award direct that the share of such infant shall be paid by the Commissioner to such person or corporation as they shall by their award appoint, and that such share shall be held by such person or corporation upon such trusts as they shall by their award define and declare.

(17) Notwithstanding anything herein contained, the arbitrators shall have no power or jurisdiction to make an award for an amount exceeding £2,000 (inclusive of any sum that the arbitrators may award in respect of party-and-party costs) in respect of bodily injury to or the death of any one person.

(18) If within the time limited by clauses (3) and (4) hereof more than one claim is made arising out of the same accident or disaster, and the total amount of the awards (including party-and-party costs) in respect of all such claims exceeds the sum of £7,500 then there shall be payable in respect of each such award only an amount bearing the same proportion to the amount awarded as the sum of £7,500 bears to the total amount of such awards, to the intent that, without prejudice to anything contained in clause (17), the total liability of the insurers in respect of the aggregate of all the claims arising out of any one accident or disaster shall not exceed in any event the sum of £7,500 (including party-and-party costs).

(19) If within the time limited by clauses (3) and (4) hereof more than one claim is made arising out of the same accident or disaster by or on behalf of persons who are relatives of each other, within the meaning of the definition of the term "relative" contained in section 2 of the Workers' Compensation Act 1922 (or in any enactment passed in amendment thereof or in substitution thereof) then, whether or not such claims relate to the death of or to bodily injury to more than one person, if the total amount of the awards (including party-and-party costs) in respect of all such claims exceeds the sum of £2,000, there shall be payable in respect of each such award only an amount bearing the same proportion to the amount awarded as the sum of £2,000 bears to the total amount of such awards, to the intent that, without prejudice to anything contained in clauses (17) and (18), the total liability of the insurers in respect of the aggregate of all the claims made by or on behalf of persons who are relatives of each other as hereinbefore defined, arising out of any one accident or disaster, shall not exceed in any event the sum of £2,000 (including party-and-party costs).

(20) After the publication of any award made pursuant to and under the provisions hereof, the claimant and the other persons (if any) for whom and on whose behalf the claim is made shall execute an agreement with the Commissioner as trustee and agent for the insurers, and for the driver, owner, or other person mentioned in clause (7) hereof, that they and each of them will, if at any time thereafter called on by the Commissioner so to do, execute in favour of the driver, owner, or other person mentioned in clause (7) hereof (and whether the identity of such driver, owner, or other person is then known or not) a release (in such forms as may be required by the Commissioner) of all such claims or demands as are referred to in the said clause (7). Where any money is payable by the Commissioner under any such award the Commissioner shall not make any such payment unless he previously obtains such agreement as aforesaid. In cases where no money is payable by the Commissioner under any such award the Commissioner shall require execution of such agreement as soon as possible after the publication of the award.

PART II—VEHICLE UNINSURED

(21) If the Plaintiff in any action hereafter brought in New Zealand to recover damages in respect of the death of or bodily injury to any person (including the Plaintiff) caused by or through or in connection with the use of a

Motor Vehicle in New Zealand owned by an Uninsured Defendant shall be unable to obtain payment of the whole or any part of the first £2,000 of any judgment recovered by the Plaintiff against the said Defendant because such Defendant is of insufficient means to pay such judgment then if having regard to the exceptions provided in subsection (4) of section 70 of the Transport Act 1949 the Defendant would have been indemnified if the Defendant had obtained Motor Vehicle (Third Party) Insurance under the Transport Act 1949 and subject to the Plaintiff executing in favour of the Insurers the assignment of the judgment obtained provided for in the next succeeding clause of these Articles of Agreement the Insurers will pay to the Plaintiff in respect of such judgment the amount of such judgment to a limit of £2,000 less any sum which the Plaintiff may have received on account or in respect of the said judgment, Provided always that the total amount payable by the Insurers in respect of all claims arising out of one accident or disaster shall not exceed £7,500 in all and if necessary the amount payable hereunder to each claimant shall abate proportionately to the extent necessary to keep the total of all payments to the sum of £7,500.

(22) It shall be a condition precedent of any payment by the Insurers in terms of the preceding clause of these Articles of Agreement that the Plaintiff shall execute in favour of the Insurers an assignment of the judgment obtained by the Plaintiff against the Uninsured Defendant.

(23) If the Insurers shall recover under the judgment assigned by any Plaintiff any sum in excess of the moneys paid by the Insurers to the Plaintiff and the costs and expenses incurred by the Insurers (hereinafter called the surplus moneys) then the Insurers will pay the said surplus moneys to the Plaintiff or to his her or its Executors Administrators or legal successors.

(24) The Insurers shall not be under any obligation to enforce any judgment assigned nor shall the Insurers be liable for any failure to enforce the said judgment.

(25) Any Plaintiff who desires to claim upon the Insurers in pursuance of these Articles of Agreement and by reason of a judgment obtained against an Uninsured Defendant not being satisfied shall give written notice (to be sent by Registered Post) to the Commissioner of Transport stating the following:

- (a) The full name, address, and occupation of the Plaintiff;
- (b) The date, time and place of the accident giving rise to the action brought by the Plaintiff;
- (c) A certified copy of the judgment obtained by the Plaintiff against the Defendant;
- (d) A statutory declaration stating the following:
 - (1) That nothing has been recovered from the Defendant in respect of the said judgment;
 - (2) That the Defendant is an Uninsured Defendant within the meaning of these Articles of Agreement;
 - (3) That according to the best of the Plaintiff's knowledge, information and belief, the Defendant is unable to pay the said judgment (or the balance owing in respect of the said judgment) from the Defendant's own moneys or assets;
 - (4) That the Plaintiff wishes to avail himself of the benefits conferred by these Articles of Agreement and that in consideration of the Insurers receiving the application the Plaintiff agrees to be bound by the provisions of these Articles of Agreement and the Plaintiff is accordingly prepared to assign the said Judgment to the Insurers.

(26) The Commissioner of Transport shall forward all applications received in terms of the preceding clause of these Articles of Agreement to the General Manager of the State Fire Office who is the authorised agent of the Insurers to deal with all such applications made for the benefits conferred by these Articles of Agreement.

(27) If any dispute shall arise between a Plaintiff claiming the benefits provided for by these Articles of Agreement and the Insurers as to whether the real reason why the said Plaintiff is unable to obtain payment of the whole or any part of the first £2,000 of any judgment recovered against an Uninsured Defendant is because such Defendant is of insufficient means to pay such judgment then such dispute shall be settled by an Arbitrator who shall be appointed by the Commissioner of Transport and the Award of the Arbitrator appointed by the Commissioner of Transport shall be final and binding upon the Plaintiff and the Insurers.

PART III—GENERAL

(28) The total amount (including all costs payable or incurred and including party and party costs) payable under any award made or required to be paid to any Plaintiff in accordance with the provisions hereof together with the legal and other costs incurred by the State Fire Insurance General Manager in handling the claim shall be collected by the Commissioner of Transport from the insurers and thereafter disbursed by him to and through the State Fire Insurance General Manager; but the Commissioner shall be liable to pay as aforesaid only such amount as he actually receives.

(29) Each of the Insurers shall contribute such proportion of the total amount payable to the Commissioner of Transport as the amount payable to it under subsection (2) of section 77 of the Transport Act 1949 for the year in which the accident giving rise to the claim occurred bears to the total premiums received under subsection (1) of the said section 77 during the months of July August and September.

(30) Each of the Insurers hereby authorises the Secretary of the Post Office to give to the Commissioner of Transport such information as the latter may require to enable the