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**THE COURT OF APPEAL  
CIVIL**

**Appeal Number: 2022/4**

**Collins J**

**Neutral Citation Number [2023] IECA I1**

**Noonan J**

**Allen J**

**BETWEEN**

**URBAN AND RURAL RECYCLING LIMITED**

**AND**

**RSA INSURANCE IRELAND DAC**

**PLAINTIFF/APPELLANT**

**AND**

**ZURICH INSURANCE PLC**

**DEFENDANT/RESPONDENT**

**JUDGMENT of Mr. Justice Allen delivered on the 25<sup>th</sup> day of January, 2023**

*Introduction*

1. Mr. Joseph Moore suffered devastating injuries in an accident at work on 19<sup>th</sup> December, 2013 when a plastic wheelie bin containing glass for recycling fell on him.

2. In the circumstances which I will describe, Mr. Moore was using a mechanical lift attached to a recycling truck to lift and tip the wheelie bin into the truck when the bin fell and struck him on the head.

3. By personal injuries summons issued on 24<sup>th</sup> March, 2014 Mr. Moore brought proceedings against his employer claiming damages for negligence and breach of duty and breach of statutory duty. The employer had two insurance policies and the issue in this action is which of the policies should respond to Mr. Moore's claim.

#### *Facts*

4. Mr. Moore was employed at the time by the first plaintiff, Urban and Rural Recycling Limited (*"the Company"*) which, as its name suggests, was in the recycling business. The Company owned a Scania recycling truck which had twin lifts on the nearside and one lift at the rear, each designed to lift two plastic wheelie bins and tip their contents into the truck. The lifting process involved manually moving the bins onto a locking point and then operating the lift to raise and tip them.

5. On the day of the accident Mr. Moore had been assigned to a round of collections. He was accompanied by Mr. Michael Wickham, the principal of the Company. Mr. Moore was driving the truck between collections.

6. The men travelled together to Sinnott's Store, Duncormick, County Wexford, where they alighted from the truck. The truck was stopped at the side of the public road. Mr. Moore loaded the bin onto the lift and operated the lift to lift and tip it. When the bin was near its emptying position it fell, striking Mr. Moore on the head.

#### *The policies*

7. At the time of the accident there were two insurance policies in place.

8. The first was an employer's liability policy, described as a "*Liability Policy*" issued by the second plaintiff, RSA Insurance Ireland Limited ("*RSA*") which provided indemnity to the Company:-

*"... against legal liability for any damages in respect of Bodily Injury of any Employee within the Territorial Limits caused during the Period of Insurance and arising out of and in the course of employment by the Assured in the Business."*

but which excluded:-

*"... any liability as required to be insured by the relevant Sections of the Road Traffic Acts or their equivalent in respect of Requirements in respect of Policies of Insurance relating to compulsory Insurance."*

9. By clause 4 of the general conditions, under the heading "*Other Insurance*" it was provided that:-

*"This insurance does not apply in respect of any loss or damage which at the time such loss or damage arises is insured by or would but for the existence of this policy be insured by any other policy or policies,"*

10. The business of the Company was described as:-

*"Glass Bottle Recycling – provide bottle bins approx. 1400 to hotels, pubs, restaurants collect and bring to Rehab Glass Co. Ltd. in Naas, Co. Kildare & up to 5% collecting of aluminium cans, including reselling of recycled glass."*

11. The second policy was a policy described as a "*Motor Fleet Policy*" issued by the defendant, Zurich Insurance Ireland Limited ("*Zurich*"). Section 1 of the policy is entitled "*Section 1 – Liability to Third Parties.*" Under the heading "*WHAT IS INSURED*" the Zurich policy provided:-

***“Indemnity to insured***

*WE will indemnify YOU against all sums which YOU or YOUR personal representatives become legally liable to pay by way of damages or costs on account of death or bodily injury to any person or damage to property caused by or in connection with any motor vehicle described in the schedule for any one accident or a series of accidents arising out of one event.”*

12. Under the heading “*WHAT IS NOT INSURED*” it was provided that:-

***“Except so far as is necessary to meet the requirements of the Road Traffic Acts Legislation WE will not be liable for:***

• *Death or bodily injury to:*

- (i) any person driving the vehicle or in charge of the vehicle for the purpose of driving.*
- (ii) any passenger being accommodated in or on the vehicle.*

*WE will not be liable for:*

- *Death or bodily injury to any person or damage to property caused or arising beyond the limits of any road in connection with:*
  - (i) the bringing of the load to any vehicle for loading or*
  - (ii) the taking away of the load from any vehicle after unloading by any person other than the driver or attendant of the vehicle.”*

13. In the general exceptions it was provided that:-

***“Use/Driving***

*WE will not be liable for any loss, damage, liability and/or injury arising out of any event happening:*

- (i) while any vehicle is being used for any purpose not permitted by the certificate of motor insurance.*

(ii) *while any vehicle being driven or for the purpose of being driven by or in the charge of any person not authorised by the certificate of motor insurance.*”

14. The Zurich policy earlier defined the “*Insured Person*” as “*YOU*” and “*the driver*”. “*You*” was defined as the person, people or company shown in the schedule as the insured, who were the Company and Mr. Wickham. The business of the Company was not defined but the schedule showed an excess of €900 for claims for accidental damage and theft to “*the 1994 Scania vehicle that is adapted to take wheelie bins and glass.*”

15. If it was not obvious from the exclusion of liability for claims beyond the limits of any road in connection with the bringing or taking away of loads by any person other than the driver or attendant, it was from the description of the vehicle, that its use encompassed loading and unloading as well as driving.

16. It is useful to observe here that it was common case that the use of the vehicle included the use of the lifts and that the liability covered by the Zurich policy and required by the Road Traffic Acts to be insured included any liability arising from the use of the lifts while the vehicle was stationary. The issue between the parties was whether the liability of the Company, if any, to Mr. Moore arising out of the use of the lift was a liability which was required by law to be covered or was otherwise covered by the terms of the policy.

#### *The High Court proceedings*

17. By this action, which was commenced by plenary summons issued on 21<sup>st</sup> June, 2017, the Company claimed a declaration that Zurich was bound to indemnify it against Mr. Moore’s claim. RSA claimed, further and in the alternative, that it was entitled to a contribution to damages and costs paid or to be paid to Mr. Moore. While in form the

Company was a plaintiff, the Company was entitled to indemnity from one or other – or possibly both – of RSA and Zurich and in substance they were the real protagonists.

**18.** The facts were admitted and the issue was brought before the High Court, by consent, on a special case under O. 34 of the Rules of the Superior Courts. The questions put before the High Court were:-

1. Whether the liability (if any) of the Company to Mr. Moore was a liability that was required to be insured under the Road Traffic Acts, and
2. Having regard to the answer to question 1, whether the Company was entitled to indemnity in respect of Mr. Moore’s claim under (a) the Zurich policy, or (b) the RSA policy, or (c) both.

**19.** I pause here to say that while the special case contemplated that the Company might be entitled to indemnity under both policies, the case argued was that it was either/or. It will be recalled that clause 4 of the general conditions of the RSA policy provided that the insurance did not cover any loss or damage insured by any other policy or policies. Accordingly, if there was cover available under the Zurich policy, there was none available under the RSA policy so the answer could not be both.

**20.** By order dated 16<sup>th</sup> December, 2021, for the reasons given in a written judgment delivered on 3<sup>rd</sup> September, 2021 [2021] IEHC 661 the High Court (Reynolds J.) determined that the Company’s liability to Mr. Moore, if any, was a liability which was required to be insured under the Road Traffic Acts, and that the Company was entitled to indemnity under the Zurich policy.

**21.** The High Court judge found first, that the term “*user*” in the Road Traffic Acts covered the use of the vehicle that led to Mr. Moore’s injury, secondly, that Mr. Moore had not been “*in charge of the vehicle for the purpose of driving*”, and thirdly, that the manner in

which Mr. Moore had constructed his personal injury claim was, on balance, consistent with “*negligent use*” within the meaning of s. 62(1)(b) of the Road Traffic Act, 1961.

**22.** With the benefit of hindsight, the questions as formulated by the special case might perhaps have been expressed more clearly. The first question was whether any liability in respect of Mr. Moore’s claim was compulsorily insurable. The second question was whether even if its liability was not compulsorily insurable, the Company was entitled to indemnity under the Zurich policy. It was accepted by Zurich that the indemnity available under the Zurich policy did *prima facie* cover any liability to Mr. Moore, unless it came within one of the exceptions listed under the heading “*WHAT IS NOT INSURED*”. However, the listed exceptions were themselves subject to the statutory requirements of the Road Traffic Acts. More straightforwardly, the indemnity available under the RSA policy simply excluded any liability required by law to be insured. Accordingly, if the Company’s liability to Mr. Moore was one which was required to be covered, that would be the end of the matter. The premise of the second question in the special case was that the cover available under the Zurich policy was greater than was required by the Road Traffic Acts and would not arise unless the answer to the first question was No.

**23.** Moreover, while the second question as formulated invited a finding whether the Company was or was not entitled to indemnity under the RSA policy, the issue in the action was limited to whether Zurich was bound to indemnify the Company against the claim and the premise of the joinder of the Company and RSA as plaintiffs was that the RSA policy would respond if the Zurich policy did not.

**24.** I should say that I am not for a moment to be thought to make the slightest criticism of the formulation of the questions in the special case which may very well have been agreed when the parties’ positions were less clear than they eventually were when the appeal came

before this court. Rather, I offer the analysis I have of the questions posed in the hope that it will bring focus on the issues.

**25.** There is one issue that I can and conveniently should get out of the way at this stage. In the course of argument before the High Court, and, indeed, in the judgment of the High Court, reference was made to a defect in the vehicle. This appears to have originated in a plea in Mr. Moore's personal injuries summons that he had been provided with defective or deficient equipment and prompted a dispute which persisted until the hearing of the appeal as to what counsel had said or meant in the course of argument before the High Court. It can be easily disposed of. The issues put before the High Court, and before this court on appeal, are based on agreed facts and documents. There was no reference in the special case to the presence or absence of any defect in the vehicle. As RSA acknowledged in correspondence after the High Court judgment, its case was not predicated on any defect in the vehicle or system of work.

*The requirements of the Road Traffic Acts*

**26.** The first issue to be decided is whether the liability, if any, of the Company to Mr. Moore was a liability that was required to be insured under the Road Traffic Acts.

**27.** This turns on the correct interpretation of s. 56 of the Road Traffic Act, 1961, as amended but before getting to this, Mr. Sreenan S.C., for Zurich, brought the court to several other provisions of the Road Traffic Acts.

**28.** By s. 3 of the Act of 1961:-

*“‘approved policy of insurance’ has the meaning specified in section 62;”*

*“‘driving’ includes managing and controlling and ... ‘driver’ and other cognate words shall be construed accordingly;”*



*“‘park’ in relation to a vehicle, means keep or leave stationary, and cognate words shall be construed accordingly;”*

*“‘use’ in relation to a vehicle, includes park, and cognate words shall be construed accordingly;”*

**29.** Section 62 of the Act of 1961 provides, so far as is material:-

*“62. – (1) A policy of insurance shall be an approved policy of insurance for the purposes of this Act if, but only if, it complies with the following conditions:*

- (a) it is issued by a vehicle insurer to a person (in this Act referred to as the insured) named therein;*
- (b) the insurer by whom it is issued binds himself by it to insure the insured against all sums without limit which the insured or his personal representative shall become liable to pay to any person ... whether by way of damages or costs on account of injury to person or property caused by the negligent use, during the period (in this Act referred to as the period of cover) specified in that behalf in the policy, of a mechanically propelled vehicle to which the policy relates, by the insured or by any of such other persons (if any) as are mentioned or otherwise indicated in that behalf in the policy;”*

**30.** The “insured” in this case, says Mr. Sreenan, is a different person to the user. The policy schedule identifies the Insured as the Company and Mr. Wickham. Mr. Moore, says Mr. Sreenan, was the “user” of the vehicle.

**31.** Section 71 of the Act of 1961 requires that:-

*“... where an event occurs in relation to a mechanically propelled vehicle in consequence of which the vehicle insurer who issued the approved policy of insurance ... may become liable to pay money to any person, the insured ... shall, as*

*soon as practicable after the occurrence of the event, or where the event did not occur in his presence, within forty-eight hours after the occurrence of the event first came to his knowledge, give to the insurer by whom the policy was issued notice in writing of the occurrence of the event ...”*

**32.** The “insured”, says Mr. Sreenan, are the Company and Mr. Wickham.

**33.** Section 72 of the Act of 1961 imposes a separate obligation to give notice of any accident on “*the person who is actually using the vehicle*”, unless he is himself the person insured under the policy or the event occurs in the presence of the insured.

**34.** The importance which Zurich would attach to ss. 71 and 72 is what is said to be the sharp distinction between the user, who is the person actually using the vehicle, and the insured. They each, it is said, have separate obligations

**35.** Section 76 of the Act of 1961 allows an injured person to recover directly from the vehicle insurer. It provides, as far as is material:-

*“Where a person (in this section referred to as the claimant) claims to be entitled to recover from the owner of a mechanically propelled vehicle or from a person (other than the owner) using a mechanically propelled vehicle (in this section referred to as the user), or has in any court of justice ... recovered judgment against the owner or user for, a sum ... against the liability for which the owner or insured is insured by an approved policy of insurance ... the claimant may serve by registered post, on the vehicle insurer ... a notice in writing of the claim or judgment for the sum, and upon service of the notice such of the following provisions as are applicable shall ... have effect:”*

**36.** The precise mechanics of the scheme by which the claimant may enforce any judgment against the vehicle insurer or institute and prosecute proceedings are not relevant but Mr. Sreenan emphasises the repeated use throughout the section of the words “*owner or*

*user*”, unless the owner happens to be the user. The owner, in this case, he says, is the Company, and the user is Mr. Moore. The “*claimant*”, he submits, has to be someone other than the owner or user.

**37.** Finally, before turning to s. 56, the court was referred to s. 118, which deals with liability in respect of persons using mechanically propelled vehicles with the consent of the owner. It provides that:-

*“Where a person (in this section referred to as the user) uses a mechanically propelled vehicle with the consent of the owner of the vehicle, the user shall, for the purposes of determining the liability or non-liability of the owner for injury caused by the negligent use of the vehicle by the user, and for the purposes of determining the liability or non-liability of any other person for injury to the vehicle or persons or property therein caused by negligence occurring while the vehicle is being used by the user, be deemed to use the vehicle as the servant of the owner, but only in so far as the user acts in accordance with the terms of such consent.”*

**38.** The point made, again, is that the section draws a sharp distinction between the owner, on the one hand, and the user, on the other. In this case, the Company, as owner, has a liability to any injured third party and the user has a separate liability to any such third party. It is that liability to a third party that is required to be insured against. As Mr. Sreenan put it, the liability of the user to himself is not one that is required to be insured against.

**39.** Section 56 of the Act of 1961 – again insofar as is material – provides:-

*“56. – (1) A person (in this subsection referred to as the user) shall not use in a public place a mechanically propelled vehicle unless ... a vehicle insurer ... would be liable for injury caused by the negligent use of the vehicle by him at that time or there is in force at that time ... -*

(a) *An approved policy of insurance whereby the user or some other person who would be liable for injury caused by the negligent use of the vehicle at that time by the user, is insured against all sums without limit ... which the user or his personal representative or such other person or his personal representative shall become liable to pay to any person ... by way of damages or costs on account of injury to person or property caused by the negligent use of the vehicle at that time by the user ...*”.

**40.** Mr. Sreenan emphasised the distinction drawn by the section between the “*user*” and “*some other person who would be liable for the injury caused.*” The distinction between the “*user*” and the “*owner*” is also apparent in s. 56, sub-s. 3 by which a person – the user – who contravenes sub-s. 1, and if he is not the owner of the vehicle, the owner, shall each be guilty of an offence.

**41.** Section 56 of the Act of 1961 as originally enacted excluded from the requirement of compulsory insurance liability to “*excepted persons*” who were defined in section 65. In what I think it is fair to say was a fairly convoluted way, the excepted persons were “*any person claiming in respect of injury to himself sustained while he was in or on*” any mechanically propelled vehicle, other than vehicles of such classes as might be designated by regulations. The Road Traffic (Compulsory Insurance) Regulations, 1962 specified three classes of vehicles for the purposes of s. 65(1)(a) and went on to provide that “*passenger*” did not include a driver. Peculiarly, exempted persons were identified more by reference to the vehicles which they were in or on rather than themselves. The scheme, in very general terms, was to exclude from the requirement for compulsory insurance passengers in commercial vehicles and passengers in any vehicle elsewhere than in permanent and secure seating accommodation.

42. Section 56 of the Act of 1961 was amended by the European Communities (Motor Insurance) Regulations, 2008 for the purpose of giving effect to Directive No. 2005/14/EC of the European Parliament and Council of 11<sup>th</sup> May, 2005 by the deletion of the reference to excepted persons in sections 56 and 62.

43. According to the explanatory note – which was expressly stated to be not part of the instrument and not to purport to be a legal interpretation – the Regulations of 2008 specified that all persons, other than the driver, travelling in a mechanically propelled vehicle are passengers for the purposes of third party compulsory motor insurance.

44. When Mr. Sreenan first referred to the explanatory note, objection was taken by Mr. McDowell S.C., for RSA, on the ground that the note, on its face, disavowed any status as a legal interpretation of the Regulations. Moreover, said Mr. McDowell, even if the explanatory note could be relied on, the reference to the driver was merely a carveout from passengers. The driver is excepted because he is actually controlling or managing the vehicle at the time the injury is caused. The court indicated that it would hear what Mr. Sreenan had to say about the explanatory note *de bene esse*.

45. The declared purpose of the 2008 Regulations was to transpose Directive No. 2005/14/EC relating to insurance against civil liability in respect of the use of motor vehicles. The reference in the explanatory note to “*all persons other than the driver travelling in a mechanically propelled vehicle*” may have come from the requirement by Article 1 of the Third Motor Directive 90/232/EEC – and now to be found in Article 12(1) of the Codified Directive 2009/10/EC – which required that motor insurance should cover “*liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.*” It seems to me that the suggestion in the explanatory note that “*These Regulations ... specify that: all persons other than the driver, travelling in a mechanically propelled vehicle are passengers for the purposes of third party compulsory motor insurance*” is incorrect. If that

is the effect of the Regulations, they do not so specify. Rather, for the purposes of giving effect to the Directive, s. 56(1)(a) and s. 62(1)(b) of the Act of 1961 were amended by the deletion of the words “(exclusive of the excepted persons)”.

**46.** It does not appear to me to be useful to dwell on what liability was compulsorily insurable before the amendment of s. 56 of the Act of 1961. There is no suggestion that the Regulations of 2008 were not effective to transpose the Directive. It is the fact that the European Union requirement for compulsory insurance is limited to liability to all persons other than the driver but it does not seem to me to necessarily follow that the Irish requirement is similarly so limited.

**47.** Mr. Sreenan attaches significance to the fact that it is evident from the terms of the Zurich policy that the insurer was aware of the nature of the Company’s business and, in the second bullet point to “*WHAT IS NOT INSURED*” distinguished between loads brought to the vehicle by, variously, the driver and the attendant. This, it is said, shows that the policy regards the person who was the driver of the truck as still being the driver while bringing loads to the truck. Moreover, he says, the cover provided for the driver and attendant – or, perhaps, the liability of the Insured in respect of the activities of the driver and attendant – while bringing or taking away bins underlines the fact – evident from the title to the section of the policy – that the liability insured is liability to third parties.

**48.** On Zurich’s case, the user of the vehicle was not the Company but Mr. Moore. The Company was either the insured or the owner or “*the other person who would be liable for the negligent use of the vehicle by the user*”. The finding of the High Court – on which it was said the judgment depended – that the Company was the user of the vehicle ignored the way the words were used in the Road Traffic Acts and secondly, posited either a liability in respect of a defect in the vehicle – which did not arise in this case – or a liability on the part

of the Company *qua* employer, which was not a compulsorily insurable liability under the Road Traffic Acts.

**49.** The core of Zurich's argument is that the liability in respect of the use of the vehicle can only be to some person other than the user. The user cannot be liable to himself. The liability which is required to be insured against is liability for negligent use. Since, in this case, it was Mr. Moore who was using the vehicle, any liability must have been to someone other than himself.

**50.** Reference was made to para. 15-17 of *Buckley on Insurance Law (5<sup>th</sup> Ed.)* where the authors suggest that:-

*“Following implementation of various EU Directives on motor insurance, it is now the position that all motor insurance policies issued in Ireland must provide indemnity in respect of legal liability to all passengers, other than the driver, arising out of the use of an insured vehicle.”*

**51.** Reference was also made to the 4<sup>th</sup> edition of the same work where it is suggested, at para. 15-94 that:-

*“Section 3 of the 1961 Act and the various regulations made under the Act contain many definitions, only some of which are relevant here. ‘Use’ in relation to a vehicle includes ‘park’, and cognate words shall be construed accordingly. ‘Park’ means ‘keep or leave stationary’. ‘Use’ means ‘to have the use of’ and the owner of a broken-down car left on the street may therefore be deemed to ‘use it’, but an unlicensed car parked on the public highway is not proof of ‘use’ and its mere presence is not proof that it was a mechanically propelled vehicle. A vehicle towed and steered in also in ‘use’, as is a vehicle stationary on the road for the purposes of loading or unloading. The word ‘use’ implies an element of controlling, managing or operating the vehicle and does not include ‘use’ as a passenger, unless the latter*

*owns the vehicle or is the driver's employer or is controlling and enjoying the use of the vehicle for his own purposes."*

**52.** Professor Merkin in his work on *The Law of Motor Insurance* (2<sup>nd</sup> Ed., 2015)

considers, at para. 5-157, "*insurance in respect of injured driver*". He offers the view that:-

*"Two situations must here be distinguished. First, if an employee driver is injured in a motor vehicle accident, then he is as the 'user' of the vehicle excluded from the compulsory insurance requirement under the general provisions of the RTA 1988 s. 143. Secondly, there may be circumstances in which an employer becomes liable to an employee who is injured while driving a motor vehicle in the course of his employment. This may arise, e.g. because the vehicle has been negligently maintained by the employer and the accident is caused by that neglect. The scheme of the Consolidated Motor Directive 2009 is apparently to exclude such liability from the scope of compulsory motor cover, because art. 13.1 provides that insurance has to cover liability for 'personal injury to all passengers other than the driver arising out of the use of the vehicle.' Any liability is, therefore, to be covered by such employer's liability insurance as may (and in the UK, must) be in place. It might be thought that the terminology of art. 13.1 is somewhat curious, and that the provision was in reality intended to deal with the first situation set out above, namely that in which the driver's injuries were not the fault of the employer. However, art. 13.1 is clear in referring to insurance against the liability of the employer towards passengers and the driver, and thus it must be assumed that there was an intention to prevent the employer from recovering from his road traffic insurers in respect of liability to the driver."*

**53.** Mr. McDowell brought the court back to the terms of the Zurich policy. The provision in relation to "*WHAT IS INSURED*", he said, did not distinguish between



employees and non-employees but covered the Company against any legal liability in respect of injury to any person. As to “*WHAT IS NOT INSURED*” it was, he said, Zurich who introduced the concept of a person “*in charge of the vehicle for the purpose of driving*”. That concept, or notion, was a purely contractual one which was not part of the legal obligation to carry compulsory insurance. Mr. McDowell emphasised that the qualification of the indemnity was expressly subject to the requirements of the Road Traffic Acts.

**54.** Mr. McDowell referred to the judgment of the Court of Justice in *Vnuk Case C-162/13*, focussing on the conclusion at para. 56 that:-

*“In light of all of those factors, and in particular of the objective of protection pursued by the First to Third Directives, the view cannot be taken that the European Union legislature wished to exclude from the protection granted by those directives injured parties to an accident caused by a vehicle in the course of its use, if that use is consistent with the normal function of that vehicle.”*

**55.** In this case, it is said, the use of the vehicle was to collect glass for recycling. The appellant, it is said, was attempting to make a distinction between the “*user*” and the person required to be insured, which, it was submitted, is invalid. The Road Traffic Acts must now be construed in accordance with European law. Mr. McDowell pointed to Article 12(1) of the Consolidated Directive which provides:-

*“1. Without prejudice to the second subparagraph of Article 13(1), the insurance referred to in Article 3 shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of the vehicle.”*

**56.** This, it is said, makes it very clear that passengers are one set of people who are required to be covered. The only passenger who is not required to be covered is the driver. The critical question, it is said, is whether someone standing outside the vehicle and loading it is the driver.

**57.** As to whether Mr. Moore was the driver, Mr. McDowell referred to *Neill v. Minister for Finance* [1948] I.R. 88 in which a majority of the Supreme Court found that the “driver” of a post office van who had left the van to deliver a parcel and returned to close the back door was not “driving” it for the purposes of s. 170 of the Road Traffic Act, 1933. *Neill*, it is said, provides an example of a person using a vehicle but not driving it. The concept of “driver”, it is said, was not a status but must be defined by activity. Since the Directive refers in the first place to passengers, the exclusion can only apply if the person excluded could first come within the general category of passengers, that is, persons in or on the vehicle – which Mr. Moore was not. In the same way persons who are about to board, or have alighted from, a vehicle, cannot be said to be passengers, the person who has recently driven, or is about to drive, the vehicle cannot be said to be the driver.

**58.** As I have said, it was common case that the operation of the lift to raise and tip the bin was part of the “use” of the truck. If it was, that use – by whomever it was operating the lift – was a use which was required to be covered by insurance and on RSA’s case the only question was whether the Company’s liability was to be determined by reference to the status of driver as opposed to the activity of driving.

**59.** As to the compulsorily insurable liability of the owner of a mechanically propelled vehicle – as well as to whether Mr. Moore was the driver or in charge for the purpose of driving, to which I will come – Mr. McDowell relied on a decision of Costello P. in *Lynch v. Lynch* [1995] 3 I.R. 496.

**60.** *Lynch v. Lynch* was an application pursuant to s. 76 of the Road Traffic Act, 1961 to execute a judgment against a vehicle insurer. The plaintiff had borrowed her father’s van and driven to work, where she had parked the van and applied the handbrake. The evidence was that the plaintiff had walked about seventeen yards when she was pinned by the van to the wall of the building. The plaintiff had sued, and indeed had recovered judgment against, her

father on the ground that the handbrake was defective. The application was opposed by the insurer *inter alia* on the ground that the plaintiff had been “*the person in charge for the purpose of driving*”, and so had been an “*excepted person*” under the law as it then was. Costello P. found that the plaintiff had not been in charge for the purpose of driving. The exception, he said, could only be construed as referring to a physical relationship between the person making the claim and the insured vehicle and was not intended to exclude liability to a person who had suffered injury after they had left the vehicle, as such a person was no longer physically in charge of the vehicle for the purpose of driving it. Costello P. said, at p. 501:-

*“The plaintiff had been lent the vehicle by her father. When a vehicle is lent by its owner to another for the purpose of being driven by the borrower a legal relationship with well established consequences will arise. In describing that relationship it can be said in a general way that the borrower is ‘in charge’ of the vehicle. But I do not think that the clause in the policy can be construed as referring to a legal relationship. It seems to me that it is referring to the physical relationship between a person making a claim and the insured vehicle and that it intended to except the insurance company from liability to a person making a claim under the policy who was physically driving the vehicle at the time when the accident giving rise to the claim occurred or who was in charge physically of the vehicle for the purpose of driving it when the accident occurred, for example, sitting at the steering wheel of a stationary vehicle. As I have already stated this was a most unusual type of accident and I do not think that the exception clause was intended to exclude liability to a person who had suffered injury after they had left the vehicle; such as a person who was no longer physically in charge of it for the purpose of driving it.”*

**61.** Mr. McDowell looked at *Lynch* and *Neill*. In *Lynch*, Ms. Lynch had driven the van and presumably intended to drive it again but she was not at the time of the accident driving the car. In *Neill*, the man referred to by the Supreme Court as the driver but by Mr. McDowell as the postman, was not the driver because he was not driving. The fact that Mr. Moore, like the postman, had been the driver until very shortly before the accident did not make him the driver at the time of the accident. And, as in the case of Ms. Lynch, the fact that Mr. Moore had shortly before been the driver of the truck did not affect the liability of the owner of the vehicle for the injuries suffered soon after.

**62.** It seems to me that the key to understanding the requirement of s. 56(1) of the Act of 1961 is to recognise that a vehicle cannot be in use unless by a user. The principal liability which must be insured against is the liability of the user. The liability of the owner of the vehicle – if he is not the user – is a secondary or vicarious liability.

**63.** The obligation to be insured is provided for by s. 56(1) and it is an obligation which is immediately imposed on the user of a vehicle. By s. 56(3) the user of a mechanically propelled vehicle in contravention of sub-s. (1) is guilty of an offence as is – if the user is not the owner of the vehicle – the owner, unless (by sub-s. (5)) the owner can show that the vehicle was being used without his consent and either that he has taken all reasonable precautions to prevent it being used or that it was used by his servant in contravention of his orders. The criminal liability in s. 56 and the civil liability in s. 118 is not in respect of the use of the vehicle *per se* but in respect of authorised use, or at least in respect of use which the owner cannot establish was unauthorised.

**64.** Section 56(1) requires that there should be a policy whereby a vehicle insurer “*would be liable for injury caused by the negligent use of the vehicle*” but that requirement is met by a policy which covers the liability for negligent use by the user. The liability of the user is one which must be insured against in any event but the obligation of the owner is to ensure

that there is insurance in place to cover the owner's liability in respect of the use by an authorised user.

**65.** In my view, the submission made on behalf of Zurich that the Road Traffic Act distinguishes clearly between the “*user*” on the one hand and the “*owner*” and the “*insured*” on the other is correct. The legislative requirement is that there should be insurance against the use of the vehicle. The criminal liability imposed by s. 56(3) on an owner is a liability for permitting a vehicle to be used without insurance which covers the user. The civil liability imposed by s. 118 on the owner of a vehicle is a vicarious liability for the negligence of a user of the vehicle who uses it with the consent of the owner. Ordinarily the owner of a mechanically propelled vehicle can be expected to have insurance in respect of his own use of it but his legal obligation is to ensure that there is insurance in place in respect of any use of the vehicle, or more correctly, that there is insurance available to answer any legal liability in respect of damages and costs that may arise out of the negligent use of the vehicle. The owner can meet that obligation by ensuring that the user has a policy in place which covers either the primary liability of the user or the secondary liability of the owner, or both. The insurer, if the owner is the insured, will be liable to provide indemnity in respect of the owner's vicarious liability for the damage caused by the negligent use but the primary liability will be that of the user. And in principle, the negligent user will be liable to indemnify the owner and the owner's insurer, unless the user is separately entitled to indemnity under the policy. Sometimes – as appears to have been the case in this case – the indemnity which the insurer agrees to provide under a motor policy taken out by the owner will extend to the driver or user, as well as the insured owner, but this is not necessarily so.

**66.** I believe that this analysis of s. 56 is reinforced by the separate statutory reporting obligations of the “*insured*” and the “*user*” in ss. 71 and 72 and by the scheme created by s. 76 which allows direct recourse by a claimant to insurance monies which would otherwise be

payable to the “owner” or “user”. While in my view it is clear from the terms of s. 56 by itself that the liability which must be insured against is a liability to third parties, that is underlined by the remedy created by section 76. In the same way that, conceptually, a user of a mechanically propelled vehicle cannot incur a liability to himself arising out of the negligent use of the vehicle, he could not be a claimant entitled to recover monies from himself. The reference in ss. 71, 72 and 76 to “vehicle insurer” must be taken as shorthand for the insurer by whom the policy was issued.

**67.** I have previously touched upon the European Communities (Motor Insurance) Regulations, 2008, the declared object of which was to give effect to Directive No. 2005/14/EC, which had amended several previous directives relating to insurance against civil liability in respect of the use of motor vehicles, including Council Directive 90/232/EEC, the Third Motor Insurance Directive. The Third Motor Insurance Directive included the requirement – now to be found in the Codified Directive 2009/103/EC – that Member States should take all necessary steps to ensure that compulsory motor insurance should cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.

**68.** Mr. Sreenan’s declared object in introducing the Regulations of 2008 was to show that compulsory insurance in Ireland, as well as in the European Union, is intended to provide only for third party cover but the argument appeared to be founded on the explanatory note to the Regulations of 2008 rather than an analysis of the legislative means by which effect was given to the EU requirement. The material provision of the Regulations of 2008 was art. 3(a)(i), which deleted the reference in s. 62 of the Act of 1961 to excepted persons. If the effect of this was to extend the requirement for compulsory insurance to liability to all persons other than the driver travelling as passengers in a mechanically propelled vehicle, the Regulations did not, as the explanatory note suggests, so specify. Moreover, I accept Mr.

McDowell's alternative submission that even if the Regulations of 2008 did so specify, the exception of the driver from the passengers would have been a carveout from a class or category of persons traveling in or on a vehicle. Whether, at the time of the accident, Mr. Moore might otherwise have been said to have been the driver of the truck – a point to which I will return – neither he nor Mr. Wickham, having alighted from the truck, could have been said to have been passengers and so, it seems to me, Mr. Moore could not be said to have been "*a passenger other than the driver*".

**69.** In the course of the argument on the second question posed by the special case – whether although the Company's liability to Mr. Moore might not have been compulsorily insurable, it was nevertheless covered by the terms of the Zurich policy – there was a good deal of debate as to whether Mr. Moore was either the driver of the truck or the person in charge of the truck for the purpose of driving and I will come to that. For present purposes, however, it is important to emphasise that the compulsorily insurable liability is not limited to the driving of the vehicle. As at the time of his accident in 1945 Master O'Neill might very well have fixed the Minister for Posts and Telegraphs with vicarious liability as the postman's employer, he might nowadays have fixed the Minister for Finance, as the owner of the van, with vicarious liability for its negligent use.

**70.** In this case, the Company's bin lorry was fitted with three mechanical lifts, two on the side and one on the rear. It was not evident from the special case whether the engine was running but the truck was not being driven. It was, as I have said, common case that any liability that might be incurred arising out of the use of the lifts was compulsorily insurable. The core issue was the nature of that liability. Central to that was the question as to whether Mr. Moore was the user of the vehicle. While RSA argues that at the time of the accident the Company was the user of the vehicle, I did not understand the argument to go so far as to suggest that Mr. Moore was not.

**71.** It was accepted in argument on both sides that in principle there may have been more than one user of this particular vehicle. If Mr. Moore and Mr. Wickham had both been using the lifts, they would both have been users. Or if Mr. Wickham had been using one of the lifts while Mr. Moore was behind the wheel, they would both have been users.

**72.** The High Court judge first considered what is required to be insured under the Road Traffic Acts. Having looked at s. 56 of the Act of 1961 and in particular at the amendment made by the Regulations of 2008, the judge concluded, at para. 41, that “... *the driver or ‘user’ of the vehicle is himself or herself excluded from the compulsory insurance requirements of the Road Traffic Act, 1961 (as amended) in respect of liability to himself/herself*”. I agree. The judge immediately went on to say that “*The clear concept that the ‘user’ of the vehicle is excluded from compulsory insurance requirements in respect of liability to himself/herself has also been maintained by European Directives governing the third provision of compulsory motor insurance within the European Union.*” I agree.

**73.** The judge then noted the argument made on behalf of Zurich that Mr. Moore had been the “*user*” and that there was no requirement for the “*user*” to be insured for injury to himself but said that it was “... *clear from the facts that Mr. Moore is suing Urban and Rural as the owner and user of the vehicle. The vehicle – the recycling truck – was in use for the purposes of the business of the company.*”

**74.** It is here, with respect, that I must part company with the High Court judge. The issue as to who was the user – or at least whether the Company was the user – of the vehicle at the time of the accident was central to the parties respective positions. I cannot agree that that issue could be determined by reference to the formulation of Mr. Moore’s claim. Moreover, while I agree – and I do not believe that it was ever contested – that the recycling truck was in use for the purposes of the business of the Company, it by no means follows that the Company was the user of the truck.



75. The judge next focussed on the definition of “*use*” in the Act of 1961 and looked at the three European cases to which she had been referred.

76. In *Vnuk v. Zavarovalnica Triglav d.d.* Case C-162/13 the plaintiff had been injured having been knocked from a ladder by a trailer attached to a tractor and the issue in the main proceedings was whether the liability was one which was required to be covered by compulsory motor insurance. The Court of Justice ruled that the concept of “*use of vehicles*” in article 3(1) of Council Directive 72/166/EEC covered any use of the vehicle which was consistent with the normal function of the vehicle and left it to the referring Slovenian court to decide whether the manoeuvre of the tractor in the courtyard of a farm to bring the trailer attached to the tractor into the barn came within that concept.

77. *Rodrigues de Andrade v. Salvador* Case C-514/16 was a fatal accident case in which a tractor which was being used to drive a herbicide spray pump slipped down the terraces of a vineyard. The ruling of the Court of Justice was that the concept of “*use of vehicles*” did not cover a situation in which the principal function of the tractor at the time of the accident was not to serve as a means of transport but to generate the motive power necessary to drive the pump.

78. As the judge noted, the decisions in *Vnuk* and *Rodrigues de Andrade* were confirmed in *Torreiro v. AIG Europe Ltd.* Case C-334/16 in which the Court found that the use of a vehicle was not confined to use on a public road or in a public place.

79. At para. 54 of her judgment, the High Court judge noted that it was common case that the use to which the truck was being put was a use consistent with its normal function, and at para. 55 noted the argument made on behalf of Zurich that the European judgments concerned accidents to third parties and were therefore not relevant to the factual scenario of Mr. Moore’s case. As to that, the judge concluded, at para. 56, that:-

*“56. In my view, that contention is simply untenable in circumstances where it is clear that Mr. Moore is to all intents and purposes a third party. Mr. Moore is not seeking to sue himself but is seeking to recover from his employer, Urban and Rural, in respect of injuries sustained by him in the course of his employment and whilst operating and controlling the recycling truck’s lifting mechanism, owned by Urban and Rural, in a manner which was consistent with its normal function.”*

**80.** I do not disagree with the judge’s assessment of the nature of Mr. Moore’s claim but again I do not believe that the formulation of the claim can be determinative of the nature of the liability. The European cases were directed to the issue of the *“use of vehicles”* and not the identification of the user. If, as the judge had previously found, the *“user”* of the vehicle is excluded from the compulsory insurance requirements of the Road Traffic Act, the issue of whether the liability was compulsorily insurable depended not on the use to which the truck was being put but whether, at the time of the accident, Mr. Moore was the user. The agreed facts were succinctly set out in the special case. It was Mr. Moore who loaded the bin onto the lift and it was Mr. Moore who operated and controlled the lift. Mr. Wickham had brought the bin to the side of the truck but he had no involvement beyond that.

**81.** The High Court judge found that it was common case that the Zurich policy provided cover *“in respect of this vehicle”*. That finding may have been correct in the general understanding of motor insurance but it was imprecise in law. In fairness to the judge, the heading of Part VI of the Act of 1961 is *“Compulsory Insurance of Mechanically Propelled Vehicles.”* The Zurich policy provided indemnity to *“the Insured”* – that is, the Company and Mr. Wickham – against any liability which they might incur for bodily injury caused by or in connection with the recycling truck. It was not the truck which was insured but the Company. The judge correctly found that Mr. Moore’s injuries had been *“caused by or in*

*connection with the motor vehicle*” but did not direct her mind to who was or might have been legally liable to Mr. Moore.

**82.** Starting at para. 75, the judge set out three reasons for her conclusion that the liability of the Company to Mr. Moore was required to be covered by an approved policy of insurance. The first reason was that “... *the term ‘user’ within the Road Traffic Acts properly construed covers the use of the vehicle that led to the injury to Mr. Moore and the liability in respect thereof, having particular regard to Vnuk decision.*” The difficulty with this is that it confuses the user with the use. I agree that the use of the lift attached to the recycling truck was a use of the vehicle consistent with the normal function of the vehicle – *Vnuk* – and that any legal liability for such use was a compulsorily insurable liability. But any such legal liability had to attach to a person, the user. It was suggested in argument that the user of the vehicle at the time of the accident was the Company but I cannot see how this could have been so. In the first place, I cannot see how a company could operate a mechanically propelled vehicle. The Company was a legal person incapable of driving or otherwise using the vehicle other than through the agency of actual persons, such as Mr. Moore. Secondly, I cannot see how an absent owner of a vehicle if a natural person might sensibly be said to be the user. The owner has a legal liability to ensure that there is insurance cover in place against negligent use and is liable for damage caused by the negligent use of the vehicle with his or its consent but that liability is vicarious and not direct. Thirdly, even if, for the sake of argument, the Company might have been regarded as a “*user*” I cannot see how this could have meant that Mr. Moore – who loaded the bin and operated and controlled the lift – was not also the user.

**83.** The use of the lift was part of the normal functioning of the vehicle. So would the driving have been. If Mr. Moore had been behind the wheel, I cannot see how the Company might have been said to have been the user. In the same way I cannot see how the Company

might be said to have been the user while Mr. Moore was attaching the bin and operating the lift.

**84.** The judge's second reason for the conclusion she came to was that Mr. Moore had not been "*in charge of the vehicle for the purposes of driving*". Whether Mr. Moore was or was not in charge of the vehicle for the purposes of driving is at the heart of the second question – whether if the liability of the Company, if any, although not compulsorily insurable was nevertheless covered by the Zurich policy – but it is not material to the first question. The argument and the decision on *Lynch* was focussed on the exception rather than on the rule. I will come back to it in the context of the second question.

**85.** The judge's third reason was that Mr. Moore had constructed his personal injury claim in a manner which, on balance, was consistent with "*negligent use*" within s. 62(1)(b) of the Act of 1961, whether by virtue of a defect in the vehicle or other negligence, so as to be subject to the compulsory insurance requirement. The pleadings in Mr. Moore's personal injuries action – as well as the claim form submitted by Mr. Wickham to the Personal Injuries Board – were appended to the special case. I do not understand why this was done. The questions of law were formulated by reference to the agreed facts as set out in the special case and it seems to me that the pleadings were calculated to confuse. It was part of the claim pleaded by Mr. Moore that he had been provided with defective equipment but this had been denied by the defence and quite markedly there was no reference in the agreed facts to any defect. The first question of law formulated by the special case was whether the liability, if any, of the Company in the underlying personal injuries proceedings was a liability that was required to be insured under the Road Traffic Acts but more accurately the question was whether the liability, if any, of the Company arising from the agreed facts was such a liability. On the facts set out in the special case, the liability, if any, of the Company was not based on any defect in the truck or the lifting mechanism but solely on the negligent use of

the vehicle by the user. The High Court judge focussed on the fact that the alleged liability arose from the use of the truck, rather than on the identity of the user.

**86.** The wording of s. 56 of the Act of 1961 is slightly complicated by the fact that it contemplates that sufficient indemnity may be available from a vehicle insurer, a vehicle guarantor or an exempted person. Stripping out those complications, the requirement is that:-

*“56. - (1) A person (in this subsection referred to as the user) shall not use in a public place a mechanically propelled vehicle unless ... there is in force at that time ...:*

*(a) An approved policy of insurance whereby the user or some other person who would be liable for injury caused by the negligent use of the vehicle at that time by the user, is insured ...”* (Emphasis added.)

**87.** By s. 62 of the Act of 1961, insofar as is material for present purposes:-

*“62. – (1) A policy of insurance shall be an approved policy of insurance ... if ...*

*(b) the insurer by whom it is issued binds himself by it to insure the insured person against all sums without limit which the insured ... shall become liable to pay to any person ... caused by the negligent use ... of a mechanically propelled vehicle to which the policy relates, by the insured ...”.*

**88.** The use required to be covered is use by the user and the liability required to be covered is any liability for injury caused by the use by the user. The user of a mechanically propelled vehicle unquestionably has a duty to take care but he does not owe a duty of care to himself and cannot become legally liable to pay damages to himself. In this case Mr. Moore was the user. The liability, if any, of the Company required to be covered was its vicarious liability as the owner for the use of the vehicle by Mr. Moore. Since Mr. Moore could not have been legally liable to damages to himself, the Company could not have incurred any vicarious liability.

*The terms of the Zurich policy*

**89.** As to the second question, it was accepted that the liability of the Company (if any) was a liability for damages and costs on account of bodily injury caused by or in connection with the vehicle, so as to fall *prima facie* within the ambit of “*WHAT IS INSURED*”. In practical terms, the indemnity might *prima facie* be available to meet a direct liability on the part of the Company for inadequate training or supervision or the like. However, it was submitted that any liability to Mr. Moore was excluded as a liability in respect of bodily injury to any person driving the vehicle or in charge of the vehicle for the purpose of driving. If Mr. Moore, having stopped and alighted from the truck, was not the driver, he was, it was submitted clearly in charge of the vehicle for the purpose of driving.

**90.** As to whether Mr. Moore was the driver of the truck, Mr. Sreenan pointed to the distinction in the Zurich policy between the driver and the attendant. The premise of the exclusion of liability for injury or damage beyond the limits of any road in connection with the bringing or taking away of a load by any person other than the driver or attendant was, it was said, that indemnity was available in respect of those activities by the driver and attendant. Thus – even if he was not otherwise the driver – the person who had driven the vehicle to the pick-up point and had alighted from it and gone beyond the limits of the road to collect a bin was, for the purposes of the policy, the driver.

**91.** As to whether Mr. Moore was in charge of the truck for the purposes of driving, Mr. Sreenan, citing *Director of Public Prosecutions v. Stewart* [2001] 3 I.R. 103, pointed to what he said was the close temporal and geographical connection with the vehicle. *Stewart* was a judgment of the High Court on a consultative case stated from the District Court. The defendant motorcyclist, having been stopped at a Garda checkpoint, declined to be searched at the roadside and was detained under s. 23 of the Misuse of Drugs Act, 1977. After he had

been put into the back of a patrol car, the Garda smelled intoxicating liquor on his breath and asked the defendant to get out of the car and provide a specimen of his breath. The defendant stepped out of the car but refused to provide the breath sample. The issue was whether the defendant, at the time the request was made had been “*a person in charge of a mechanically propelled vehicle*”, for the purposes of s. 12(1) of the Road Traffic Act, 1994. Kearns J. (as he then was) having reviewed the authorities, held that “*a person in charge*” of a mechanically propelled vehicle could be taken to mean a person who had been in charge, provided that there was a close temporal and geographic connection between that event and the other requirements of the section.

**92.** *Lynch*, he said, was distinguishable on the facts, first because Ms. Lynch had parked the van and moved away from it and secondly because the owner’s liability was in respect of a defect in the vehicle. Mr. Sreenan, I think it is fair to say, went so far as to suggest that *Lynch* might have been wrongly decided without going so far as to submit that it had been.

**93.** Mr. McDowell’s argument, I think it is fair to say, was more focussed on the first question than on the second. Whether Mr. Moore was the driver was not, he submitted, a matter of status but depended on activity. If – as he was not – Mr. Moore was not, at the time of the accident, driving the truck, he could not have been the driver. Mr. McDowell pointed to article 12 of the Consolidated Directive, which extended the compulsorily insurable liability to all passengers other than the driver, or, perhaps, limited the exclusion of liability to the driver as a passenger.

**94.** Mr. McDowell, focussing on the use of the vehicle, referred back to *Neill*, in which, it will be recalled the postman loading the van was found not to have been driving it; to *Vnuk* in which the Court of Justice said that the Directive extended to all injured parties to an accident in the course of the use of a vehicle consistent with its normal function; and to the judgment of McDonald J. in *Mongan v. Mongan* [2020] 3 I.R.678 which found that the Directive

required that liability for injuries sustained in a deliberate attack had to be covered by a policy of insurance.

**95.** In support of his argument that Mr. Moore was not the driver, Mr. McDowell referred to a number of English cases which had considered what activity might and might not amount to driving. In *Reg. v. McDonagh* [1974] 1 Q.B. 448 a disqualified driver who – according to himself – had been directed by a police officer to move his car to remove an obstruction, had done so by pushing it with both feet on the ground and one hand on the steering wheel. *Jones v. Pratt* [1983] R.T.R. 54, *Tyler v. Whatmore* [1976] R.T.R. 84 and *Langman v. Valdentine* [1952] 2 All E.R. 803 were all concerned with front seat passengers leaning over to the driver's side and to a greater or lesser extent moving the steering wheel. They all go to show that Mr. Moore was not driving the truck at the time of the accident but not necessarily that he was not the driver. The submission on behalf of RSA that a person cannot be a driver unless he is driving is not without merit. Equally, there is force in the submission that the Zurich policy contemplates that the driver's duties may extend beyond driving to the collection of bins. As was pointed out in the course of argument, it is difficult to contemplate that the truck might not have a driver simply because there was no one immediately behind the wheel.

**96.** In the end, I find that it is not necessary to decide whether at the time of the accident Mr. Moore was the driver because he was clearly at all times the person in charge of the vehicle for the purpose of driving. *Lynch* is clearly distinguishable on the facts because Ms. Lynch had parked and locked up the van and because of the physical distance which she had put between herself and the van before the accident. It is distinguishable in law also because the issue argued and decided was whether Ms. Lynch – having locked up and walked away – came within the exception rather than whether – having done both – she continued to be the user of the van so as to come within the rule.



*Summary and conclusions*

**97.** The liability, if any, of the Company to Mr. Moore arising out of the accident on 19<sup>th</sup> December, 2013 was not a liability for negligent use of the vehicle by the user. Accordingly, it was not a liability which was required to be insured under the Road Traffic Acts.

**98.** The injury sustained by Mr. Moore was an injury caused by or in connection with the recycling truck within the meaning of section 1 of the Zurich policy but indemnity to the Company was excluded by the exclusion of liability in respect of bodily injury to the person in charge of the vehicle for the purpose of driving.

**99.** For the reasons given, I have concluded that the High Court judge erred in her analysis and conclusion and that the appeal must be allowed and the High Court order set aside.

**100.** The appellant, Zurich, having been wholly successful on its appeal, I can think of no reason why it should not have an order for its costs both in the High Court and of the appeal. However, if the respondent would contend for any other costs order, I would allow the respondent a period of fourteen days within which to file and serve a short written submission (not to exceed 1,000 words), to which the appellant will have the same time to respond in the same manner.

**101.** As this judgment is being delivered electronically, Collins and Noonan JJ. have authorised me say that they agree with it and with the orders proposed.

