

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.02.2026

Pronounced on : 05.06.2026

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CORAM:

**THE HONOURABLE MR.JUSTICE P.VADAMALAI**

**C.M.A.(MD)No.910 of 2024**

1. M.Nagammal,  
W/o. Late. Murugan,  
Door No. 8-3-60, Ambatkar Nagar,  
Singampunari,  
Singampunari Taluk,  
Sivagangai District.

2. P.Nachammal,  
W/o. Late Palani,  
Door No.2/144, Palaya Palayam,  
Alagapuri, Manaparai Taluk,  
Trichy District.

... Appellants/Petitioners

Vs.

1.The Branch Manager,  
M/s. APN Trading Company,  
No.32/30, North Nadar Street,  
Singampunari Taluk and Town,  
Sivagangai District.

2.The Branch Manager,  
New India Insurance Company,  
Door No. 11-2-15/1, Ground Floor,  
Near Indian Overseas Bank,  
Madurai Main Road,  
Thiruppathur Town,  
Sivagangai District.

...Respondents/Respondents



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**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.162 of 2021 on the file of the Motor Accident Claims Tribunal/Additional District Court, Sivagangai, dated 23.06.2023.

For Appellants : Mr.K.Kumaravel  
For R1 : Mr.K.S.Durai Pandian  
For R2 : Mr.A.Ilango

### **JUDGMENT**

This Civil Miscellaneous Appeal is preferred against the judgment and decree, dated 23.06.2023 passed in M.C.O.P.No.162 of 2021 by the Motor Accident Claims Tribunal/Additional District Court, Sivagangai.

2.The petitioners/claimants in M.C.O.P.No.162 of 2021 are the appellants herein. The respondents in the claim petition are the respondents herein.

3.For the sake of convenience, the parties arrayed in M.C.O.P.No.162 of 2021 are adopted hereunder.

#### **4.The brief facts of the case:**

On 26.10.2021, the deceased Murugan was travelling as a loadman in the 1st respondent's Eicher Lorry bearing registration number TN 63 AF 6112



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from Alangudi to Singampunari. At about 2.00 a.m., when the vehicle was coming near the green bamboo Ayyanar Koil Arch in A.Thekkoor to Singampunari road, the driver of the said lorry had driven in a rash and negligent manner from north to south and the lorry capsized. The deceased sustained fatal injuries and died. The deceased Murugan was earning Rs.20,000/- as a loadman. The vehicle was insured with the 2<sup>nd</sup> respondent/ Insurance Company at the time of the accident. An F.I.R. in Crime No.120 of 2021 was registered by the Nerkuppai police station. Hence, the petitioners/claimants who are dependents of the deceased Murugan filed a claim petition seeking compensation of Rs.25,00,000/-.

5.The 1<sup>st</sup> respondent remained ex-parte before the Tribunal.

6.The 2<sup>nd</sup> respondent/Insurance Company objected to the claim petition by contending that three unauthorized persons, including the deceased Murugan, were travelling on the roof of the vehicle. The deceased travelled on the top of the lorry and did not sit in the cabin. The deceased was not a loadman of the vehicle. So, it is a clear violation of policy conditions and the MV Act and Rules. There was no premium collected to cover the risk of the loadman. Since it was a policy package, no cover has been extended to cover the risk of loadman. The driver of the offending vehicle was also not having a



valid driving license. Hence, the 2<sup>nd</sup> respondent/Insurance Company is not liable to pay any compensation. Therefore, the petitioners are not entitled to any claim from the 2<sup>nd</sup> respondent/Insurance Company.

7. Before the Tribunal, on the petitioners' side, two witnesses were examined as P.W.1 and P.W.2 and Ex.P.1 to Ex.P.10 were marked. On the 2<sup>nd</sup> respondent's side, two witnesses were examined as R.W.1 and R.W.2 and Ex.R.1 was marked. In addition, Ex.X.1 to Ex.X.3 were also marked.

8. After hearing both sides and after considering the evidences, the Tribunal has passed the impugned award by holding that the driver of the 1<sup>st</sup> respondent's vehicle was responsible for the accident; that since the 1<sup>st</sup> respondent allowed the passengers travelling outside the cabin without any premium to cover risk, the 1<sup>st</sup> respondent alone was liable to pay compensation and that the 2<sup>nd</sup> respondent/Insurance Company was not liable to pay any compensation. Accordingly, the Tribunal passed an award granting total compensation of Rs.16,91,000/-, directing the 1<sup>st</sup> respondent to pay the same. The claim petition was dismissed in respect of the 2<sup>nd</sup> respondent/Insurance Company.



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9. Aggrieved by the said award, the petitioners/claimants have preferred this Civil Miscellaneous Appeal.

10. Heard both sides and perused the records in this Civil Miscellaneous Appeal.

11. The learned counsel appearing for the appellants/petitioners/claimants submitted that the insurance policy is a commercial vehicle policy for the period from 14.03.2021 to 13.03.2022. The policy was in force at the time the accident took place on 26.10.2021. The policy was issued for a lorry, a goods-carrying public carrier. So, as per Section 236 of the Tamil Nadu Motor Vehicle Rules, 1929, the basic third-party premium covers six load men. The Tribunal held that the deceased was sitting on the top of the vehicle and no additional premium was paid and so the 2nd respondent is not liable to pay compensation. The Tribunal erred in considering the Ex.R.1- Policy. Ex.R.1 shows that a total sum of Rs.26,935/-, including Rs.50/- towards driver, conductor, cleaner and employed for (oprn) other operations, was collected by the 2nd respondent/Insurance Company and hence, the owner of the vehicle need not pay any additional premium separately for loadmen in the lorry. If there is any package policy, the insurance company is liable to pay compensation.



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Even assuming that the deceased was travelling as a gratuitous passenger, the insurance company is liable to pay the compensation first and then recover the same from the owner as per “pay and recovery theory”. Therefore, the Civil Miscellaneous Appeal may be allowed.

12. In support of his arguments, the learned counsel for the petitioners/claimants has relied on the following decisions:

**(i) 2024 (1) TN MAC 186 in the case of Iffco Tokio General Insurance Co., Ltd. /v/ Shajahan, wherein it is held in paragraph Nos.41 and 42 as follows:**

*"41. On the basis of the said contract, as per the mandate under Section 146(1), the policy is issued by the insurance service providers under two categories, viz., (i) Comprehensive Policy/Package Policy and (ii) Act Only Policy/Liability Policy, which is not in dispute. An Act Only Policy/Liability Policy covers the liability of the insured by the insurer in respect of liabilities, which have been specifically undertaken to be covered by the insurer in the said policy, meaning thereby, that the liability to third party by the insurer, which is the basis of the coverage would be only to the extent of the persons, or classes of persons, who are undertaken to be insured. Therefore, the indemnification would be only on the basis of the terms agreed*



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*between the first and the second party and the scope for payment of compensation cannot be enlarged to classes of persons, who are not covered by payment of additional premium and, thereby, the insurer is not liable to indemnify.*

*42.In case of a Comprehensive Policy/Package Policy, as the name signifies, is a Comprehensive Policy, which covers the liability of the insured, thereby indemnified by the Insurer, of all such persons, be it the Occupants of the vehicle or a person outside the vehicle and any other person, towards any claim made by such persons, including the Driver of the vehicle as also the damage to property of the Third party.....".*

**(ii) 2026 (1) TN MAC 1 (SC) in the case of Sunita & Ors. /v/ United Indian Insurance Co., Ltd., & Ors., wherein it is held in paragraph Nos.13 to 18 as follows:**

*"13.Adverting to the facts in hand, from a bare perusal of the record, it is borne that the vehicle in question was insured with "Liability Only Policy" and no premium was paid to cover the driver, owner, or a gratuitous passenger travelling therein. However, even then, in our view, the Courts below erred in holding that the Insurance Company is not liable to pay the compensation to the claimant-appellants, for the principle of "Pay and Recover" ought to have*



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*been invoked. As such, we are inclined to interfere with the above findings of the Courts below.*

*14. We must advert to the exposition of this Court in National Insurance Co. Ltd. v. Baljit Kaur. The deceased therein was travelling as a gratuitous passenger, and due to the rash and negligent driving of the offending vehicle, lost his life. The Insurance Company was directed to satisfy the amount awarded by the Courts below and recover the same from the owner of the vehicle, as the premium was not paid by the owner of the vehicle towards gratuitous passenger.*

*15. The above position has been followed by this Court in Anu Bhanvara v. IFFCO Tokio General Insurance Co. Ltd., wherein the injured person was travelling as a gratuitous passenger and was not covered under the Insurance Policy, the driver and owner of the vehicle was held liable for payment of compensation amount. This Court applied the principle of “Pay and Recover” and directed the Insurance Company to pay the amount and, thereafter, recover the same from the owner of the vehicle.*

*16. The aforementioned principle was adopted by this Court in various judgments of this Court in Amrit Lal Sood v. Kaushalya Devi Thapar; New India Assurance Co. Ltd. v. C.M. Jaya; National Insurance Co. Ltd. v. Challa*



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*Upendra Rao; New India Assurance Co. Ltd. v. Vimal Devi; National Insurance Co. Ltd. v. Saju P. Paul; Manuara Khatun v. Rajesh Kumar Singh; and Puttappa v. Rama Naik .*

*17.Applying the above expositions of law, the Courts below ought to have directed the Insurance Company to indemnify the amount and thereafter recover the same.*

*18.Therefore, in light of the attending facts and circumstances of the case, we are of the view that the Insurance Company is liable to indemnify the compensation amount awarded by the Tribunal and recover the same only from the owner of the offending vehicle.”*

**13.**The learned counsel for the 1<sup>st</sup> respondent/owner has submitted almost the very same argument putforth by the appellants/claimants' side and prayed to fix the liability on the 2<sup>nd</sup> respondent/Insurance Company as per 'pay and recovery theory'. The learned counsel for the first respondent has also filed his written arguments.

**14.**Per contra, the learned counsel for the 2nd respondent/Insurance Company has mainly argued that the deceased was travelling as a loadman on the top of the offending vehicle. The Ex.R.1 - Policy was issued on receipt of additional premium only to cover the legal liability to the paid driver,

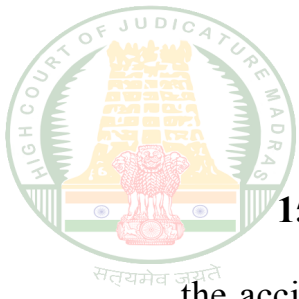


conductor, and cleaner employed for operation and no premium was collected covering the loadman. R.W.2 has also categorically stated the same in his evidence. General Regulations (GR) 39 of the Indian Motor Tariff provides cover for a loadman travelling in the offending vehicle only on payment of an additional premium under a special contract, as held by the Hon'ble Supreme Court in **Asha Rani's** case. The Hon'ble Supreme Court has held as such in various decisions that only on payment of additional premium, the loadman is entitled to claim compensation. In these facts and circumstances, the 2nd respondent insurance company is not liable to pay any compensation, but only the owner is liable to pay the compensation. The Tribunal has correctly held that the 2<sup>nd</sup> respondent insurance company is not liable to pay compensation as no additional premium was paid. Therefore, this civil miscellaneous appeal may be dismissed. In support of his argument, the learned counsel relied on the following citations:

**(i) 2008 (2) TN MAC 29 SC in the case of National Insurance Company Ltd. /v/ Cholletti Bharatamma and Ors.**

**(ii) 2023 (1) TN MAC 634 (Mdu Bench) in the case of Branch Manager ICICI Lombard Insurance Company Ltd., /v/ R.Velsamy.**

**(iii) 2025 ACJ 330 in the case of United India Insurance Company Ltd., /v/ Lakshmi and Others.**



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**15.**On hearing both sides and on perusal of the records, it is clear that the accident took place upon the rash and negligent driving of the driver of the goods vehicle bearing registration number TN 63 AF 6112, which belonged to the 1<sup>st</sup> respondent. It is also clear that the deceased Murugan was travelling in the vehicle as a load man. The Tribunal has held that the accident took place due to the rash and negligent act of the driver of the offending vehicle and that since there is no additional premium for the load man, the 2<sup>nd</sup> respondent/ Insurance Company need not indemnify the owner. It is the specific case of the petitioners/claimants that a sum of Rs.50/- was paid towards driver, conductor, cleaner and persons employed for (oprn) other operations, as seen from Ex.R.1 - Policy and that as per Section 236 of Tamil Nadu Motor Vehicle Rules, 1929, six loadmen can be permitted in case of package policy. This has been vehemently agitated by the 2nd respondent/Insurance Company that no additional premium was collected to cover the loadman and according to the GR 39 of the Indian Motor Tariff, the loadman is entitled to coverage only on payment of additional premium.

**16.**On perusal of Ex.R.1, it is clear that a total net premium of Rs.28,861/-, including Rs.50/- towards driver, conductor, cleaner and persons employed for (oprn) other operations, was collected. The learned counsel for



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the insurance company relied on rulings of this Court, and submitted that this Court has held that in circumstances of this nature, the insurance company is not liable to pay and recover the award in the light of the principle of the Hon'ble Supreme Court in Asha Rani's case. Even though the deceased was held to be gratuitous passenger, the insurance company has to first pay the award amount and then recover it from owner under 'Pay and Recovery Theory'. The same is also the submission of the petitioners/claimants as well as the 1<sup>st</sup> respondent/owner side. Mere fact that the deceased was a gratuitous passenger, an insurance company cannot be exonerated from the liability to pay compensation in motor accident claims cases. This fact has been affirmed by the Hon'ble Supreme Court in its recent pronouncement in the **Kaminiben case (2026 Live Law SC 174)**.

17.The Hon'ble Supreme Court reported in **2017 (1) TN MAC 289 (SC)**, considering **Asha Rani's case and Baljit** case, clearly held that since the question involved was referred to a Larger Bench and the reference made to the Larger Bench was disposed of by keeping the issue undecided, the Hon'ble Supreme Court has not taken different view from the one consistently being taken by this Court in all previous case decisions, namely that the insurance company has to first satisfy the award amount in favour of the claimant and thereafter recover the same from the owner of the vehicle.



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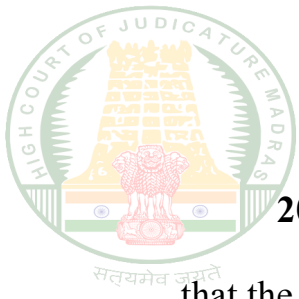
This has been repeatedly held by our Hon'ble Supreme Court in various motor accident claim cases, as rightly relied on by the petitioners' side as reported in **2026 (1) TN MAC 1 (SC) in Sunita's case**. The Hon'ble Supreme Court clearly held that “the deceased therein was travelling as a gratuitous passenger, and due to the rash and negligent driving of the offending vehicle, lost his life. The Insurance Company was directed to satisfy the amount awarded by the Courts below and recover the same from the owner of the vehicle, as the premium was not paid by the owner of the vehicle towards gratuitous passenger”. The Hon'ble Supreme Court has clearly held that *this Court applied the principle of “Pay and Recover” and directed the Insurance Company to pay the amount and, thereafter, recover the same from the owner of the vehicle and the aforementioned principle was adopted by this Court in various judgments of this Court in Amrit Lal Sood v. Kaushalya Devi Thapar; New India Assurance Co. Ltd. v. C.M. Jaya; National Insurance Co. Ltd. v. Challa Upendra Rao; New India Assurance Co. Ltd. v. Vimal Devi; National Insurance Co. Ltd. v. Saju P. Paul; Manuara Khatun v. Rajesh Kumar Singh; and Puttappa v. Rama Naik”.*

**18.**In view of the above settled principle, this Court is of the considered view that the Tribunal erred in exonerating the 2<sup>nd</sup> respondent/Insurance Company from fixing liability upon “Pay and



Recovery Theory.” In the case of accident claims, the Tribunal has to adopt settled principles while awarding compensation favouring the claimants rather than the insurance companies. It is pertinent to mention here that the owner of the vehicle remained *exparte* before the Tribunal, however, the 1<sup>st</sup> respondent appeared before this Court and accepted the “Pay and Recovery theory”. Hence, the citations relied on by the 2<sup>nd</sup> respondent/Insurance Company are not applicable to the facts and circumstances of this case, whereas the citations relied on by the petitioners/claimants side are applicable to the case on hand.

19. There is no dispute that the deceased was aged 50 years and he was working as a loadman. Though the petitioners/claimants claimed that the deceased was earning Rs.20,000/-, in the absence of proof of income, the Tribunal has correctly fixed notional income as Rs.12,000/- plus 25% towards future prospects. The deceased being a family man, the Tribunal has correctly deducted 1/3 towards personal expenses. In this regard, there is no dispute in respect of arriving at the total compensation of Rs.16,91,000/- by the Tribunal and apportionment ordered by it. Therefore, the compensation awarded by the Tribunal is held correct and the same is not liable to be set aside.



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**20.**In view of the aforesaid facts and circumstances, this Court holds that the appeal is to be allowed and the award passed by the tribunal has to be modified. The dismissal of the claim petition against the 2<sup>nd</sup> respondent/Insurance Company is liable to be set aside with a direction to pay the award amount to the petitioners/claimants and recover it from the owner/1<sup>st</sup> respondent.

**21.In the result,**

i)This Civil Miscellaneous Appeal is partly allowed. No costs.

ii)The order, dated 23.06.2023 passed in M.C.O.P.No.162 of 2021 by the Motor Accident Claims Tribunal/Additional District Court, Sivagangai, in respect of dismissal as against the 2<sup>nd</sup> respondent/Insurance Company is set aside and the same is modified.

iii)The 2<sup>nd</sup> respondent/Insurance Company is directed to deposit the entire compensation amount of Rs.16,91,000/- (Rupees Sixteen Lakhs and Ninety One Thousand only) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.162 of 2021 by the Motor Accident Claims Tribunal/Additional District Court, Sivagangai within a period of six weeks from the date of receipt of a copy of this order.



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iv)The 2<sup>nd</sup> respondent/Insurance Company is at liberty to recover the aforesaid deposited amount from the 1<sup>st</sup> respondent/owner.

v)On such deposit being made by the 2<sup>nd</sup> respondent/Insurance Company, the claimants/petitioners herein are permitted to withdraw their respective entire share amount as apportioned by the Tribunal with proportionate interest and cost by filing an appropriate application before the Tribunal.

**05.06.2026**

NCC : Yes / No

Index : Yes / No

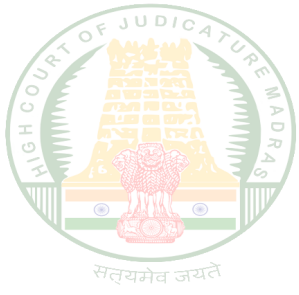
Internet : Yes / No

VSD

**To**

1.The Motor Accident Claims Tribunal/  
Additional District Court,  
Sivagangai.

2.The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.VADAMALAI, J.**

VSD

Pre - Delivery Judgment made in  
**C.M.A.(MD)No.910 of 2024**

**05.06.2026**