

C.M.A(MD)No.1217 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 03.06.2026

Delivered on : 24.07.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1217 of 2025
and
C.M.P(MD)No.17064 of 2025

1.P.Prema

2.P.Sangeetha

3.P.Rajkumar

: Appellants

Vs.

1.A.Sivakumar

2.The Divisional Manager,
M/s. United India Insurance Co.Ltd.,
Divisional Office,
No.7-A West Veli Street,
Madurai 625 001.

: Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 (1) of Motor Vehicles Act, against the award made in M.C.O.P.No.2033 of 2022, dated 12.03.2024, on the file of the Special District Judge (Motor Accident Claim Tribunal) Madurai.



C.M.A(MD)No.1217 of 2025

WEB COPY

For Appellants : Mr.S.Ramakrishnan

For Respondents : Mr.A.S.Mathiyalagan, for R2.

: No Appearance for R1.

J U D G M E N T

The Civil Miscellaneous appeal is directed against the award made in M.C.O.P.No.2033 of 2022, dated 12.03.2024 on the file of the Motor Accident Claims Tribunal/Special District Court to deal with MCOP cases, Madurai.

2. The appellants/claimants, who were awarded with compensation of Rs.11,75,480,- with interest and costs, payable by the first respondent/owner of the vehicle for the death of Premraj, consequent to an accident occurred on 03.04.2004, challenged the finding of the Tribunal exonerating the second respondent/insurer and mulcting entire liability on the first respondent/owner of the vehicle.



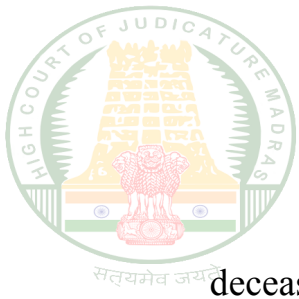
C.M.A(MD)No.1217 of 2025

WEB COPY

3. For the sake of convenience and brevity, the parties herein after will be referred as per their ranking/status before the Tribunal.

4. The case of the claimants is that on 03.07.2004 at 12.30 a.m, when the deceased was travelling as a load man in a lorry bearing Reg.No.TN-60-8439 in Valparai to Malukkuparai Road Road near Mariamman Temple, the lorry driver, who drove the vehicle from east-west in the hills area, suddenly lost his control and as a result of which, the lorry fell down to the deep forest area and that the Premraj sustained multiple serious injuries and subsequently succumbed to the injuries.

5.The defence of the second respondent is that the vehicle involved in the accident was a goods carriage and that its seating capacity was only two persons, including the driver. According to the second respondent, at the time of the accident, apart from the driver, three persons, including the deceased, were travelling in the vehicle. It is their further case that the risk in respect of persons travelling in a goods carriage is not required to be covered under the policy of insurance and, therefore, the risk relating to the



C.M.A(MD)No.1217 of 2025

WEB COPY

deceased was not covered under the policy issued in favour of the first respondent. Consequently, the second respondent contends that it is not liable to indemnify the insured in respect of any liability arising out of the said accident.

6. The Tribunal, considering the evidence adduced by both the sides, has passed the impugned order, dated 12.03.2024, holding that the accident was occurred only due to the rash and negligent driving of the first respondent lorry driver and that since no premium amount has been paid for the deceased by the first respondent and as there was no policy coverage for the deceased, the second respondent is not liable to pay compensation, and directed the first respondent/owner to pay a compensation of Rs.11,75,480/- with interest and costs. Aggrieved by the impugned award mulcting the entire liability on the first respondent/owner of the vehicle and exonerating the second respondent/insurer, the claimants have preferred the present appeal.

7. The learned counsel for the appellants/claimants would mainly contend that the Tribunal, having recorded a categorical finding that the



C.M.A(MD)No.1217 of 2025

WEB COPY

accident had occurred only due to the rash and negligent driving of the first respondent's driver ought not to have completely exonerated the second respondent/insurer. The learned counsel placed reliance on the judgment of the Division Bench of this Court in ***C.M.A.No.517 of 2025 and batch, dated 01.06.2026, [The Branch Manager, ICICI Lombard General Insurance Company Ltd., vs. Mariyapushpam and others*** reported in ***MANU/TN/1553/2026***] and contended that even in cases where the insurer is not contractually liable, the Court can invoke the doctrine of 'pay and recover' in order to safeguard the interests of third-party claimants.

8. The learned counsel for the second respondent/insurer would submit that the Tribunal, on perusing the insurance policy filed under Ex.R.1, recorded a finding that no additional premium had been paid to cover the risk of the deceased loadman and that since the deceased was not covered under the policy of insurance, the insurer cannot be mulcted with any liability, nor even with a direction to pay the compensation to the claimants and then to recover the same from the owner of the offending vehicle.



C.M.A(MD)No.1217 of 2025

WEB COPY

9. It is pertinent to note that the Tribunal has rendered a specific finding that though Ex.R.1 is a package policy, no premium amount had been paid for the deceased and as such, the second respondent insurer is not liable to pay the compensation. The only question that arises for consideration is whether, notwithstanding the absence of any contractual liability, this Court has to invoke the doctrine of 'pay and recover' and directing the insurer to satisfy the award in the first instance and then to recover the same from the owner of the vehicle.

10. No doubt, the Division Bench of this Court in ***C.M.A.No.517 of 2025 and batch, dated 01.06.2026, [The Branch Manager, ICICI Lombard General Insurance Company Ltd., vs. Mariyapushpam and others*** reported in ***MANU/TN/1553/2026***], has specifically held that the principle of pay and recover can be invoked, subject to the provisions of the Motor Vehicles Act and to ensure that innocent victims are not deprived of compensation, even where the insurer succeeds in establishing a statutory defence. In the case on hand, admittedly, the deceased was travelling in the lorry as a loadman.

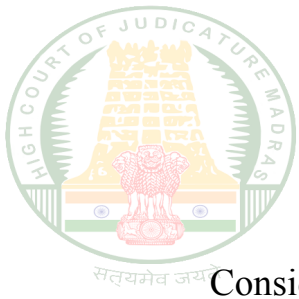


C.M.A(MD)No.1217 of 2025

WEB COPY

11. A perusal of Ex.R.1/insurance policy would disclose that no premium had been paid to cover the risk of a load man. It is pertinent to mention that the premium was paid only towards personal accident cover for the owner-driver, legal liability towards the paid driver, and legal liability towards a non-fare-paying passenger.

12. As rightly contended by the learned counsel for the second respondent /insurer, none of these coverages can be extended to a loadman. Considering the above, the Tribunal has rightly observed that the risk in respect of the deceased was outside the purview of the policy. Once it is held that the risk itself was not covered under the contract of insurance, as rightly contended by the learned counsel for the second respondent/insurer, the question of directing the insurer to satisfy the award and recover the same from the owner could not arise. Hence, the finding of the Tribunal exonerating the second respondent/insurer cannot be found fault with. The appellant has not challenged the quantum of compensation awarded by the Tribunal. Consequently, this Court concludes that the Civil Miscellaneous Appeal is devoid of merits and the same is liable to be dismissed.



C.M.A(MD)No.1217 of 2025

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Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

13. In the result, the Civil Miscellaneous Appeal is dismissed. The first respondent/owner is directed to deposit the entire award amount along with accrued interest and costs from the date of petition till the date of realization excluding the default period, if any, to the credit of M.C.O.P. No.2033 of 2022, on the file of the Special District Judge (Motor Accident Claim Tribunal) Madurai, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit being made, the claimants are permitted to withdraw their share as apportioned by the Tribunal, with accrued interests and costs, on due application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. The parties are directed to bear their own costs.

24.07.2026

NCC : Yes/No

Index : Yes/No

Internet : Yes/No
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C.M.A(MD)No.1217 of 2025

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To

- 1.Motor Accident Claims Tribunal/
Special District Court to deal with MCOP cases,
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.1217 of 2025

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.1217 of 2025

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