IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2026

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 1554 of 2023

1. Prema
W/o. Late. Vijayakumar.
Kuppandapalayam, Magudanchavadi
Post, Ernopuram Village, Sankagiri
Taluk, Salem District. and 4 Others

2. Yuvaraj
S/o. Late. Vijayakumar.
Kuppandapalayam, Magudanchavadi
Post, Ernopuram Village, Sankagiri
Taluk, Salem District.

3. Dhivya
D/o. Late. Vijayakumar.
Kuppandapalayam, Magudanchavadi
Post, Ernopuram Village, Sankagiri
Taluk, Salem District.

4. Arunagiri
S/o. Kandasamy Pillai,
Kuppandapalayam, Magudanchavadi
Post, Ernopuram Village, Sankagiri
Taluk, Salem District.

5. Krishnaveni
W/o. Arunagiri, Kuppandapalayam,
Magudanchavadi Post, Ernopuram
Village, Sankagiri Taluk, Salem
District.

Appellant(s)

Vs

1. Elango @ Elangovan

S/o. Radha Krishnan,
Theyarayanpalayam, Gudalur Post and
Village, Sankagiri Taluk.

2.National Insurance Co. Ltd
1st Floor, No. 1631-1/8, Salem Bhavani
main Road, Sankagiri.

Respondent(s)

CMA No. 1554 of 2023

PRAYER

To order made in MCOP.No. 429 of 2013 on the file of the Motor Accident Claims Tribunal Cum Subordinate Court, Sankagiri dated 01.06.2022 are to be set aside by fixing just and reasonable compensation for the death of deceased Vijayakumar and thus render justice.

CMA No. 1554 of 2023

For Appellant(s): Mr.C.Kulanthaivel

For Respondent(s): Mr D. Bhaskaran For R2 R1-Unclaimed

JUDGEMENT

This Civil Miscellaneous Appeal has been filed against order made in MCOP.No. 429 of 2013 on the file of the Motor Accident Claims Tribunal Cum Subordinate Court, Sankagiri dated 01.06.2022.

2. The brief facts of the case :

The deceased, Vijayakumar, was the owner-cum-driver of the lorry bearing Registration No. TAN 3488. On 27.05.2013, the lorry was loaded with cotton bales at Mulanur and was proceeding towards Konganapuram for unloading. Around 10:30 p.m., while the lorry was passing through Keel Thangyur on the Sankagiri-Konganapuram main road, some of the cotton bales on the left side were about to fall. The deceased, who was sitting on the left side inside the cabin, looked out to check the falling bales. At that moment, the driver turned the lorry suddenly to the left, causing the deceased to lose his balance and fall from the vehicle. He sustained grievous injuries and was initially admitted to the Sankagiri Government Hospital. He was subsequently shifted to the Kovai Medical Centre, Coimbatore, where he succumbed to his injuries on 29.05.2013. Following his demise, the petitioners/claimants filed MCOP No.429 of 2013 before the Motor Accident Claims Tribunal-cum-Subordinate Court, Sankagiri, seeking compensation.

3. The 1st respondent contested the claim, submitting that the accident occurred solely due to the negligence of the deceased, Vijayakumar, who fell from the lorry. He contended that there was no negligence or rashness on his part as the driver.

4. The 2nd respondent/Insurance Company raised objections stating that at the time of the accident, the deceased was under the influence of alcohol. They argued that he lost his balance and fell from the vehicle entirely due to his intoxication and own negligence, thereby absolving the insurer of liability to pay compensation.

5. The petitioners examined three witnesses (P.W.1 to P.W.3) and marked fourteen documents as Exhibits (Ex.P1 to Ex.P14). The respondents examined two witnesses (R.W.1 and R.W.2) and marked the Accident Register as Exhibit (Ex.R1).

6. Upon considering the oral and documentary evidence, the Tribunal observed that the evidence of P.W.2, evidence of Doctor R.W.2, established that the deceased was under the influence of alcohol at the time of the accident. The Tribunal held that the accident was a result of the deceased's own carelessness and intoxication. Furthermore, the Tribunal noted that Vijayakumar was the registered owner of the lorry. Under the terms of the insurance policy, liability was restricted, and only a driver was entitled to compensation. Since Vijayakumar was operating as the owner and not as a driver under the standard terms, the Tribunal concluded he was not entitled to compensation from the Insurance Company. Consequently, the claim petition was dismissed. Aggrieved over the same, the petitioners filed this Civil Miscellaneous Appeal.

7. The learned counsel for the petitioners/appellants submits that the Tribunal has erroneously made an observation that the accident happened due to the negligence of Vijayakumar and has also erroneously held that Vijayakumar is not covered under the insurance policy/Ex.R2. Further, the learned counsel

for the petitioners submits that the 1st respondent driver alone is responsible for the accident. As per the FIR, the driver of the lorry suddenly turned the lorry at a high speed, due to which Vijayakumar lost his balance and fell down; however, the Tribunal failed to consider the specific premium paid under the caption "Compulsory PA to Owner-cum-Driver and WC to Employee-1". Hence, the petitioners are entitled to compensation.

8. The learned counsel for the petitioners/appellants further submits that the 2nd respondent insurer, having collected a specific premium to cover the risk of the employee/occupant, is estopped from imposing unreasonable conditions to make the policy inapplicable to the persons covered under the policy. Imposing unreasonable conditions in order to invalidate the policy for the purpose of exoneration is against public policy. Further, the Tribunal has failed to properly consider the liability of the insurer to pay compensation under the policy marked as Ex.P2 in view of various findings of this Court and the Hon'ble Apex Court reported in:

- ***National Insurance Co. Ltd. Vs. Krishnan*** **[2013 (1) TNMAC 729]**
- ***National Insurance Co. Ltd. Vs. Balakrishnan*** **[2013 (2) TNMAC 637 (SC**

9. By way of reply, the learned counsel for the respondent raised an objection stating that at the time of the accident, the deceased Vijayakumar was under the influence of alcohol and, being intoxicated, he himself fell down from his own lorry. As there was no negligence on the part of the driver of the lorry, the Tribunal rightly concluded that the accident happened due to the own negligence of Vijayakumar. As such, the order is well-reasoned and needs no interference. Further, he denied that the deceased was operating as an owner-cum-driver, noting that he had not driven the lorry on that day. Hence, he prays to dismiss this application.

9. Heard both sides.

10. The petitioners/appellants are legal heirs of deceased Vijayakumar. The petitioners/appellants stated that Vijayakumar, was the owner-cum-driver of the lorry bearing Registration No. TAN 3488. On 27.05.2013, the lorry was loaded with cotton bales at Mulanur and was proceeding towards Konganapuram for unloading. Around 10:30 p.m., while the lorry was passing through Keel Thangyur on the Sankagiri-Konganapuram main road, some of the cotton bales on the left side were about to fall. The deceased, who was sitting on the left side inside the cabin, looked out to check the falling bales. At that moment, the driver turned the lorry suddenly to the left, causing the deceased to lose his balance and fall from the vehicle. He sustained grievous injuries and

died; to that effect, wife of the deceased gave the evidence. Admittedly, she was not present at the time of the accident, P.W.2 is the driver of the lorry at the time of the accident which is an undisputed fact. And that the vehicle belong to the deceased Vijayakumar. But the petitioners/appellants contend that on the day of the accident, lorry loaded the cotton bales and Vijayakumar assisted the driver of the lorry/P.W.2. But the insurance company refuted the same stating that deceased has not possessed any valid driving licence, therefore, he should not be treated as a co-driver as claimed by the claimants.

11. On perusal of the records, the fact reveals that the claimants have not produced any driving licence of the deceased Vijayakumar but deceased has travelled in the lorry at the time of the accident which is an undisputed fact. Though he is the owner cum driver, he accompanied the driver of the lorry at the time of the accident. It is also undisputed fact that lorry loaded with cotton bales. The claimants contend that some of the cotton bales on the left side of the lorry were about to fall. The deceased, who was sitting on the left side inside the cabin, looked out to check the falling bales. At that moment, the driver turned the lorry rash and negligently driven the lorry due to which deceased fell down and sustained injuries.

12. The learned counsel for the 2nd respondent submits that at the time of the accident deceased was under the influence of the alcohol he himself fell down from the vehicle voluntarily and invited accident to that effect they relied on Accident Register/Ex.R1 and examined Doctor as R.W.2, who admitted that

she had not conducted any blood test for the deceased when he was admitted in the hospital but sensed the alcoholic smell on the deceased, but that alone is not sufficient to conclude that the deceased consumed alcohol at the time of the accident.

13. With regard to manner of accident, the fact reveals that the deceased fell down by opening cabin door, fell down and sustained grievous injuries and died in the hospital. There is no direct proof that the deceased fell down due to the intoxication of alcohol and sustained grievous injuries. But the tribunal relying on evidence of R.W.2 concluded that deceased was under the influence of alcohol as such in incorrect. Mere alcoholic smell on the deceased is not sufficient to conclude that the deceased was intoxicated at the time of accident there must be concrete evidence to establish that the deceased fell down from the lorry under the influence of alcohol and sustained grievous injuries. Therefore, the findings rendered by the tribunal is incorrect.

14. The main objection raised on the side of the second respondent/…... is that the policy of insurance is intended only for the purpose of indemnifying the insured against liabilities arising towards third parties or in respect of damages caused to third parties. But in the case on hand, according to the second respondent/Insurance company, the deceased being the owner of the lorry, he sustained injuries and succumbed to injuries on his own negligence. Therefore, the legal heirs of the deceased are not entitled to any compensation. In the present case, it is contractual policy, the insurance company is liable to

indemnify the occupant of the vehicle but the objection of the 2nd respondent/Insurance company is that only in respect of third party risks, insurance company is liable to pay the compensation not for the owner of the vehicle. But upto 7 lakhs, the insured is entitled to claim and there is no specific condition that it is not applicable to the owner of the vehicle. Even assuming that deceased is the owner of the vehicle, he is the occupant of the lorry at the time of occurrence of accident and there is no rebuttal evidence on the side of the 2nd respondent that under the influence of alcohol he fell down from the lorry and sustained grevious injuries. On the other hand, as per the evidence of driver of the lorry, at the time of the accident, cotton bale in the lorry about to fell down; so to take precautionary measures the deceased opened the cabin of the Lorry and died and the evidence of P.W.2 proved that aspect.

15. The main objection raised on the side of the 2nd respondent-insurance company is that, in view of Section 147 of the Motor Vehicles Act, the insurance company is not statutorily required to assume the risk in respect of death or bodily injury sustained by the injured owner of the vehicle himself.

16. However, as already discussed above, the policy in question specifically provides Personal Accident Coverage to the owner/driver. The Motor Vehicles Act being a beneficial piece of legislation, the terms of policy have to be construed in a manner that advances the object of providing compensation to the victims or their legal heirs. covers actively injured any

person. In the present case, the policy admittedly contains Personal Accident Coverage for a sum of Rs.7,00,000/-, therefore, the petitioners/appellants are entitled to receive compensation of the said amount, under the policy.

17. Accordingly, the second respondent/insurance company is directed to pay a sum of Rs.7 lakhs as compensation to the petitioners/appellants together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation, the said compensation shall be deposited by the 2nd respondent within a period of 8 weeks from the date of receipt of a copy of this order on the file of Motor Accident Claims Tribunal Cum Subordinate Court, Sankagiri, on such deposit, the petitioners/appellants are entitled to withdraw the award amount along with accrued interst as per the following apportionment:

1st appellant/wife – Rs.2,00,000/-

2nd appellant/son – Rs.2,00,000/-

3rd appellant/daughter – Rs.2,00,000/-

4th appellant/father – Rs.50,000/-

5th appellant/mother – Rs.50,000/-

18. In the result, this Civil Miscellaneous Appeal is allowed. No Costs. Pending petition, if any, is closed.

08.06.2026

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To
1. The Motor Accident Claims Tribunal Cum Subordinate Court, Sankagiri.
2. The Section Officer, V. R Section, High Court, Madras.

T.V.THAMILSELVI J.

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CMA No. 1554 of 2023

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