

**BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
TIRUVALLUR AT POONAMALLEE.
(III Additional District & Sessions Court)**

Present : **Thiru.C.VIJAYAKUMAR, B.A., B.L.,**
III Additional District and Sessions Judge

Thursday, the 12th day of March 2026

I.A.No.03/2025 in MCOP.No.72/2024

- 1) Mrs. G. Pushpa, W/o. Ganapathy,
 - 2) Minor. Kathirvel, S/o. Ganapathy,
 - 3) Minor. Ezhilarasan, S/o. Ganapathy,
 - 4) Unnamalai, W/o. Chakkarapani,
- all are residing at No.2, Sinka Street,
Cheyyar – 603 304.

..Petitioners / Petitioners

//Vs//

- 1) P. Ganesan, S/o. Paulraj Devar,
No. 34/8, Madura Nagar 4th Street,
Thiruvottiyur, Chennai – 600 019.
- 2) P. Athigurunathan, S/o. Pandian,
No. 154, Athanoor Ottapidaram,
Thoothukudi – 628 712.
- 3) The Regional Transport Office,
Chennai (East) Power Mills Road,
Pulianthoppu, Chennai – 600 012.

..Respondents / Respondents

This petition came up before this Court for final hearing on 20.02.2026 in the presence of M/s. K.G. Suresh, S. Sridharan, J. Yuvaraj, G. Anitha learned counsels for the Petitioner / Petitioner, 1st Respondent / 1st Respondent set

exparte on 05.11.2025, M/s. S.M. Muralidharn, E. Paramasivan learned counsel for the 2nd Respondent / 2nd Respondent, 3rd Respondent / 3rd Respondent set *exparte* on 05.12.2025, and upon hearing petitioner side arguments and having stood over for consideration till this day, this court passed the following:

ORDER

The plaintiff in the suit has filed this petition under Order XXXVIII Rule 5 of CPC and prayed to direct the Respondents/Respondents to furnish security for compensation claim amount within the time fixed period or during pending of this case.

2) The averments made in the affidavit filed by the petitioner in support of the petition are briefly as follows:-

The Petitioner herein filed the above claim petition seeking compensation for the death of her husband in road traffic accident. The 1st respondent's vehicle, a container lorry bearing registration number TN-04-AA-6148, was uninsured at the time of the accident, rendering the respondents jointly liable for the compensation claimed. During the pendency of this petition, the 1st respondent has been attempting to sell the vehicle to a third party. As this lorry is the only known asset belonging to the 1st respondent and is valued at over Rs

40,00,000/-, its sale or transfer would leave me unable to recover the compensation amount, causing irreparable loss and hardship. Given that there is a *prima facie* case and the balance of convenience lies in favor of the petitioner, and the petitioner seeks direction to the respondents to furnish security for the claim amount and restrains the 1st respondent from selling, mortgaging, or transferring the vehicle until the case is resolved. Hence, the petition.

3) The averments made in the affidavit filed by the petitioner in support of the petition are briefly as follows:-

The 2nd respondent denied all averments therein, except those specifically admitted, and put the petitioners to strict proof. The main case had been filed by the legal heirs of the late Mr. Ganapathy, claiming compensation for a road accident; the 2nd respondent was actively defending the matter through counsel, having filed a counter and cross-examined the petitioners' witnesses. At that stage, the petitioners had filed I.A. No. 3 of 2025 seeking security for the claim amount or the attachment of a lorry owned by the 1st respondent. The 2nd respondent stated that the allegations regarding the accident, the 1st respondent's attempt to sell the vehicle, the lack of other assets, and the vehicle's value of Rs.40,00,000/- were not within their knowledge and

specifically pertained to the 1st respondent; therefore, those averments were not traversed. Furthermore, the 2nd respondent was advised that the petition for attachment before judgment was not maintainable against them as they were not liable for compensation, and the affidavit failed to satisfy the legal conditions for such an order. Hence, this petition is liable to be dismissed.

4) On the side of the Petitioner/ Plaintiff and Respondents/ Defendants, no witnesses were examined and no documents were marked.

5) The point arising for consideration is whether the petition has to be allowed or not ?

6) Point:

Heard both sides. Perused the documents.

7) The petitioners herein filed the above O.P seeking compensation for the death of Ganpathy from the respondents and the same was pending before this court for argumennts. At this stage, the petitioner filed the petition for the direction to the defendant to furnish security to the suit claim in failure attach the petition mentioned lorry before the Judgment.

8)The first point for consideration is whether the motor accident claim tribunal has power under order 38 rule 5 CPC. The Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules 1989 rule 22 reads as follows :

22. Without prejudice to the provisions contained in section 174, the Claims Tribunal shall for the purpose of enforcement of its award, have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908 (Central Act V of 1908) as if the award were a decree for the payment of money passed by such court in civil suit.

As per the above rule, the Tribunal is expressly clothed with all the powers of a Civil Court in the execution of a decree. The power to order attachment before judgment under Order 38 Rule 5 CPC is precisely that, a power exercised by a civil court to secure the future execution of a decree. The object of Order 38 Rule 5 is to prevent a defendant from frustrating a decree by disposing of or removing his property before judgment can be executed. Since Rule 22 equates the Tribunal's award with a civil court's decree for the purpose of enforcement, the Tribunal must necessarily possess the ancillary power to secure that award before it is passed. Therefore, this Court holds that the power under Order 38 Rule 5 CPC is available to the Motor Accident Claims Tribunal, provided the strict conditions laid down in the said rule are satisfied.

9) To substantiate the claim of the petitioner, the petitioner must establish their case under Order 38 Rule 5, which reads as follows:

5. Where Respondent may be called upon to furnish security for production of property.—

(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.

10) As per the above mandate, the petitioner has to initially prove the following facts:

- 1) That he has a legitimate chance to obtain a decree;**
- 2) That the respondent, with the intent to obstruct or delay the execution of any decree**

that may be passed against him, is likely to dispose of or remove the property; and

3) That the property mentioned in the petition is owned by the respondent.

11) The petitioner herein filed the claim petition for the compensation for the death of her husband. It is the case of the petitioner, on 04.10.2023 at about 11.05 hours, when the deceased was riding the tricycle in Poonamallee high road, madhiravedu junction near, in front of Sri Anatheeratha vidyapetta residency. At that time 1st respondent's lorry was driven by its driver in rash and negligent manner endangering public safety and hit against the deceased. As a result, the deceased sustained grievous injuries and died on the spot. The trial commenced on behalf of the petitioners, PW1 to PW3 were examined and 15 documents were marked and presently the petition is in the stage of arguments.

12) Upon perusal of materials, this Court concludes that prima facie material shows the petitioner has a reasonable likelihood of establishing the relevant facts in issue in favour of them. That is the petitioners have an ultimate chance to obtain a decree in favour of him as enumerated under order 38 rule 5 of CPC.

13) In this circumstances the Hon'ble Supreme court in the following case published in **Indian Kanoon - <http://indiankanoon.org/doc/9447> Reported**

in 2007 SC 80 Raman Tech. & Process Engg. Co. & ... vs Solanki

Traders case held that,

“It is well-settled that merely having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed. Equally well settled is the position that even where the defendant is removing or disposing his assets, an attachment before judgment will not be issued, if the plaintiff is not able to satisfy that he has a prima facie case.”

In these circumstances, when this Court applied the above position to the present case, the petitioner stated that, the defendants, with intent to obstruct or delay the execution of any decree that may be passed against them. Hence, this Court concludes that the petitioners are sufficiently proved the petition and has satisfied all the requirements under Order 38 Rule 5 of the CPC.

14) In these circumstances the Amendment to the Tamil Nadu Motor Vehicle Accident Claims Tribunal Rules.G.O. Ms. No. 668, Home (Transport-IV), 22nd November 2019 reads as follows

Rule 26. (1) No Court shall release a Motor Vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish a copy of

such insurance policy despite demand by the investigating police officer, unless and until the registered owner furnishes sufficient security to the satisfaction of the Court to pay compensation that may be awarded in a claim case arising out of such accident.

(2) Where the motor vehicle is not covered by a policy of insurance against third party risks or when registered owner of the Motor Vehicle fails to furnish a copy of such policy in circumstances mentioned in sub-rule (1), the motor vehicle shall be sold off in public auction by the Magistrate having jurisdiction over the area where the accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating police officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days, for purpose of satisfying the compensation that may have been awarded or may be awarded in a claim case arising out of such accident.

15) When this court applied the above amendment rules in the present petition along with the Order 38 Rule 5 CPC, there is a comprehensive mechanism to protect the interests of claimants in motor accident cases, especially when the offending vehicle is uninsured. In the instant case, it is an admitted fact that the 1st respondent's container lorry bearing registration number TN-04-AA-6148 was uninsured at the time of the accident. This factual matrix brings the present case squarely within the ambit of Rule 26 of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, as amended in 2019.

16) A conjoint reading of Order 38 Rule 5 CPC and Rule 26 of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules , 1989 reveals a common legislative intent, to secure the claimant's compensation from being defeated by the actions of a vehicle owner. While Order 38 Rule 5 CPC requires the petitioner to prove the respondent's intent to obstruct or delay the decree, Rule 26 operates almost automatically upon proof that the vehicle is uninsured. Therefore, the owner of such a vehicle must either furnish security for the release of the vehicle, or face the eventual sale of the vehicle by the Magistrate and the deposit of the proceeds with the Tribunal.

17) In the present case, the petitioner has not only established the ingredients of Order 38 Rule 5 CPC by demonstrating the 1st respondent's attempt to sell the vehicle, but has also brought forth the undeniable fact that the vehicle is uninsured. The 1st respondent, despite service of notice, has chosen to remain absent and has not come forward to furnish any security as contemplated under either Order 38 Rule 5 CPC or Rule 26 of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules , 1989. This conduct of the 1st respondent further strengthens the petitioner's case and clearly indicates an attempt to alienate the only asset available to satisfy the future award. Therefore, this Court holds that the petition is maintainable and liable to be

allowed, both under the general principles of Order 38 Rule 5 CPC and under the special provisions of Rule 26 of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989.

18) In the result, this petition is allowed without cost. Accordingly, the 1st respondent shall be prohibited from selling, mortgaging, alienating, or creating any third-party rights over the lorry bearing registration number TN-04-AA-6148. The order of attachment should be forwarded to the Regional transport office concerned to make necessary entries. Attachment Batta within a week time. Call on 18.04.2026.

Dictated to the Steno-Typist directly, typed by him in the computer, corrected and pronounced by me in the open court, this the 12th day of March 2026.

**III Additional District and Sessions Judge,
Tiruvallur at Poonamallee.**

Both side Witnesses and Exhibits : NIL

**III Additional District and Sessions Judge,
Tiruvallur at Poonamallee.**