IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.356 of 2021

1.The New India Assurance Company Limited,
Rep.by its Branch Manager,
Venkteshwara Complex Second Floor,
Karumbalai, Bangalore Main Road,
Karupur, Salem District.

2.The New India Assurance Company Limited,
Divisional Manager, Amman Complex,
EVN Road, Erode. ...Petitioner

Vs

1.Karuppannan
2.Smbu
3.Sathish Kumar ...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside dismissal order dated 20.12.2019 passed in I.A.No.1182 of 2018 in M.C.O.P.No.4 of 2018 on the file of th IV Additional District Court, Bhavani and consequently dismiss the above execution petition.

For Petitioner : Mr.S.Dhakshnamoorthy

ORDER

The limited prayer sought for in the present petition is to set aside the dismissal order dated 20.12.2019 passed in I.A.No.1182 of 2018 in M.C.O.P.No.4 of 2018 on the file of the IV Additional District Court, Bhavani and consequently dismiss the above execution petition.

2. The learned counsel for the petitioner would submit that the trial Court failed to appreciate the fact that the claimants have explicitly stated in their claim petition that the insurance policy issued by the petitioner came into effect only from 17.06.2016, whereas the accident occurred a day before i.e., on 16.06.2016. Therefore, *prima facie,* there is no insurance coverage on the date of accident and hence, impleading the revision petitioner/insurer is patently erroneous. The Court below ought to have appreciated the evidence of the offical from Regional Transport Office, Mathuranthagam, who was testified as P.W.3 and marked the Registration documents inter alia the insurance policy issued by the erstwhile L&T General Insurance Company (Now acquired by HDFC Ergo General Insurance Co. Ltd.,) The said policy issued by L&T General Insurance Company was for a period of one year from

04.02.2016 to 03.02.2017, which duly covers the Tractor on the date of accident. Further, the learned counsel for the petitioner would submit that the Tribunal failed to consider the documentary evidence of P.W.3 marked as Ex.X2, wherein the copy of Insurance Policy explicitly shows that the tractor bearing Engine No.076190N and Chassis No.2183228 at the time of registration was insured with L&T General Insurance Company vide policy No.915106005947210000 for the period from 04.02.2016 to 03.02.2017. It was stated that the learned Tribunal, having observed in the impugned order that L&T General Insurance Company has to be heard to arrive at the clear conclusion, ought to have added HDFC Ergo General Insurance Company (It has acquired the L&T General Insurance Company) as necessary party and consequently out to have struck out the name of the revision petitioner as, *prima facie,* cause of action arose against the revision petitioner. Hence, the learned counsel for the petitioner prays to allow this petition.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. It is seen that the accident took place on 16.06.2016 at about 09.30 P.M., and the insurance policy came into effect on 17.06.2016. Immediately after the accident, the petitioner obtained the proposal form and policy copy of the involved vehicle from their branch office. As per the documents, their insurer gave his proposal only on 17.06.2016 at Karupur branch and the branch office issued insurance certificate with effect from 17.06.2016, 03.57.49 PM to 16.06.2017, 11.59.59 P.M. Therefore, the petition mentioned policy is not covered with the date and time of accident. The Court below has rightly come to the conclusion that there is no explanation given by anyone as to why the vehicle was insured second time within a period of one year. Only after detailed trial, the Court can come to the conclusion under which policy the said vehicle is covered and the same has to be considered only at the time of trial. At this time, it is also made clear that suo motu L&T General Insurance Company can be impleaded as a party to the proceedings and they can be issued summons to make them to appear in the said proceedings.

6. Hence, this Court is of the view that L&T General Insurance Company may be impleaded as party to the proceedings, to explain as to

why the respondents have stated that the period of insurance has ended before the day of accident and also to explain the genuinity of the insurance certificate issued by them, which shows that the period of insurance is in force till 03.02.2017. Subsequently, a direction is issued to the IV Additional District Court, Bhavani, to consider and dispose of the M.C.O.P.No.4 of 2018, after impleadment of the party, preferably within a period of one year from the date of receipt of copy of this order.

7. Accordingly, the Civil Revision Petition stands disposed of. No costs.

26.02.2021

Index:Yes/No
Speaking order/Non-Speaking Order
sbn

To

The IV Additional District Court,
Bhavani.

V.BHAVANI SUBBAROYAN, J.

sbn

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