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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.494 of 2014
and M.P.No.1 of 2014

The Branch Manager,
The Unites India Insurance Company Limited,
Branch Office, No.11/A, M.C.Road,
Ambur, Vellore District – 635 002 .. Appellant

-Vs.-

1. Mariappan

2. M.Sree Sathivelan .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 29.04.2013 in M.C.O.P.No.146 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Krishnagiri.

For Appellant ... Ms.R. Sree Vidhya

For Respondent-1 .... M/s.SP.Yuaraj

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For Respondent-2 . .. Mr.Mukund R.Pandiyan

JUDGMENT

The Insurance Company has challenged the Award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate-II) Dharmapuri, Krishnagiri in M.C.O.P.No.146 of 2007.

2. They have challenged the Award passed fastening the liability on the Insurance Company, despite the fact that the insured has only availed of an Act policy. It is their contention that the insurer cannot be made liable and the Tribunal ought to have exonerated the appellant-Insurance Company.

3. The facts briefly set out are as follows:-

The first respondent/petitioner was traveling in a Fiat Car bearing Registration No.TSB 1269 on 19.09.2004 at about 08.00 a.m on the Dharmapuri to Krishnagiri main road. He was seated on the front seat. The driver of the said car was driving the same in a rash and negligent manner at

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a very high speed as result of which, the driver had lost control and hit the road side bridge, as result of which, the first respondent had sustained injuries. He had claimed a compensation of a sum of Rs.7,00,000/-.

4. The Insurance Company had filed a counter *inter-alia* denying the various allegations contained in the petition and also taking a stand that the occupant of the car was not covered, as it was an Act policy. The vehicle was to be used only for the owner's own use and not on hire.

5. The Tribunal below has overlooked this defense and had held that the appellant-Insurance Company would pay the compensation to the first respondent and thereafter, recover the same from the second respondent. Aggrieved by this order, the appellant is before this Court.

6. Heard the learned on either side and perused the materials available on record.

7. Admittedly, the insurance cover for the vehicle is only an Act

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policy under which third parties are not covered. Admittedly, the first respondent is the third party to the policy. This is not a case of a policy violation, but is a case of no policy. Therefore, the pay and recovery passed by the Tribunal is totally erroneous and therefore, has to be set aside. Consequently, this civil miscellaneous appeal is allowed. The appellant Insurance Company is exonerated and the first respondent/claimant shall claim the compensation from the first respondent. The amount already deposited by the appellant-Insurance Company shall be refunded to them. No costs. Consequently, the miscellaneous petition is closed.

16.11.2022

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To

1. The Motor Accident Claims Tribunal
   (Chief Judicial Magistrate) at Krishnagiri.

2. The Section Officer,
   V.R.Section, High Court, Madras.

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P.T.ASHA, J.,

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