



C.R.P.(MD) Nos.755 & 940 to 942 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD) Nos.755 & 940 to 942 of 2023

and

C.M.P.(MD) Nos.3551, 4338, 4339 & 4342 of 2023

G.Chitra Gunasekaran

... Petitioner in
C.R.P.(MD) No.755/2023

A.Saranya Arjun

... Petitioner in
C.R.P.(MD) No.940/2023

Minor A.S.Anirudh
rep. by his Natural Guardian / Mother
A.Saranya Arjun

... Petitioner in
C.R.P.(MD) No.941/2023

G.Abishek

... Petitioner in
C.R.P.(MD) No.943/2023

Vs.

V.Natarajan (Died)

1.The Branch Manager,
National Insurance Company,
Commercial Plot No.3,
80 Feet Road, Vaigai Colony,
Anna Nagar, Madurai - 625 020.

2.G.Arun



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3.The Manager,
HDFC ERGO General Insurance,
248B, B-1, C, C-1, Rekha Towers,
Kamarajar Salai Road,
Madurai - 625 009.

4.Vasuki Natrajan

5.Elizharasan

6.Sudharsan

... Respondents in all C.R.Ps.

Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the impugned orders dated 12.12.2022 passed by the Special Sub Court (Motor Accident Claims Tribunal), Madurai in I.A.No. 1400 of 2022 in M.C.O.P.No.596 of 2016, I.A.No.1401 of 2022 in M.C.O.P.No.597 of 2016, I.A.No.1403 of 2022 in M.C.O.P.No.20 of 2017 and I.A.No.1402 of 2022 in M.C.O.P.No.598 of 2016 respectively.

For Petitioners
in all C.R.Ps. : Mr.R.Murugaboopathy

For R1
in all C.R.Ps. : Mr.S.Srinivasa Raghavan

For R3
in all C.R.Ps. : Mr.V.Sakthivel

For R2
in all C.R.Ps. : No appearance



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COMMON ORDER

By this common order, all these four Civil Revision Petitions are being disposed of.

2. These Civil Revision Petitions have been filed to set aside the impugned orders dated 12.12.2022 passed by the Special Sub Court (Motor Accident Claims Tribunal), Madurai in I.A.No.1400 of 2022 in M.C.O.P.No.596 of 2016, I.A.No.1401 of 2022 in M.C.O.P.No.597 of 2016, I.A.No.1403 of 2022 in M.C.O.P.No.20 of 2017 and I.A.No.1402 of 2022 in M.C.O.P.No.598 of 2016 respectively.

3. By the impugned orders dated 12.12.2022, the Special Sub Court (Motor Accident Claims Tribunal), Madurai has dismissed the above I.As. filed by the respective petitioners to re-examine the Disability Certificates given by the Medical Board to them, with the following observations:-

ஆவணங்களை பரிசீலனை செய்ததில் மேற்படி அசல் வழக்கில் விபத்தானது 19.01.2014 அன்று நடந்துள்ளது. மேற்படி வழக்கானது மனுதாரர் தரப்பில் 2014 அன்று தாக்கல் செய்யப்பட்டு 5 வருடங்கள் கழித்து தான் மனுதாரர்கள் ஊனம் நிர்ணயம் செய்ய



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வேண்டும் என்று குறிப்பாணை தாக்கல் செய்துள்ள நிலையில், மனுதாரர்கள் தரப்பில் நீ.ம.சா.ஆ.1 முதல் 4 வரை வழங்கிய மதுரை அரசு ராஜாஜி மருத்துவமனை அமைந்துள்ள மருத்துவ குழுமம், ஊனம் நிர்ணயம் செய்யப்பட்டது சம்பந்தமாக, மருத்துவக் குழும மருத்துவர் சாட்சியாக விசாரணை செய்யப்படவில்லை. மேற்படி வழக்கில் 2ம் எதிர்மனுதாரர் சாட்சியம் முடிக்கப்பட்டு 4ம் எதிர்மனுதாரர் தரப்பு சாட்சியத்திற்காக வழக்கு ஒத்தி வைக்கப்பட்டுள்ள நிலையில் மனுதாரர்களால் இவ் வழக்கிடை மனு தாக்கல் செய்யப்பட்டுள்ளது. மேற்படி நீ.ம.சா.ஆ. 1 முதல் 4 வரை வழங்கப்பட்டுள்ள ஊனச் சான்றிதழில் மனுதாரர்களின் ஊனம் குறைவாக நிர்ணயம் செய்யப்பட்டுள்ளது. அல்லது தவறாக நிர்ணயம் செய்தது சம்பந்தமாக மனுதாரர் தரப்பில் மருத்துவ குழும உறுப்பினர்களை விசாரிக்க எவ்வித நடவடிக்கையும் மேற்கொள்ளாமல் வழக்கை தாமதம் செய்வதற்காக மனுதாரர்கள் இம் மனுவை தாக்கல் செய்துள்ளார்கள். இம் மனுவை அனுமதிக்கும் பட்சத்தில் வழக்கு விசாரணை தாமதமேயாகும். மேற்படி வழக்கு 7 வருடங்களாக நடந்து வரும் நிலையில் மாண்புமிகு சென்னை உயர்நீதிமன்றம் உத்தரவின் படி வழக்கானது 5 வருடத்திற்குள் முடிக்க வேண்டும் என்று உத்தரவிடப்பட்டுள்ள நிலையில் மேற்படி வழக்கானது 7 வருடத்திற்கு மேலாக அசல் மனு நிலுவையில் இருந்துள்ளதாலும் மனுதாரர் தரப்பில் வழக்கை கால தாமதம் செய்வதற்காக இம் மனுவை தாக்கல் செய்துள்ளதால் மேற்படி மனுவை தள்ளுபடி செய்வது அவசியம் என்று இந் நீதிமன்றம் முடிவு காண்கிறது.

4. The petitioners are the claimants in the respective M.C.O.Ps. before the Special Sub Court (Motor Accident Claims Tribunal), Madurai and were sent to the Medical Board for examination on 23.03.2022, pursuant to which, Disability Certificates were marked before the Tribunal



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as Exs.C1 to C4. After the respondents' evidences were closed, the petitioners have filed I.As. to re-examine the Disability Certificates given by the Medical Board and to examine the Experts of the Medical Board. The details of the M.C.O.Ps, I.As., Exs. are given below:-

Sl. No.	C.R.P.(MD) No.	M.C.O.P.No.	I.A.No.	Ex.No.
1	755/2023	596/2016	1400/2022	Ex.C1
2	940/2023	597/2016	1401/2022	Ex.C2
3	941/2023	20/2017	1403/2022	Ex.C4
4	942/2023	598/2016	1402/2022	Ex.C3

5. The learned counsel for the petitioners would submit that the petitioners have rights of appellate remedy in terms of guidelines and explanations for Assessment of Disability and Certification issued by the Ministry of Social Justice & Empowerment, Government of India as published by the National Institute for the Orthopaedically Handicapped. A reference is made to the following paragraph from guidelines and explanations given for Assessment of Disability and Certification:-

Appeal - In case of controversy arises on percentage of disability given by a board, the individual can appeal to the same board to reassess his/her disability. The board is



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authorized to consider and reassess the individual and modify its certificate with reasons. In case of further controversy, the individual can approach to higher state government medical authority to get reassessed by board/designated authority. The Director General Health Services, Govt. of India shall be final appellate authority.

6. Pursuant of the aforesaid guidelines, the petitioners were constrained to move the I.As.

7. Per contra, both the learned counsel appearing for the first respondent and the learned counsel for the third respondent submit that documents were marked on 29.03.2022 as Ex.C1 to C4. That apart, it is submitted that once the documents have been marked as exhibits, they cannot be eschewed. It is submitted that the intention of the petitioner by filing of the I.As. is only to delay and drag the proceeding in M.C.O.Ps. and therefore, the impugned orders do not call for interference.

8. The learned counsel for the first respondent has drawn attention to the guidelines issued by the Hon'ble Division Bench of the Madras High Court (Principal Seat of this Court), Chennai in **The Branch Manager, TATA AIG General Insurance Co. Ltd. Vs. Prabhu and**



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another, 2016 (1) TN MAC 609 (DB), wherein, it has been held as

under:-

23. For any and all the above reasons, we hereby deem it fit and proper to issue the following directions:

i) We hereby direct that in motor accidents claims the claims tribunals shall issue a letter to Medical Board in the District of Tamil Nadu. Within whose jurisdiction the claim petition was pending and in case there was no Medical Board in the said District to the nearest District Medical Board, to examine the injured claimant/victim and issue a certificate of disability within such time as may be specified by the claims tribunal

ii) We hereby direct that the Medical Board/s shall assess the permanent disability or lack thereof as per the Disability (Permanent Physical Impairment) –Assessment and Certification- Guidelines & Gazette Notification- issued by Ministry of Social Justice & Empowerment, Government of India- Regd No.DL33004/99 (Extraordinary) Part II, Sec 1, June,13, 2001- published by National Institute for the Orthopedically Handicapped.

iii) We hereby direct that the Medical Board shall be at liberty to follow its procedures and practices or conduct tests as they may deem fit, for issuance of such certificates of disability while following the procedure laid down in the Manual above

iv) We hereby direct that the Medical Board/s shall be at liberty to charge such fee as may be required from the insurance companies or transport corporations or such other contesting parties, as the case may be, to pay the same as part of the costs of the proceedings, to the concerned Medical Board.

v) We hereby direct that the Claims Tribunal shall, upon



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receipt of the certificate of disability, in sealed cover from the medical Board/s concerned, shall issue a certified copy of the said certificate to the contesting parties, on application

vi) We hereby direct that Claims Tribunals shall mark the certificates of disability without need for any oral evidence or insisting upon the appearance of Medical Board official or personnel or Doctor, ordinarily, as a matter of course. However, in exceptional cases, this would not preclude the Claims Tribunals, for reasons to be recorded in writing, suo motu or at the request of the contesting parties to direct the author/s of the certificate/s of disability, from the Medical Board/s, to appear before the Claims Tribunal to answer clarifications, if any, sought for.

vii) We hereby direct that the above said procedure and procedure shall come into force on and from 1/8/2016 and time granted thereof shall be utilized by all the stakeholders to arrange for necessary logistics support for smooth conduct of proceedings under the new dispensation

viii) We hereby direct that High Court Registry shall issue a Circular on these directions along with the judgment with reasons to be sent to Medical Boards in all Districts of Tamil Nadu through the Registry of the District Courts in Tamil Nadu, as soon as possible

(ix) We hereby make it clear that it shall be open all stakeholders including the Registries and Medical Boards concerned, to approach this Court for any clarifications or changes or modifications they envisaged for the better implementation of this new dispensation, intended to serve the cause of the innocent motor accidents victims/claimants, as the case may be and this Court shall be obliged to consider the same in the circumstances of the



case.

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9. I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the first respondent and the learned counsel for the third respondent.

10. Guidelines issued by the Hon'ble Division Bench in **Prabhu** case referred to *supra* are very clear that in exceptional cases, the Experts can be cross-examined. Although the Division Bench has given above guidelines, the guidelines have to be read in conjunction with substantial rights of the litigant under the Indian Evidence Act, 1872. The Medical Expert, in certain cases, is to be construed as a witness in terms of Section 45 of the Indian Evidence Act, 1872 which reads as under:-

45. Opinions of experts.—When the Court has to form an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.

Such persons are called experts.



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11. In **Mani Ram Vs. State of Rajasthan**, AIR 1993 SC 2453, the

Hon'ble Supreme Court has held that opinion of experts hardly decisive and is not a substantive evidence.

12. The Hon'ble Supreme Court has repeatedly held that the opinion of an Expert as also the Medical Expert is an opinion and is advisory in nature and not binding upon the Court. The Court has to form its own opinion considering the material data, and the opinion on the technical aspects rendered by the Medical Expert [*See Madan Gopal Vs. Naval Dubey*, (1992) 3 SCC 204]

13. The Court has also held in **Mafabhai Nagarbhai Raval Vs. State of Gujarat**, (1992) 4 SCC 69, held that unless there is something inherently defective in medical report, the Court cannot substitute its own opinion for that of the doctor.

14. Thus, the report of the expert is admissible as a evidence. However, such report can be tested. The documents produced can be subjected to forensic examination. If the Court desires, the Court can summon the witness under Order 16 Rules 14, 15 & 16 of Code of Civil



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Procedure, 1908. Order 16 Rules 14, 15 & 16 of Code of Civil Procedure,

1908 are reproduced below:-

Rule 14	Rule 15	Rule 16
14. Court may of its own accord summon as witnesses strangers to suit. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit and not called as witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession on a day to be appointed, and may examine him as a witness or require him to produce such document.	15. Duty of persons summoned give evidence or produce document. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.	16. when they may depart. (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of. (2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.



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15. Therefore, I am inclined to dispose of these Civil Revision Petitions by directing Special Sub Court (Motor Accident Claims Tribunal), Madurai, to issue summon to the Medical Expert who have given Exs.C1 to C4 Disability Certificates. It is open for the petitioners to subject such Expert to cross-examination and thereafter, the Court may come to an independent conclusion on the Disability Certificates.

16. Liberty is given to the petitioners to obtain an independent Certificate from an expert in the field to discredit the reports given by the Medical Board in Ex.C1 to C4 Disability Certificates. In case the petitioners produce any expert's report/certificate, it is open for the respondents to subject such expert to cross-examination.

17. These Civil Revision Petitions are disposed of. No cost. Consequently, connected Miscellaneous Petitions are closed.

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Internet: Yes/No

Index: Yes/ No

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To



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(Motor Accident Claims Tribunal),
Madurai.

C.SARAVANAN, J.

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