

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 8243 of 2014
Date of Decision: 26.5.2015

Anand Singla**.....Petitioner****Vs****MACT Mohali and others****....Respondents****CORAM: - HON'BLE MS. JUSTICE M.M.S.BEDI**

Present: - Mr. Ashwani Arora, Advocate for the petitioner.

Mr. P.K.Chug, Advocate for respondents No. 2 and 3.

Ms. Shamsher Kaur, Advocate for respondent No. 4

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M.M.S.BEDI, J (Oral)

Petitioner is a claimant in the claim petition pending before the Motor Accident Claims Tribunal (for short 'the Tribunal'), Mohali. Vide the impugned order dated 4.11.2014, an application seeking assessment of the disability of the petitioner-claimant was dismissed by the Tribunal. observing that Medical Board cannot be constituted for the petitioner to get him assessed.

Learned counsel for respondents have submitted that the Court cannot be permitted to create evidence for the parties for adjudication of the matter.

The observations of the Tribunal appears to be contrary to the spirit of Section 45 of the Indian Evidence Act, 1872 (for short 'the Act'), which provides that when a Court has to form an opinion upon a point of science, the opinions upon that point of persons specially skilled in that particular field would be relevant facts. In a claim petition, the extent of disability is always a fact in issue regarding which the evidence may be given by a party, as per Section 5 of the Act. The Tribunal appears to have not exercised its jurisdiction vested in it for the wrong reasons.

After hearing learned counsel for both the parties, I am of the opinion that the Tribunal has jurisdiction to seek a report from a Medical Officer of a hospital as such an opinion would be relevant and necessary for just decision of the case. But I am of the opinion that such a discretion can be exercised only after the concerned person has been denied any assistance by the concerned medical authorities.

In the interest of justice, without expression of any opinion on the merits of the case, I deem it appropriate that the petitioner should move an application for assessment of his permanent disability before the Chief Medical Officer, General Hospital, Mohali. It is expected that the application will be entertained and necessary steps would be taken to determine the disability/permanent disability, if any. In case, the medical authorities do not examine the petitioner for determining the permanent disability at this stage, it will be open to the petitioner to move an application for assistance of the Tribunal. In that eventuality, it is directed that a direction would be given by the Tribunal for assessment of the permanent disability of the petitioner by exercising the jurisdiction vested in it.

Disposed of with above observations.

(M.M.S.BEDI)
JUDGE

26.5.2015

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