

C.M.A.Nos.2380 OF 2015 and 428 of 2016

RESERVED ON : 01.11.2016

DELIVERED ON : 25.11.2016

RAJIV SHAKDHER,J.
AND
S.VAIDYANATHAN,J.

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1. Based on the note dated 29.08.2016 prepared by the Registry, the matter came to be placed before this Bench, after it was duly actioned by the Hon'ble the Chief Justice on the very same date, i.e., 29.08.2016.

1.1. By virtue of the order of the Hon'ble the Chief Justice, this Bench was called upon to examine the validity, sustainability and scope of two communications. The first communication was that of the Law Association (in short Association), which is, dated 23.08.2016. The second communication was that of the Principal District Judge, Villupuram District, Villupuram, dated 19.08.2016.

2. The Association as well as the learned Principal District Judge, in effect, sought clarifications qua the judgments dated 11.03.2016 and 12.04.2016, passed in C.M.A.Nos.428 of 2016 and

2380 of 2015, respectively, by a Division Bench, comprising of Hon'ble Mr.Justice R.Sudhakar (as he then was) and Hon'ble Mr.Justice S.Vaidyanathan.

2.1. Pertinently, scope for such an exercise was left open by the Division Bench in order to ensure a seamless implementation of its directions contained in its aforementioned judgments.

2.2. The Association, in its communication, dated 23.08.2016, sought, in a sense, a stay on the operation of the direction contained in the two judgments, to the extent it required the Motor Accident Claims Tribunal (in short Tribunal), to refer the cases to the Medical Board, for ascertaining the extent of the disability suffered by the victim.

2.3. It is contended that the said direction should be kept in abeyance, till such time sufficient Medical Boards were constituted.

2.4. The argument being that the disposal of claims had slowed down on account of slow pace of expert input by the Medical Board.

3. In so far as the Principal District Judge is concerned, he has sought several clarifications, which, essentially, relate to the applicability of the directions contained in the judgments passed by this Court to pending and fresh cases. For the sake of convenience, the clarifications sought are set forth hereafter:

".....i) Whether the same procedure shall be followed while issuing cheques for the award passed already (before 01.08.2016) in MCOP Cases or whether the old method shall be followed.

ii) Whether the same shall be followed while depositing the award amount for the orders passed previously (before 01.08.2016) or whether the old method shall be followed.

iii) Whether the procedure contemplated in the Judgment under first reference shall be followed for the pending & part-heard cases prior to 1.8.2016 or whether the old method shall be followed.

iv) Under which procedure shall be followed while depositing the 50% of award amount for the pending & part-heard cases prior to 1.8.2016 and also for the new cases filed after 1.8.2016.

v) In the case of medial examination of the claimant in pending and part-heard cases (prior to 1.8.2016), whether the circular under second reference shall be followed or whether the old method shall be

followed....."

4. Given the concerns of the Association and the Principal District Judge, we had, at the hearing held on 15.09.2016, called upon the learned Advocate General to assist us in the matter. The concern of the Association that the Medical Boards had not been constituted in every District was set out in the order passed on that date.

4.1. At the next date of hearing, i.e., on 30.09.2016, learned Advocate General put before us broad statistics, which were suggestive of fact that, Medical Boards were available, both, in the Medical Colleges located in the State of Tamil Nadu as well as in the District Headquarters.

4.2. Thus, having regard to the submissions made before us by the learned Advocate General on 30.09.2016, we directed him to supply us the statistics and/or information as to the exact number of references made by the Tribunals, as on 30.09.2016. The Registry of this Court was also directed to gather statistics and/or information as to the number of references made by the Tribunals to the Medical

Boards, which were pending consideration, as on 30.09.2016.

5. When the matter was, again, called on 01.11.2016, the learned Advocate General placed before us a communication dated 26.10.2016, addressed to him by the Principal Secretary to Government of Tamil Nadu, Health and Family Welfare Department (in short HFWD).

5.1. The information put before us was suggestive of the fact that, till 30.09.2016, in the 22 Medical Colleges, adverted to in the annexure appended to the communication, 625 cases had been referred by the Tribunals to the concerned Medical Boards. Out of which, the concerned Medical Boards, between 01.08.2016 and 30.09.2016, had issued disability certificates, only, in 47 cases.

5.2. The situation, vis-a-vis the Medical Boards constituted by Government Medical College Hospitals and District Headquarters hospitals, was no better. In so far as these institutions are concerned, the Tribunals, apparently, had made 519 references, out of which, certificates had been issued by the concerned Medical Boards,

between 01.08.2016 and 30.09.2016, only, in 84 cases.

6. As regards the Registry of this Court is concerned, it has reported that in the State of Tamil Nadu, the Tribunals, as on 30.09.2016, had made 2347 references to various Medical Boards, while in the Union Territory of Puducherry, as on 30.09.2016, 7 references have been made; taking the total to 2354 references.

7. The data received from the two sources reveals that there is a wide variation in the number of references made by the Tribunals to various Medical Boards.

8. To be noted, the aforementioned communication dated 26.10.2016 gives the following reasons for the delay in the issuance of disability certificates by the concerned Medical Boards. The said communication, notably, also alludes to the suggestions for removal of the difficulties faced by Medical Boards in disposal of cases.

9. For the sake of convenience, we intend to extract what the HFWD, perceives as reasons for the delay in the issuance of Medical

certificates as also their suggestions for overcoming the said difficulties.

Reasons for delay as per HFWD:

- i) The claimants are not attending the Medical Board on the day specified.*
- ii) The address of the claimants provided is not correct.*
- iii) The claimants fail to bring the necessary documents.*
- iv) The claimants are referred to undergo certain medical test (such as X-ray, Scan) to find out the accurate percentage of disability.*
- v) The accident cases referred by the tribunal might have taken place long before, hence it take time to determine the disability in such cases.*

Suggestions of HFWD for improvement:

- i) If the number of cases are high, one or two or more special medical board for MCOP may be conducted biweekly.*
- ii) With regard to MCOP cases Certificate will be issued within a maximum of four weeks.*
- iii) Complicated cases may be referred to nearby hospital/college where multi-specialists are available.*
- iv) Phone/Mobile Number of the individual (victim) shall be mentioned for speedy communication/disposal.*
- v. The victims may be informed in the call letter to bring the documents viz., Accident Register copy, wound certificate, discharge summary, old and present (latest) X-rays and any other document relating to the injury."*

10. Having regard to the fact that there is obviously a low rate disposal by the concerned Medical Boards, which, to our mind, is a cause for concern and could lead to a situation, where the remedy envisaged by this Court, (because of clogging in the adjudication of claims made), may become worse than the malady, we had put to the learned Advocate General, whether a point man could be appointed, qua each of the Medical Boards, who could, then, ensure a quick and a comprehensive disposal of matters by the concerned Medical Board.

10.1. The learned Advocate General suggested that, the Dean of the Medical College and the Superintendent of the concerned Government Hospital can act as a point person, who would, on a monthly basis, gather information with regard to the pending references and issue suitable directions for expedition.

10.2. This apart, we were also informed that the Tribunals are taking time in making references to the concerned Medical Boards, despite memos, to that effect, being filed by the parties.

11. Having heard the learned Advocate General and the counsels appearing for the Association as well as those who appeared for the Insurance Companies, we are inclined to issue the following directions for the smooth implementation of the directions contained in the judgments dated 11.03.2016 and 12.04.2016:

11.1. The Dean of the concerned Medical College and, likewise the Superintendent of the concerned Medical Hospital, will regularly, without fail, gather information, on a weekly basis, from the concerned Medical Boards, as to the number of references pending before them.

11.2. The Dean and the Superintendent will ensure that no references are kept pending with the concerned Medical Boards for a period beyond four (4) weeks from the date of receipt of references from the Tribunal. In case, such an eventuality arises, the Medical Board, will articulate the reasons for the delay. If any, information, is sought from the parties, they shall be duly intimated.

11.3. In order to reduce the scope of gap in getting information

and material, which would be required by the Medical Boards to carry out their functions of assessing the extent of disability, the concerned Tribunal will scan and thereafter e-mail the record of each case to the Medical Boards. The Medical Board will treat the case papers received by them from the Tribunal, as originals and act upon the same, accordingly.

11.4. Similarly, upon assessment being made by the Tribunal, the disability certificate shall be sent, in addition via e-mail, to the concerned Tribunal. The usual delay caused because of late receipt of a hard copy could, thus, be avoided.

11.5. The Tribunal, while making references, shall ensure that a date is fixed for appearance of the claimant before the Medical Board. In case, the date fixed by the Tribunal is not convenient to the Medical Board, the Medical Board will give a fresh date, which is proximate in time to the date fixed by the Tribunal. The Tribunal will, preferably, fix a date in the presence of the claimant, so that the claimant is made aware as to the next date of appearance before the Medical Board.

11.6. The Dean and the Superintendent will send the statistics of pending references, on a bi-monthly basis, to the Registrar (I.T.-cum - Statistics), High Court, Madras, who, in turn, shall place a report before the concerned portfolio Judge for suitable directions to the concerned Tribunal, wherever necessary.

12. Therefore, the prayer of the Association that, since, the Medical Boards are not upto the task assigned to them, the Tribunal should resort to the old procedure, in our view, should be met with directions issued by us. Thus, no such direction, as sought for by the Association, can be granted for the present.

13. As regards the clarifications, which are sought by the learned Principal District Judge, in our view, the judgments of this Court, are quite clear. The procedure prescribed therein for disposal of claims is required to be applied with effect from 01.08.2016. In all cases, where awards have been passed prior to 01.08.2016, the procedure in force, for issuance of crossed cheques in favour of claimant, prior to the said date shall operate. This would take care, to our mind, query Nos.(i) and (ii) referred to in paragraph (3) above.

13.1. As regards pending and part-heard cases, since, Tribunals would pass awards after 01.08.2016, the procedure prescribed in the two judgments of the High Court would have to be followed. This would also apply to any direction that the Tribunal may issue for deposit of a part of the amount in respect of those cases, which are pending and part-heard as on 01.08.2016. This clarification, to our mind, would take care of query Nos.(iii) to (v) referred to in paragraph 3 above.

13.2. In so far as the pending and part heard cases, where evidence with regard to permanent disability has already been recorded, and the matter is otherwise ripe for hearing, the direction issued for referring the matter to the Medical Board would not apply.

13.3. Furthermore, the suggestions made by the learned Advocate General, as recorded by us in paragraph 9.1, are also accepted.

13.4. Accordingly, Medical Boards will convene at least two times a week. The disability certificates will be issued without fail within four (4) weeks from the date of receipt of reference from the

Tribunals. Complicated cases will be referred to the nearest hospital/college having multi-speciality facility. The Medical Board, while referring the matter, will articulate the area of concern. The reference will be accompanied with all relevant papers. The claimant will be communicated the date on which his/her/its presence, if at all, is required. In case any additional documents/reports are required, necessary information will be given in writing, with a copy marked to the opposing party and/or the concerned counsel.

14. Before we conclude, we may also make it clear that the directions contained, in the two judgments of this Court, were issued, keeping in mind the best interests of the parties at hand. While the concern of the Court was to do away with the situation, which was rampant, i.e., the production of doctors, who were stock witnesses, for the purpose of placing evidence on record with regard to the disability suffered, the Court was also concerned that the compensation awarded by the Tribunals, should reach the beneficiaries directly, keeping in mind, that none of the procedures it chose to prescribe should operate in a manner, which would either create a logjam or, delay the adjudication of claims.

15. Therefore, while directions have been issued to the Tribunals to refer the matter to the Medical Boards, the Tribunals, will bear in mind, that, if the witnesses produced by the claimants are credible and the Presiding Officers are satisfied that the matter ought not to be referred to the Medical Boards, then, they should proceed in the matter based on the appreciation of the material placed before them.

15.1. We make it clear that the directions issued by the Court did not take away the discretion of the Presiding Officer of the Tribunal, in that regard.

16. To our mind, no further clarificatory directions are called for to be issued, for the moment. The matter is disposed of in the aforesaid terms.

(RSAJ)

(SVNJ)

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Pre-Delivery Judgment in
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