IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.1136 of 2013
and M.P.No.1 of 2013

M.Jayaprakash .. Petitioner

Vs

1.A.N.Raghavan
2.The Branch Manager,
New India Assurance Co. Ltd.,
Thiruthangal – 626 130. .. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the petition and Docket order dated 08.01.2013 in I.A.No.966 of 2012 in M.C.O.P.No.394 of 2007 on the file of Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruvallur.

For Petitioner : Mr.K.Suryanarayanan
For R1 : Not ready in notice
For R2 : Mr.J.Chandran

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O R D E R

This Civil Revision Petition has been filed to set aside the petition and Docket order dated 08.01.2013 in I.A.No.966 of 2012 in M.C.O.P.No.394 of 2007 on the file of Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruvallur.

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2. The petitioner is the claimant in MCOP.No.394 of 2007 on the file of Motor Accidents Claims Tribunal Subordinate Court, Tiruvallur. The petitioner filed the claim petition for the injuries sustained by him in the road traffic accident occurred on 11.01.2007. In the claim petition, he has stated that he sustained injuries communicated fracture both bones right leg with compartment Syndrome (R) leg and right bronchial plexus injury dislocation of (R) Shoulder, Rightly Blood vessels damaged. He filed disability certificate to prove the said claim. The second respondent sought the petitioner to be referred to Medical Board to ascertain the nature of the injuries sustained by the petitioner. The Tribunal referred the petitioner to the Medical Board. According to the petitioner, Medical Board examined him on 07.09.2012. The team of Doctor checked up the entire body with his previous treatment records and assessed the disability and sent the report, disability certificate to the Court without worksheet and without following the Medical guidelines correctly. According to the petitioner, the Doctors of the Medical Board gave report only with regard to injuries suffered by him, on his right hand and failed to give report and did not assess the disability for the right leg, even though the Doctors checked up his entire body with his previous treatment records. In these circumstances, petitioner filed application in I.A.No.966 of 2012 for a direction to the Medical Board for re-examination and to assess

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the disability of his right leg.

3. The second respondent filed Memo of Objection stating that the petitioner was already examined by Ortho Specialist and there is no need for review by the Medical Board.

4. The learned Judge, considering the averments made in the affidavit and Memo of Objection filed by the second respondent, dismissed the application on the ground that MCOP is of the year 2007 and it is in part-heard stage, the petitioner has marked Exs.1 to 41 and number of disability certificates issued by the Doctors and Medical Board has also assessed the total disability at 54%.

5. Against the said order dated 08.01.2013 made in I.A.No.966 of 2012 in MCOP.No.394 of 2007, the present Civil Revision Petition is filed by the petitioner.

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6. The contention of the learned counsel for the petitioner is that the petitioner has suffered fracture in the right leg and he produced disability certificate to that effect. On the application filed by the second respondent, the petitioner was referred to Medical Board and Medical Board assessed the disability of the petitioner only with regard to his right hand and Medical Board has failed to give report with

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regard to injuries occurred in the right leg. The petitioner is claiming compensation for the injuries suffered by him, both in the right leg as well as in the right shoulder as claimed by him in the claim petition.

7. The learned counsel appearing for the second respondent submitted that petitioner was already examined by Medical Board and there is no necessity to again refer the petitioner to Medical Board. The learned Judge has rightly dismissed the petition.

8. Heard the learned counsel appearing for the petitioner as well as second respondent and perused the materials available on record.

9. The contention of learned counsel for petitioner has considerable force. The learned Judge has failed to consider the facts as Medical Board has not given any report with regard to the injuries to right leg of the petitioner. In these circumstances, the order of the learned Judge is liable to be set aside and it is hereby set aside. The learned Judge is directed to refer the petitioner to Medical Board with specific directions to the Medical Board to examine the right leg of the petitioner and give a report with regard to the injuries sustained by the petitioner and if so, the percentage of disability.

10. As the MCOP is of the year 2007, the learned Judge is

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directed to refer the petitioner to Medical Board, at the earliest, in any event within a period of two weeks from the date of receipt of a copy of this order. The petitioner is also directed to be present before the Medical Board on the date specified by the Medical Board. The learned Judge is directed to dispose the MCOP as expeditiously as possible, in any event not later than four months from the date of receipt of the report of the Medical Board.

11. With the above observations, the Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

02.11.2017

Speaking (or) Non speaking Order :

Index : Yes / No

Internet : Yes / No

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V.M.VELUMANI,J

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To

1.The Motor Accidents Claims Tribunal (Subordinate Judge),
Tiruvallur.

2.The Branch Manager,
New India Assurance Co. Ltd.,
Thiruthangal – 626 130.

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