

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. PD No.3396 of 2013
and M.P.No.1 of 2013**

Judgment reserved on 06.11.2017	Judgment pronounced on 17.11.2017
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Iffco Tokio General Insurance Co. Ltd.,
No.28, North Usman Road, T.Nagar,
Chennai – 600 041.

...

Petitioner

Vs

1.Balamuthu
2.Suryanarayanan

...

Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India against the judgment and decree made in MP No.1262/2013 in MCOP No.1174 of 2010, dated 12.04.2013 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Petitioner : Mr.M.B.Raghavan

For Respondents : Mr.Terry Challaraja
for R1

ORDER

This Civil Revision Petition is filed against the judgment and decree made in MP No.1262/2013 in MCOP No.1174 of 2010, dated 12.04.2013 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

2. The petitioner is second respondent, first respondent is the claimant and the second respondent is the first respondent in MCOP No.1174 of 2010 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai. The first respondent filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident occurred on 16.01.2010.

3. According to the first respondent, due to the injuries sustained by him in the accident, he suffered total disability of 160%. The petitioner filed counter statement and is contesting the claim petition. Trial commenced. The first respondent examined three doctors as PW2 to PW4. The petitioner cross examined the doctors who gave evidence as PW2 to PW4 on behalf of the first respondent. The petitioner filed present M.P No.1262 of 2012 under

Section 169 (3) and Section 153 of CPC for permission to call for the doctors of Miot Hospital who gave treatment, as witnesses and also direct the petitioner to appear before the court to assess the disability for assisting the court.

4. According to the petitioner, disability assessed by three doctors at 160% is highly exorbitant and doctors who treated the petitioner must be summoned to give evidence to assess proper percentage of disability. The first respondent filed counter and opposed the said application stating that he was examined by experienced and specialized doctors with experience of more than 30 years in Government Hospitals. They are also members in the Medical Board.

5. The learned Judge, considering the materials on record, averments in the affidavit, counter affidavit and judgments relied on by the learned counsel for the first respondent, dismissed the application holding that there is no reason to send the first respondent to Medical Board and the petitioner was directed to elicit necessary points through the doctors already examined by way of recalling the witnesses.

6. Against the said order of dismissal made in M.P No.1262/2013 in MCOP No.1174 of 2010, dated 12.04.2013, the present Civil Revision Petition has been filed by the petitioner.

7. The learned counsel for the petitioner submitted that the percentage of disability assessed by the doctors is on the higher side. The doctors who treated him initially must be examined. The learned counsel for the petitioner contended that the judgments relied on by the learned Judge are not applicable to the facts of the present case and the judgment of the Hon'ble Apex Court reported in **2011 (1) ACJ 1 [Raj Kumar v. Ajay Kumar & Anr.]** is applicable to the facts of the present case. The learned counsel for the petitioner relied on the judgment reported in **2016 (1) TNMAC 609 (DB) [The Branch Manager, TATA AIG General Insurance Co. Ltd. v. Prabhu]**

13. While so, we do not find the claims being disposed of as early as has been mandated or facilitated. In our experience, one of the primary or major causes for the continued pendency of claims either before the claims tribunals or before this Court is the divergence in views with regard to the assessment of permanent disability and the prevalent practice thereof. Despite the plethora of case-law on the issue of assessment of disability and fixation of functional disability, the rival stands taken by the contesting parties necessitates detailed

examination. The claims tribunals may have the benefit of say a decision as in *Raj Kumar v Ajay Kumar* in 2011 ACJ 1 (SC), where the Apex Court has laid down parameters and guidelines in this regard. In this very decision the pitfalls associated in assessment of permanent disability has been gone into as there is no one strait jacket formula and the fact the claimants choose to adduce evidence to through Doctors of their choice, makes it more litigation friendly. Of course, the evidence of a certificate of disability from Medical Board was commended for acceptance in that decision.

14. We do find that the claimants choose to examine a select group of Doctors virtually practising in this jurisdiction. The insurance companies and transport corporations repeatedly complain that they are stock witnesses and challenge their assessments, even if accepted by claims tribunals after discounting the same. We have noted some decisions which have been critical of the mode and manner of assessment of disability by these Doctors who regularly appear before the claims tribunals. It is not rocket science to identify the personnel who appear in these proceedings as they are found in the list of witnesses before various claims tribunals all over the State, very regularly. That has been the major grouse or grievance of the insurance companies and transport corporations that these medical professionals do not follow proper practices and their assessments are tilted to advance the interest of the claimants, at times, unfairly. This procedure and practice in assessment of permanent disability by various Doctors in various claims tribunal have led to huge pendency of appeals before this Court also. In fact, one could say without fear of contradiction, that divergence in views on the assessment of disability is the major contributor to the filing of appeals in this portfolio. We are regularly called upon to play the arbiter in the assessment of disabilities. If only we could introduce an uniform and consistent assessment of disability, the pendency would significantly come down, as scope for challenge would be diminished. That is our endeavour in this case.

18. We do feel that standardization has been strongly advocated in the above decision. We also find that an RTI query was made to the health commissionerate, medical services and medical education on the issuance certificates of disability by Medical Board etc., We find that the authority has confirmed that Private Hospitals were not allowed to give disability certificates. Only government hospitals, medical college hospitals, District Hospitals and Sub District Hospital were empowered to do so. Obviously medical board constituted by the government would be entitled to do so, more so, when attached to Major Government Hospitals or District Hospitals. This fortifies our stand that need as come to introduce the much needed element of uniformity and consistency in assessment of disabilities and standardization in issuance of Certificates of disability. If consistency and uniformity can be achieved then the disputed area would be significantly reduced. We find that the primary reason for the gross divergence and alleged exaggeration in assessment of permanent disability arises from the twin causes of i) failure to follow one framework in face for such assessment and ii) and the personnel applying their own varies lines to assess permanent disability as is their wont. As pointed out by the apex court in Raj Kumars case it may not be proper to accept the physical disablement at 45% as is reflective of the medical evidence, without critical examination or construe the functional disability also to be of the same percentage. We find that the Doctors assess percentage without identifying the basis for the same and the claims tribunal mechanically reduce say 5% or 10% and conclude that the reduced percentage was functional disability. This is not a healthy practice. The cause for this problem is the near arbitrary assessment of permanent disability by the set of Doctors who regularly appear before the claims tribunals. We deem it is now time to introduce or usher in a uniform and consistent procedure for such assessment which would rid the need for even examining such Doctors and save time for the claims tribunals to dispose of claims. More importantly, it

may rid the jurisdiction of the one sore point which is adding to the pendency and appeals too.

8. Per contra, the learned counsel appearing for the first respondent contended that the first respondent has filed discharge summary obtained from MIOT Hospital containing the nature of injuries sustained by him and the nature of treatment given to him. Subsequently, he was examined by three doctors who are specialists in their respective fields and working in Government Hospitals. The three doctors have given evidence as PWs 2 to 4 and the learned counsel for the petitioner extensively cross examined them. The judgments relied on by the learned counsel for the petitioner reported in **2016 (1) TNMAC 609 (DB)** cited supra is modified by the Division Bench of this Court in the judgment reported in **2017 (1) TN MAC 106 (DB) [The Branch Manager, TATA AIG General Insurance Co. Ltd. v. Prabhu]** wherein it has been held as follows -

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.

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, ie., 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.

(2) 2017 (1) TN MAC 1 (SC) [Golla Rajanna, etc. v. The Divisional Manager and another]

10. The Workmen's Compensation Commissioner, having regard to the evidence, had returned a finding on the nature of injury and the percentage of disability. It is purely a question of fact. There is no case for the insurance company that the finding is based on no evidence at all or that it is perverse. Under Section 4(1)(c)(ii) of the Act, the percentage of permanent disability needs to be assessed only by a qualified medical practitioner. There is no case for the respondents that the doctor who issued the disability certificate is not a qualified medical practitioner, as defined under the Act. Thus, the Workmen's Compensation Commissioner has passed the order based on the certificate of disability issued by the doctor and which has been duly proved before the Workmen's Compensation Commissioner.

(3) 2010 (2) TN MAC 581 (SC) [Raj Kumar v. Ajay

Kumar & Anr.]

13. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

and submitted that the Hon'ble Apex Court has given guidelines how to assess the disability or Loss of Earning Capacity.

9. Heard the learned counsel for the petitioner as well as first respondent and perused the materials available on record. The

learned counsel for the petitioner as well as respondent elaborately argued the matter and extensively referred to documents filed in the typedset of papers as well as the judgments relied on by them.

10. The contention of the learned counsel for the petitioner is that percentage of disability assessed by three doctors is not correct. The assessment of percentage of disability at 160% is on the higher side. In view of the same, the first respondent must be referred to Medical Board. The petitioner filed petition seeking permission to call the doctors who gave treatment as witnesses and also to direct the petitioner to appear before the court to assess the disability for assisting the Court. The learned Judge, considering the arguments made by the learned counsel for the petitioner, held that there is no reason to send the first respondent to Medical Board.

11. The first respondent, after the accident, took treatment in MIOT Hospital and subsequently was examined by three doctors who are specialists in their respective fields and working in Government Hospitals. They also gave evidence with regard to percentage of disability and has given reasons for arriving at such percentage of disability. The learned counsel for the petitioner cross examined the three doctors who gave evidence. In view of

the same, there is no reason to refer the first respondent to Medical Board to assess the percentage of disability. Further, the learned Judge has held that it is open to the petitioner to re-call the doctors who gave evidence for further cross examination. The judgments relied on by the learned counsel for the petitioner does not advance the case of the petitioner. The said judgments mainly deals with the loss of future earning capacity of the injured with reference to the extent of his permanent disability.

12. In the present case, the issue is not with regard to determination of loss of future earning but only with regard to percentage of disability. In the judgment reported in **2010 (2) TN MAC 581 (SC)** cited *supra*, in Para 17, it has been held that the certificate issued by the Chief Medical Officer, Gaziabad in U.P. on the assessment made by the Medical Board which also consisted of an Orthopaedic Surgeon can be accepted even though the accident occurred in Delhi and injured claimant was treated in Delhi Hospital after the accident. The Hon'ble Apex Court in the above cited judgment, in para 17 has held as follows -

17. In this case, the Tribunal acted on the disability certificate, but the High Court had reservations about its acceptability as it found that the injured had been treated in the Government

Hospital in Delhi whereas the disability certificate was issued by a District Hospital in the State of Uttar Pradesh. The reason given by the High Court for rejection may not be sound for two reasons. Firstly though the accident occurred in Delhi and the injured claimant was treated in a Delhi Hospital after the accident, as he hailed from Chirori Mandi in the neighbouring District of Ghaziabad in Uttar Pradesh, situated on the outskirts of Delhi, he might have continued the treatment in the place where he resided. Secondly the certificate has been issued by the Chief Medical Officer, Ghaziabad, on the assessment made by the Medical Board which also consisted of an Orthopaedic Surgeon. We are therefore of the view that the High Court ought not to have rejected the said disability certificate.

13. In the present case, after the accident, the first respondent was treated at MIOT Hospital and the said hospital has issued discharge summary which is marked as exhibit in the claim petition and filed by the first respondent in two typed set of papers. After being discharged from the hospital, the petitioner has obtained disability certificate from the following three doctors -

1. Prof.N.Saichandhran, Orthopaedic Surgeon, Govt. Royapettah Hospital, Chennai
2. Dr.M.Saravana Bavanantham, Civil Surgeon, Govt. Stanley Hospital, Chennai
3. Dr.R.Rajappa, Ophthalmic Surgeon, Formerly Prof. & Senior Surgeon in Ophthalmology, MMC, KMC, SRMC & RI (DU)

As stated above, all the three doctors are specialists in their respective fields. They have examined the first respondent, assessed the disability sustained by him and issued disability certificates in their respective speciality. They have given evidence and were cross examined. They are senior doctors in Government Hospital. They are not stock witnesses.

14. In view of the above facts and ratio in the judgment of Hon'ble Apex Court reported in **2010 (2) TN MAC 581 (SC)** cited *supra*, this Civil Revision Petition is liable to be dismissed as devoid of merits and is hereby dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

17.11.2017

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Index : Yes/No

To

III Judge,
Court of Small Causes,
The Motor Accidents Claims Tribunal,
Chennai.

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V.M.VELUMANI, J.

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**Pre-delivery Order in
C.R.P. PD No.3396 of 2013**

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17.11.2017