



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

C.R.P(MD)No.1477 & 1478 of 2016 (PD)

and

C.M.P(MD)No.7230 of 2016

P. RajendranPetitioner/Claimant in both C.R.Ps.

Vs.

M/S. United India Insurance Company Ltd.,

Represented by its Branch Manager,

M.P.S Complex, 2nd Floor,

R.F. Road, Palani-624 601.

Dindigul District.Respondent/2nd Respondent in both C.R.Ps.

PRAYER in both C.R.Ps.: Civil Revision Petitions are filed, under Article 227 of the Constitution of India, to set aside the Fair and Decretal order, dated 09.06.2016 passed I.A.Nos.479 & 478 of 2016 in MCOP No. 5 of 2014, respectively on the file of the Chief Judicial Magistrate, Sivagangai.

For Petitioner : Mr.P. Paranthaman
in both C.R.Ps.

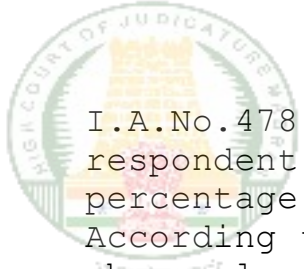
For Respondent : Mr. I.Suthakaran
in both C.R.Ps.

COMMON ORDER

The issue involved in both the CRPs are interlinked and hence, both CRPs are disposed of by common order.

2. The petitioner has filed these Civil Revision Petitions to set aside the Fair and Decretal order, dated 09.06.2016 passed I.A.Nos.479 & 478 of 2016 in MCOP No. 5 of 2014, by the Chief Judicial Magistrate, Sivagangai.

3.The Petitioner filed claim petition in M.C.O.P.No.5 of 2014 claiming compensation of Rs.10,00,000/- from the respondent for the injury sustained by him in the accident, which took place on 29.03.2012. Trial Commenced. The petitioner examined himself as P.W.1 and he examined one Doctor Shankarlal as P.W.2 and his side evidence was closed. The claim petition was posted to respondent side evidence. The respondent did not let in any evidence and on 12.04.2016, therefore the evidence was closed and posted for arguments on 12.04.2016. The respondent filed two applications in



I.A.No.478 of 2016 to re-open and I.A.No.479 of 2016 to permit the respondent to examine the Doctor to ascertain the correct percentage of disability to prove the case of the petitioner. According to the respondent, certificate issued by P.W.2 Doctor is abnormal and therefore, the petitioner must be examined by another doctor. The concerned Officer of the respondent was not available on 07-03-2016 and therefore, the respondent side evidence was closed. Disability certificate issued by Dr.Shankarlal at the rate of 88.7% for the injury is not admitted and is quite abnormal. At the time of examination, P.W.2 admitted that no surgery was performed and he had not recommended for any surgery to the petitioner. In the circumstances, it is necessary for the respondent to ascertain the correct percentage of disability of the petitioner suffered in the alleged accident. To disprove the disability certificate issued by P.W.2 Dr.Shankarlal, is abnormal, the respondent filed the applications to engage some other medical expert or doctor in same field for better evidence and evidence of both parties. Failure to let in evidence on behalf of the respondent, is not willful and therefore, prayed for re-opening case.

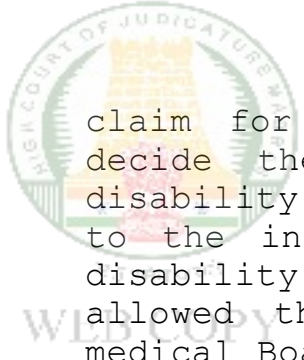
4.In the above said two applications, the petitioner filed counter affidavit and opposed the said applications and submitted that the respondent failed to let in evidence after taking number of adjournments. The learned counsel for the respondent cross-examined the P.W.2 Doctor and nothing was elucidated in cross-examination and therefore, there is no necessity to examine the petitioner by another Doctor.

5.The learned Judge considering all the materials on record and averments made in the affidavit and counter affidavit allowed both the applications holding that it is necessary to examine the petitioner by another Doctor with regard to percentage of disability suffered by the petitioner.

6.Against the said order, dated 09.06.2016 allowing the applications in I.A.Nos.478 & 479 of 2016, the petitioner has come out with the present Civil Revision Petitions.

7.I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and also perused all the materials available on record.

8.The contention of the learned counsel for the petitioner that the respondent did not avail the opportunity to let in oral evidence inspite of number of adjournments. The respondent in the cross-examination of P.W.2 doctor has not elucidated any answer to disprove the percentage of disability as certified by the P.W.2 Doctor. The respondent is seriously disputing the percentage of disability as certified by P.W.2. According to the respondent, percentage of disability as certified by P.W.2 is abnormal and therefore, petitioner must be examined by another doctor. In a



claim for compensation for the injury suffered, Court has to decide the nature of the disability and percentage of the disability in order to arrive at just compensation to be awarded to the injured claimant. In the present case, in view of the disability disputed by the respondent, the learned Judge has allowed the applications and referred to be examined by the medical Board at the cost of respondent in order to arrive at just compensation. In the circumstances, there is no illegality or irregularity in the order warranting interference by this Court.

9. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assitant Registrar(C)

/True copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Sivagangai.

+1cc to M/s.I.SUTHAKARAN, Advocate, in SR No.10842

AM/MR

AAM-CM MSA/21.03.2017 3P 3c

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