



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON 04.04.2018

DATED: 05.07.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) Nos.751 and 752 of 2018

and

CMP(MD) Nos.3308 & 3309 of 2018

The United India Insurance Company Limited,
Office at D.No.1, Post office Road,
Palayamkottai-02,
Tirunelveli,
Tamil Nadu.

.. Petitioner in both the CRPs

VS

1.A.Anto Peter Samras

2.Sri Ram Popular Service,
Office at No.4-105, Tiruchendur Road,
Palayamkottai,
Tirunelveli District,
Tirunelveli,
Tamil Nadu.

.. Respondents in both the CRPs

Common Prayer: Revisions filed under Article 227 of Constitution of India against the Fair and Decretal order dated 23.1.2018 passed in I.A.Nos.298 and 299 of 2017 in M.C.O.P.No.458 of 2014 on the file of the I Additional District Judge (FAC), Tuticorin.

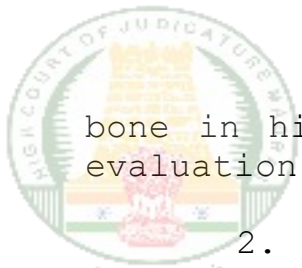
(In both the CRPs)

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.R.J.Karthick (for R1)

COMMON ORDER

These revisions are directed against the order dated 23.01.2018 passed in I.A.Nos.298 and 299 of 2017 in M.C.O.P.No.458 of 2014 on the file of the learned I Additional District Judge (FAC), Tuticorin, dismissing petitions to re-open the case and to direct the first respondent to appear before the Medical Board for the purpose of assessing the actual reason for a portion of the



bone in his right leg femur alleged to have been rotten and for evaluation of the first respondent's actual disability at present.

2. The first respondent had filed M.C.O.P.No.458 of 2014 claiming compensation of Rs.40,00,000/- for the injuries sustained by him in the road traffic accident on 30.08.2014. Before the Motor Accidents Claims Tribunal, trial commenced and the main O.P. was posted for orders. At this stage, the petitioner has filed petitions to re-open the case and to direct the first respondent to appear before the Medical Board for evaluation of the actual disability sustained by him in the accident.

3. Upon consideration of the rival submissions, the trial Court dismissed both petitions. Aggrieved by the same, the petitioner has preferred these Civil Revision Petitions.

4. The learned counsel for the petitioner submitted that originally the claim petition was filed seeking compensation of Rs.20,00,000/- and subsequently, by way of petition, the same was enhanced to Rs.40,00,000/- that too after examination of P.W.2 doctor. He would submit that now the petitioner contends that after the first round of examination of witnesses, he had undergone surgery and therefore, it has become necessary to refer him to the Medical Board to know about the actual disability sustained by him and for that purpose, the petitioner has filed these petitions.

5. According to the learned counsel, the trial Court failed to appreciate that the injured was claiming a huge compensation for the alleged injuries sustained by him and the trial Court was empowered to refer the claimant to the Medical Board. Therefore, it is very much necessary to refer the claimant to the Medical Board.

6. Per contra, the learned counsel appearing for the first respondent/claimant submitted that on the side of the first respondent, PW-2 doctor was examined way back on 24.04.2016 and through him the disability certificate has been marked. After 1½ years, the petitioner has filed petition to refer the first respondent to the Medical Board stating that the disability certificate Ex.P28 has not been issued by following the norms. In support of his submissions, the learned counsel cited the following decisions:

(i) The Branch Manager, TATA AIG General Insurance Co., Ltd., v. Prabhu and another, reported in 2016 (1) TN MAC 609 (DB).

(ii) The Branch Manager, TATA AIG General Insurance Co., Ltd., v. Prabhu and another, reported in 2017 (1) TN MAC 106 (DB).



7. The learned Tribunal while dismissing both the petitions observed that P.W.2-doctor was examined on 20.04.2016 and marked Ex.P28 disability certificate. It was also observed that in view of the decision of a Division Bench of this Court reported in 2017 (1) TN MAC 106, the request made by the petitioner to refer the first respondent to the Medical Board is unsustainable.

8. Let us consider, the proposition laid down by this Court in the Branch Manager, TATA AIG General Insurance Co., Ltd., v. Prabhu and another, reported in 2017 (1) TN MAC 106. The aforesaid decision was arising out of a Note dated 29.08.2016 prepared by the Registry of this Court, wherein certain clarifications have been issued by the Division Bench of this Court qua the judgment dated 12.04.2016 passed in C.M.A.No.2380 of 2015 (The Branch Manager, TATA AIG General Insurance Co., Ltd., v. Prabhu and another, reported in 2016 (1) TN MAC 609 (DB)).

9. The decision in Branch Manager, TATA AIG General Insurance Co., Ltd., v. Prabhu and another, reported in 2016 (1) TN MAC 609, the Hon'ble Division Bench of this Court considered the exaggerated assessment of disability by select group of Doctors without identifying basis for the same and mechanical reduction of the same by Tribunals by 5% to 10% to arrive at functional disability and held that such practice is not a healthy practice. In paragraph 23, the Hon'ble Division Bench held as under:

"23. For any and all the above reasons, we hereby deem it fit and proper to issue the following directions:

(i) We hereby direct that in Motor Accidents claims the Claims Tribunals shall issue a letter to Medical Board in the District of Tamil Nadu, within whose jurisdiction the Claim Petition was pending and in case there was no Medical Board in the said District to the nearest District Medical Board, to examine the injured Claimant/victim and issue a Certificate of Disability within such time as may be specified by the Claims Tribunal.

(ii) We hereby direct that the Medical Board/s shall assess the Permanent Disability or lack thereof as per the Disability (Permanent Physical Impairment) - Assessment and Certification - Guidelines & Gazette Notification - issued by Ministry of Social Justice & Empowerment, Government of India, - Regd No.DL33004/99 (Extraordinary) Part II, Section 1, June, 13, 2001 - published by National Institute for the Orthopaedically Handicapped.

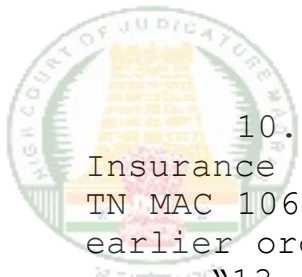
(iii) We hereby direct that the Medical Board shall have liberty to follow its procedures and practices or conduct tests as they may deem fit, for issuance of such Certificates of Disability



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while following the procedure laid down in the Manual above.

- (iv) We hereby direct that the Medical Board/s shall be at liberty to charge such fee as may be required from the Insurance Companies or Transport Corporations or such other contesting parties, as the case may be, to pay the same as part of the Costs of the proceedings, to the concerned Medical Board.
- (v) We hereby direct that the Claims Tribunal shall, upon receipt of the Certificate of Disability, in sealed cover from the Medical Board/s concerned, shall issue a certified copy of the said Certificate to the contesting parties, on Application.
- (vi) We hereby direct that Claims Tribunals shall mark the Certificates of Disability without need for any oral evidence or insisting upon the appearance of Medical Board official or personnel or Doctor, ordinarily, as a matter of course. However, in exceptional cases, this would not preclude the Claims Tribunals, for reasons to be recorded in writing, suo motu or at the request of the contesting parties to direct the author/s of the Certificate/s of Disability, from the Medical Board/s, to appear before the Claims Tribunal to answer clarifications, if any sought for.
- (vii) We hereby direct that the above said procedure and procedures shall come into force on and from 1.8.2016 and time granted, thereof, shall be utilized by all the stakeholders to arrange for necessary logistics support for smooth conduct of proceedings under the new dispensation.
- (viii) We hereby direct that High Court Registry shall issue a Circular on these directions along with the Judgment with reasons to be sent to Medical Board in all Districts of Tamil Nadu through the Registry of the District Courts in Tamil Ndu, as soon as possible.
- (ix) We hereby make it clear that it shall be open all stakeholders including the Registries and Medical Boards concerned, to approach this Court for any clarifications or changes or modifications they envisaged for the better implementation of this new dispensation, intended to serve the cause of the innocent Motor Accidents victims/Claimants, as the case may be and this Court shall be obliged to consider the same in the circumstances of the



10. In the case of Branch Manager, TATA AIG General Insurance Co., Ltd., v. Prabhu and another, reported in 2017 (1) TN MAC 106, the Hon'ble Division Bench of this Court clarified the earlier order and held as under:

"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 1.8.2016. In all cases, where Awards have been passed prior to 1.8.2016, the procedure in force, for issuance of Crossed Cheques in favour of Claimant of Claimant, prior to the said date shall operate. This would take care, to our mind, Query Nos.(i) & (ii) referred to in Paragraph 3 above.

13.1. As regards pending and part-heard cases, since Tribunals would pass Awards after 1.8.2016, the procedure prescribed in the two Judgments of 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 1.8.2016. 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."

11. In the case on hand, as rightly held by the learned Tribunal that the Doctor who examined and issued the disability certificate to the first respondent was examined as P.W.2 on 20.04.2016 and through him Ex.P28 disability certificate and Ex.P29 x-ray were marked. Thus, it is seen that the cut-off date fixed in the Branch Manager, TATA AIG General Insurance Co., Ltd., v. Prabhu and another, reported in 2016 (1) TN MAC 106, by the Hon'ble Division Bench would not apply to the case on hand, as the evidence of P.W.2-Dr.Ramaguru regarding disability was recorded on 20.04.2016 well prior to the cut-off date. Therefore, prayer of the petitioner to refer the first respondent to the Medical Board cannot be granted.

12. If at all the petitioner was not satisfied with the Doctor's assessment, they would not have cross-examined the Doctor earlier. But in this case, the petitioner cross-examined the PW.2-Doctor. At the time of cross-examination, the petitioner has ~~plea~~ referring the first respondent to the Medical Board. PW.2-Doctor, who issued the disability certificate has thoroughly examined the petitioner and after perusing the medical



records and also physical examination, he had issued Ex.P28 disability certificate. The order of the trial Court is well founded. There are no valid grounds to interfere with the order of the trial Court and hence, the Civil Revision Petitions are liable to be dismissed.

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13.In the result:

- (a) both the Civil Revision Petitions are dismissed;
- (b) the learned 1st Additional District Judge (FAC), Tuticorin, is directed to dispose of the MCOP.No.458 of 2014 within a period of two months from the date of receipt of a copy of this order, by conducting trial on day to day basis without giving any unnecessary adjournments to either parties. The parties are also directed to co-operate for early disposal of the MCOP. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writ)

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Sub Assistant Registrar

To

The I Additional District Judge (FAC),
Tuticorin.

+1. C.C. to Mr.R.J.KARTHICK Advocate SR.No.71562.
+1. C.C. to Mr.N.DILIPKUMAR Advocate SR.No.71323.

order made in
C.R.P. (MD) (PD) Nos.751 and 752 of 2018
and
CMP (MD) Nos.3308 & 3309 of 2018
05.07.2018

SDS/MMS/SAR-4/09.07.2018/6P/4C