



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD) (MD) No.989 of 2018
and C.M.P.(MD) No.4328 of 2018

M/s.Bajaj Allianz General Insurance Company Ltd.,
No.184/25, KPS Shopping Arcade,
Bye Pass Road, Madurai-10.

... Petitioner/Petitioner
/3rd respondent

-vs-

1. Sundar ... Respondent/Respondent/Petitioner
2. S.P.Sivakumar
3. Anubama
4. Vadivel ... Respondents/Respondents/Respondents
5. National Insurance Co.Ltd.,
Divisional Office, Promenade Road,
Cantonment, Trichy. ... 5th Respondent/5th Respondents
/5th Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order made in I.A.No.2231 of 2017 in M.C.O.P.No.875 of 2013 on the file of the Motor Accidents Claims Tribunal, (Special District Judge MCOP) Tiruchirappalli dated 22.12.2017 and allow the Civil Revision Petition.

For Petitioner : M/s.K.R.Shivashankari
For R1 to R4 : No Appearance
For R5 : Mr.D.Sivaraman

O R D E R

The claimant/1st respondent herein had filed M.C.O.P.No.875 of 2013 before Motor Accidents Claims Tribunal, (Special District Judge MCOP) Tiruchirappalli, claiming a compensation of Rs.5,00,000/- for the injuries sustained by him in the accident on 20.09.2010. During pendency of the said petition, the revision petitioner (hereinafter referred to as the Insurance Company) filed an application in I.A.No.2231 of 2017, seeking to refer the claimant to the Medical Board, Government Hospital, Tiruchirappalli to assess his disability and to obtain a Disability



Certificate therefrom and the said application was dismissed by the Tribunal, on the ground that the claimant cannot be made to run from pillar to post unnecessarily. Challenging the said finding, the present revision petition has been filed by the Insurance Company.

2. It is the case of the Insurance Company that the claimant has taken steps to examine the stock Doctor as witness for assessing the disability without there being any evidence that the claimant was treated by the so-called Doctor and therefore, the Tribunal must have allowed the application filed by the Insurance Company for referring the claimant to the Medical Board. It is the further case of the Insurance Company that the refusal of the Tribunal in not referring the claimant to the Medical Board would result in exaggerated assessment of disability without identifying any basis for the same. Therefore, it is prayed that in the interest of justice, the order passed by the Tribunal may be set aside and the claimant will be ordered to be referred to the Medical Board.

3. Learned counsel for the petitioner, in support her submission that the Court should refer the injured to the Medical Board for assessing the exact disability, has relied upon a judgment of the Hon'ble Division Bench of this Court in the case of *The Branch Manager, TATA AIG General Insurance Co. Ltd., vs. Prabhu*, reported in 2016 (1) TNMAC 609 (DB), wherein the Hon'ble Division Bench, while referring the claimant therein to the Medical Board, was pleased to observe as under:

"22. We are aware that the infrastructure must be in place before the Medical Boards for facilitating the issue of such certificates of disability. Equally, the stake holders need to get ready for this changed dispensation which would result in marking of the certificate of disability from the Medical Boards as a matter of course without need to have them marked through witnesses or be subjected to cross examination as before. There should be no difficulty to embrace this procedure is mandated to be Summary in nature (Sec.169). So be it. There cannot be complaint or grouse from either side for the remedy of credibility, authenticity allied with uniformity and consistency would overwhelm any other aspect. The stakeholders in this jurisdiction would get to gain immensely considering that the claimants/victims may no longer need to seek certification from Doctors or have them examined and matters disputed and delayed based on assessment of disability. Equally, the insurance companies and transport corporations, in particular, may have their major grouse and grievance of stock witnesses certifying disability be ruled out. Medical Board has the authority of law and is an independent body. The Medical Board is also required to assessed the permanent disability based on the Central Government circular dt.13/6/2001. The sorely missing element of uniformity and



consistency would surely lead to early disposal of claims and possible settlements of the same. Further, scope for dispute in appeals on divergence in assessments of disability would be considerably reduced. In effect, the procedure we have hit upon and devised for follow up and practice would go a long way in aiding and assisting the Parliamentary mandate to provide speedy succor and relief to innocent motor accidents claims. It would truly be a win win situation for all stakeholders concerned.

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, Sec 1, June,13, 2001- published by National Institute for the Orthopedically Handicapped.

iii) We hereby direct that the Medical Board shall be at liberty to follow its procedures and practices or conduct tests as they may deem fit, for issuance of such certificates of disability 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.

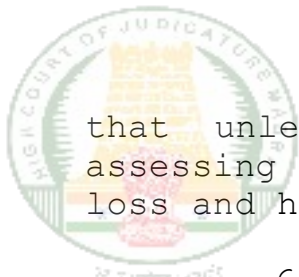
vii) We hereby direct that the above said procedure and procedure shall come into force on and from 1/8/2016 and time granted thereof shall be utilized by all the stakeholders to arrange for necessary logistics support for smooth conduct of proceedings under the new dispensation.

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 Boards in all Districts of Tamil Nadu through the Registry of the District Courts in Tamil Nadu, 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 case."

4. Heard the learned counsel for the petitioner. Though notice was served to R1, R3 & R4 and their names were printed in the cause list, there is no representation for them. R2 is reported to be dead. Learned counsel for R5 has stated that R5 is only a formal party.

5. It is seen that the claimant, while travelling in a car bearing Reg.No.TN-45-AR-0769 along with his colleagues and friends, met with an accident, on account of which, the owner of the said car died in the mishap and the claimant sustained grievous injuries all over his body and fracture on his right hip and leg, which led to immobility of the claimant. Before the Tribunal, the claimant examined P.W.2 / Doctor to prove his injuries, which according to the Insurance Company, is not an acceptable witness, as the said Doctor is a Stock Witness, adducing evidence almost in maximum number of cases before the Tribunal and therefore, pleaded for referring the claimant to the Medical Board at Trichy. It is the stand of the Insurance Company



that unless the claimant is referred to Medical Board for assessing his disability, the Company will be put to irreparable loss and hardship.

6. There is force in the contention raised by the Insurance Company. It is pertinent to mention here that unfair assessment without following established mode and manner would result in huge pendency of appeals and the assessment vested with Medical Boards would lend more credibility and authenticity and it could be inferred that certificates issued by Medical Board could be marked without requiring examination of Medical Doctors. The above view expressed by the Hon'ble Division Bench in the cited judgment (supra) has been further modified and clarified, while dealing with the case in *The Divisional Manager, Oriental Insurance Co. Ltd., Kannur v. Rajesh and another*, reported in 2017 (1) TNMAC 106 (DB) by the yet another Division Bench and therefore, it is apparent that the judgment rendered in that context has attained finality.

7. In view of what is stated hereinabove and following the judgments of the Hon'ble Division Bench of this Court, referred to supra, this Court is of the view that the order dated 22.12.2017 made in I.A.No.2231 of 2017 in M.C.O.P.No.875 of 2013 on the file of the Motor Accidents Claims Tribunal, (Special District Judge MCOP) Tiruchirappalli, is liable to be set aside.

8. In the result,

a) this Civil Revision Petition is allowed and the order dated 22.12.2017 passed in I.A.No.2231 of 2017 in M.C.O.P.No.875 of 2013 by the Motor Accidents Claims Tribunal, (Special District Judge for MCOP) Tiruchirappalli, is hereby set aside;

b) the Motor Accidents Claims Tribunal, Tiruchirappalli is directed to issue a letter to the Medical Board, Government Hospital, Tiruchirappalli to examine the injured / claimant / 1st respondent herein, with a direction to the Medical Board to issue a Certificate of Disability in a sealed cover, within a period of two weeks from the date of issuance of such letter;

c) the Motor Accidents Claims Tribunal, Tiruchirappalli, upon receipt of the Certificate of Disability from the Board, shall issue a certified copy of the said Certificate to the contesting parties on application;

d) the Motor Accidents Claims Tribunal, Tiruchirappalli is further directed to dispose of M.C.O.P.No.875 of 2013, within a period of three months from the date of receipt of the Certificate, bearing in mind the observations made hereinabove and in view of the observations of the Hon'ble Division Bench of this Court (cited supra).



No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To:

1. The Special District Judge for MCOP cases,
(Motor Accidents Claims Tribunal),
Tiruchirappalli.
2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.K.R.SHIVASANKARI, Advocate, SR.No. 68527

+1cc to Mr.D.SIVARAMAN, Advocate, SR.No. 68584

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