

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NO.3147 OF 2017
AND CMP NO.14772 OF 2017

Manikandan

...

Petitioner

VS.

1.K.Rani

2.Royal Sundaram Alliance Insurance Co. Ltd.,

Rep. by its Manager

No.1, Club House Road,

Anna Salai, Chennai - 600 002.

...

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 27.04.2017 made in I.A.No.679 of 2016 in MCOP No.149 of 2013 on the file of the Court of Subordinate Judge, Ranipet, Vellore District.

For Petitioner : Mr.T.P.Prabakaran

ORDER

This Civil Revision Petition is directed against the order referring the victim / claimant / petitioner to Medical Board for assessment of physical disability.

2. The second respondent/insurance company filed an interlocutory application in I.A.No.679 of 2016 in MCOP No.149 of 2013 under Section 169 of Motor Vehicles Act to refer the claimant/petitioner to Medical Board for the purpose of assessing his disability. The said interlocutory application was allowed. Aggrieved over the same, the claimant/petitioner has preferred the above Civil Revision Petition.

3. The learned counsel appearing for the petitioner/claimant would vehemently contend that he has already been examined by a qualified Doctor and he was also cross examined by the insurance company on 04.11.2015. The Doctor, who was examined as an expert witness is a retired Joint Director from Government service. Therefore, he cannot be treated as a stock witness nor his evidence can be rejected, more so, when he was subjected to cross examination.

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4. Relying on the judgment of a Division Bench of this Court in ***THE BRANCH MANAGER, TATA AIG GENERAL INSURANCE CO. LTD., VS. PRABHU AND ANOTHER [2016 (1) TN MAC 609 (DB)]*** the

learned counsel appearing for the petitioner / claimant further contended that referral to Medical Boards came into force with effect from 01.08.2016. Therefore, evidences taken on and after 01.08.2016 only can be referred to Medical Board and not in the case where evidence was concluded prior to the said date.

5. I have heard the submissions made by the learned counsel appearing for the petitioner and perused the materials available on record.

6. Section 169 of the Motor Vehicles Act confers power of a Civil Court on the Claims Tribunal. According to which, the Tribunal is conferred with the power to get opinion of one or more experts. In that view of the matter, it cannot be said that the power is curtailed with reference to the cut off date fixed by the Division Bench. Even assuming that a direction is given to follow a particular uniform procedure on a particular date, it will not curtail the powers of the Tribunal to refer the matter to Medical Board before the said cut off date. Therefore, I do not find any infirmity in the order passed by the Motor Accident Claims Tribunal. However, it is made clear that

physical disability cannot be substituted for functional disability. The Tribunal shall apply its mind to the distinguishing parameters of physical and functional disabilities for fixing the loss of earning capacity at the time of awarding compensation.

7. With these observations, the order dated 27.04.2017 passed in I.A.No.679 of 2016 in MCOP No.149 of 2013 by the learned Subordinate Judge, Ranipet, Vellore District is hereby confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

30.08.2019

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
TK

To

The Subordinate Judge
Subordinate Court
Ranipet, Vellore District.

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M.GOVINDARAJ, J.

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