



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.419 of 2019

and

C.M.P. (MD) No.2070 of 2019

The Branch Manager,
The New India Assurance Company Limited,
Tenkasi Road,
Rajapalayam.

... Petitioner/2nd respondent/2nd respondent

vs.

1.V.Muniyasamy ...1st respondent/Petitioner /Petitioner

2.C.Jesudhasan ...2nd respondent/ 1st respondent/ 1st respondent

PRAYER:- Civil Revision Petition filed the under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.No.696 of 2018 in M.C.O.P.No.87 of 2015 dated 05.01.2019 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Srivilliputtur.

For Petitioner : Mr.J.S.Murali

ORDER

This Civil Revision Petition has been filed to set aside the order dated 05.01.2019 passed in I.A.No.696 of 2018 in M.C.O.P.No.87 of 2015 by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Srivilliputtur.

2.I.A.No.696 of 2018 was filed by the first respondent herein/claimant for examination of certain witnesses by way of summoning them before the Tribunal, ie., to examine the Doctor of Madurai Lakshmana Multi Speciality Hospital, who gave treatment to the first petitioner herein/claimant for his ailment in the brain and to examine the Manager of the said hospital to prove the payment made by the first respondent herein/claimant for his treatment. According to the first respondent / claimant, in the medical board, which assessed his injury, there was no specialist in this field and therefore, he sought for summoning the Doctor who gave treatment to him.



3.The Tribunal after considering the contends raised by both side, allowed the petition stating that as far as the ailment of the petitioner, which is in the brain and in the nervous system, is concerned, it would be better to be assessed by the doctors in the Multi-Speciality Hospitals and hence, the reason stated by the first respondent herein/claimant was considered by the trial Court and the relief sought by the claimant was granted. Aggrieved by the said order, the petitioner herein/Insurance Company has preferred this present Civil Revision Petition.

4.In the grounds, the petitioner herein/Insurance Company contended that after having sent the first respondent herein/claimant to the Virudhunagar Medical Board for assessing the disability and for further examination, there is no necessity for summoning the private Doctor. The petitioner/Insurance Company has also brought to the notice of this Court that the Tribunal has not properly understood the principles laid down in the decision reported in 2017 (1) TNMAC 106 (DB), in which, the Division Bench of this Court has held that the petitioner shall be referred to be medical board to assess the disability.

5.On perusal of the records, it is observed that the first respondent herein/claimant filed a petition to examine the Doctor one Jeyakumar, who gave treatment to him for assessing the disability. On perusal of the petition, it is observed that the necessity for the claimant to summon the witnesses arose as there is no qualified doctor to assess the injury that is sustained on his brain.

6.On a perusal of records, this Court does not find any document filed by the medical board that there is no expert available in the above said board to assess the disability that is caused due to the injury. The said Doctor one Jeyakumar, has given treatment to the first respondent herein/claimant and regarding the disability, the expert in the said medical board can assess the same. Even if an expert is not available, the medical board themselves can arrange for an expert to assess the disability and the documents can be produced before the Tribunal, and it is for the Tribunal to assess the genuineness of the said documents at the very best.

7.In view of the above, the order dated 05.01.2019 passed in I.A.No.696 of 2018 in M.C.O.P.No.87 of 2015 by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Srivilliputtur. is set aside, with a direction to the Tribunal to assess the disability of the first respondent herein/claimant by an expert in the said medical board and if necessary, the medical board doctors can arrange the specialist doctors if it is lacking in the said board.



8. This Civil Revision Petition is allowed with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar (CS)

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To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal cum
Chief Judicial Magistrate court,
Srivilliputtur.

+1CC TO MR.J.S.MURALI, Advocate Sr. No. 51245

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TR (03.04.2019) 3P 3C