



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2019

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THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P (MD) Nos.1205 and 1206 of 2019

and

C.M.P (MD) No.6748 of 2019

M/s.Bajaj Allianz General
Insurance Company Ltd.,
rep. by its Branch Manager,
Coimbatore.

.. Petitioner in both CRPs.

Vs.

1.Sivamanikandan

2.Ravichandran

.. Respondents in both CRPs.

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India praying to direct the learned Additional District Judge to number the unnumbered I.A. Applications in I.A.SR.Nos.1481 and 1482 of 2019 in M.C.O.P.No.431 of 2012 on the file of the Motor Accident Claims Tribunal (Third Additional District Judge), Pattukottai, dated 08.07.2019 respectively.

For petitioner
in both CRPs.

: Mr.K.R.Shivashankari

COMMON ORDER

Against the orders of return, these revisions have been filed.

2.The first respondent / claimant filed M.C.O.P.No.431 of 2012 seeking compensation to the tune of Rs.25,00,000/- for the injuries sustained by him due to the accident caused by the driver of the second respondent, on 22.04.2012. During pendency of the same, the petitioner / Insurance Company has filed two interlocutory applications seeking to take out summons to the witnesses with suitable direction to them to tender oral evidence relating to Accident Register copies relating to the first respondent / claimant and also seeking to refer the first respondent / claimant to the Medical Board. The Motor Accidents Claims Tribunal has returned the said applications stating that the medical certificates with regard to the first respondent / claimant have already been marked as exhibits and based on the same, the Tribunal will fix the disability. Against which, the present Civil Revision



Petitions have been filed.

3.The learned counsel appearing for the petitioner / Insurance Company would submit that P.W.2, doctor has admitted in his cross-examination that he has not given treatment to the first respondent / claimant for the injuries sustained by him at the time of accident. Therefore, the petitioner / Insurance Company has filed the present petitions seeking to summon the Doctor who has issued the Accident Register and other related documents and also to refer the first respondent / claimant to the Medical Board, for assessing the disability. But the Tribunal has returned both the petitions. Thus, he prayed to set aside the same.

4.The learned counsel for the petitioner / Insurance Corporation would also rely upon the following Judgments of this Court:

(i) **2016(1) TN MAC 609(DB) [The Branch Manager, Tata AIG General Insurance Co. Ltd., Coimbatore v. Prabhu and Another].**

(ii) **2017(1) TN MAC 106(DB) [The Branch Manager, Tata AIG General Insurance Co. Ltd., Coimbatore v. Prabhu and Others].**

(iii) Order dated 06.07.2018 made in C.M.P.No.6376 of 2018 in C.M.A.No.2380 of 2015 **[The Branch Manager, Tata AIG General Insurance Co. Ltd., Coimbatore v. Prabhu and Others].**

5.Heard the learned counsel for the petitioner / Insurance Corporation and perused the materials available on record.

6.Perusal of records shows that the doctor who gave treatment to the claimant has not been examined before the Tribunal. The petitioner / Insurance Company has filed the present petitions seeking to take out summons to the doctor, who gave treatment to the claimant and also to refer the first respondent / claimant to the Medical Board for assessing the disability. The issue involved in this case is covered by the Judgment of this Court in **2016(1) TN MAC 609(DB) [The Branch Manager, Tata AIG General Insurance Co. Ltd., Coimbatore v. Prabhu and Another]**, wherein it has been held as follows:

"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".

has made further directions and clarifications issued for smooth implementation of directions issued in **2016(1) TN MAC 609(DB) [The Branch Manager, Tata AIG General Insurance Co. Ltd., Coimbatore v. Prabhu and Another]** and the same reads as follows:

"12. Therefore, the prayer of the Association that, since, the Medical Board are not upto the task assigned to them, the Tribunal should resort to the old procedure, in our view, should be met with directions issued by us. Thus, no such direction, as sought for by the Association, can be granted for the present.

13. As regard 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, 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 the 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.

13.3. Furthermore, the suggestions made by the learned Advocate General, as recorded by us in Paragraph 9.1, are also accepted.

13.4. Accordingly, medical Boards will convene at least two times a week. The Disability Certificates will be issued without fail within four (4) weeks from the date of receipt of reference from the Tribunals. Complicated cases will be referred to the nearest Hospital/College having multi-speciality facility. The Medical Board, while referring the matter, will articulate the area of concern. The reference will be accompanied with all relevant papers. The Claimant will be communicated the date on which his/her/its presence, if at all, is required. In case any additional Documents/Reports are required, necessary information will be given in writing, with a copy marked to the opposing party and/or the concerned Counsel.

14. Before we conclude, we may also make it clear that



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the directions contained, in the two Judgments of this Court, were issued, keeping in mind the best interests of the parties at hand. While the concern of the Court was to do away with the situation, which was rampant, I.e., the production of Doctor, who were Stock Witnesses, for the purpose of placing evidence on record with regard to the disability suffered, the Court was also concerned that the Compensation awarded by the Tribunals, should reach the beneficiaries directly, keeping in mind, that none of the procedures it chose to prescribe should operate in a manner, which would either create a logjam or, delay the adjudication of claims.

15. Therefore, while directions have been issued to the Tribunals to refer the matter to the Medical Boards, the Tribunals, will bear in mind, that, if the Witnesses produced by the Claimants are credible and the Presiding Officers are satisfied that the matter ought not to be referred to the Medical Boards, then they should proceed in the matter based on the appreciation of the material placed before them.

15.1. We make it clear that the directions issued by the Court did not take away the discretion of the Presiding Officer of the Tribunal, in that regard".

In the order dated 06.07.2018 made in C.M.P.No.7367 of 2018 in C.M.A.No.2380 of 2015, this Court has made further clarification and the same reads as follows:

"2. The Insurance Company has filed this petition with an apprehension that the Division Bench consisting of Rejiv Shakder, J and one of us (SVNJ), has passed an order modifying the original order dated 12.04.2016 made in C.M.A.No.2380 of 2015. Firstly, by means of this Miscellaneous Petition, the order dated 12.04.2016 cannot be clarified/reviewed/modified. Secondly, by means of a letter that has been addressed, no Court, more particularly in C.M.A., can review the order dated 12.04.2016. We have not reviewed the original order and for the purpose of disposal of the representation, this Court has made observations therein and it nowhere modified the original order dated 12.04.2016. The order dated 25.11.2016 is an order, whereby, nowhere the Division bench, has modified the original order dated 12.04.2016. It is made clear that the order dated 12.04.2016 will prevail. The clarification issued in the order dated 25.11.2016 has not watered down the earlier observation made in the order dated 12.04.2016. It is further made clear that Doctors, who have examined/treated the claimants, alone can be examined as witness".

7. It is seen that the learned Judge without giving an opportunity to the petitioner / Insurance Company has returned both the petitions. Therefore, in view of the above Judgments referred to supra, the orders of return passed by the Tribunal are set aside



and the matter is remitted to the Tribunal and the learned Judge is directed to number the interlocutory applications and after giving opportunity to the petitioner / Insurance Company to place all the materials, shall pass orders in the light of the above Judgments.

8. The Civil Revision Petitions are allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

9. Registry is directed to return the original interlocutory applications filed alongwith the revisions, to the petitioner forthwith, after retaining photocopies of the same.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar (CS)

smn

To

1. The Third Additional District Judge,
Motor Accidents Claims Tribunal,
Pattukkottai.

2. The Record Keeper,
E.R. Section,
Madurai Bench of Madras High Court,
Madurai.

(return the original interlocutory order
after retaining photocopies of the same)

+2CC TO MR.K.R.SHIVA SHANKARI, Advocate Sr. No.78306 & 78307

**COMMON ORDER MADE IN
C.R.P (MD) Nos.1205 and 1206 of 2019**

NS (CO)

TR (13.08.2019) 6P 5C