

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 28.08.2020	Delivered on 16.09.2020
---------------------------	----------------------------

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 586 of 2018
and
C.M.P.No. 3149 of 2018

The United India Insurance Company Limited
No.134, Greams Road, IV Floor, Anna salai,
Chennai-600006.

...Petitioner

-vs-

1.Venugopal
2.M.Raman

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 11th September, 2017, passed in I.A.No.52 of 2017, in E.C.No. 34 of 2016, by the Commissioner for Employees Compensation (Deputy Commissioner of Labour - I) at Chennai.

For Petitioner : Mr.J.Micheal Visuvasam

For Respondents: Mr.F.Terry Chella Raja for R1
R2 - No Appearance

O R D E R

This civil revision petition has been filed by the Insurance Company aggrieved by the dismissal of its application to refer the claimant to the medical board for its opinion in order to enable the Commissioner for Employees' Compensation to arrive at the just compensation payable to the claimant.

2. The original petition in E.C.No.34 of 2016 was filed by the first respondent herein seeking compensation for the injuries sustained by him in an accident that took place during the course of his employment. The claim is being opposed by the petitioner / Insurance company on various grounds. The nature and gravity of the injuries suffered by the claimant are also disputed by the Insurance Company. Even in the objections filed by the Insurance Company, the Insurance Company has sought for

referring the claimant to the medical board as per the judgment of the Hon'ble Division Bench of this Court in TATA AIG General Insurance Company Limited Vs. Prabhu and another reported in (2016) 1 TNMAC 609. During trial, after examination of the claimant, the Insurance Company filed the instant application in I.A.No.52 of 2017 seeking reference to the medical board.

3. This was opposed by the claimant primarily contending that the reference to the medical board is wholly unnecessary in the light of the provisions of the Employees' Compensation Act, 1923 particularly, the schedule thereto, which provides for a fixed percentage of disability for certain injuries. Therefore, it is the contention of the claimant that unlike cases arising under the Motor Vehicles Act, the discretion vested in the Commissioner, Employees' Compensation to refuse ascertaining of disability is very narrow and therefore, reference to medical board is not necessary. It is the further contention of the claimant that reference to the medical board will unnecessarily delay the proceedings, which would cause substantial prejudice to the claimant. The Commissioner, Employees' Compensation passed an order dated 11.09.2017, dismissed the application concluding that the application is pre-mature. The need or otherwise for an evaluation by the medical board can be decided after the evidence of the Doctor to be examined on the side of the claimant. The Commissioner, Employees' Compensation also concluded that if the evidence of the Doctor, who is examined by the claimant is credible and acceptable, reference to the medical board is not necessary. It is against this order, the Insurance Company has come up with this revision.

4. I have heard Mr.J.Micheal Visuvasam, learned counsel for the petitioner and Mr.F.Terry Chella Raja, learned counsel for the first respondent. Second respondent though served, is not appearing either in person or through counsel, duly instructed.

5. Mr.J.Micheal Visuvasam, learned counsel for the Insurance Company would contend in view of the provisions of Section, 4(i) (c)(ii) of the Employees' Compensation Act, in cases of injuries not specified in schedule I, the percentage of compensation has to be assessed by a qualified medical practitioner. This provision involves a certain amount of guess work in determining the percentage of disability caused by the injury. Therefore, according to the learned counsel, the reference to the medical board is essential to enable the Commissioner, Employees' Compensation to determine the compensation payable to the claimant precisely. He would also invite my attention to Section 11 of the Act, which enables the employer to subject the injured employee to medical examination by a qualified medical practitioner. Pointing out that the medical examination contemplated under Section 11 has to be conducted by the

employer and today after the expansion of the claims under the Employees, Compensation Act to wider area including motor accident claims, such medical examination at the instance of the employers has become almost extinct. Further arguing, the learned counsel would submit that the scope of an appeal under the Employees Compensation Act being restricted only to substantial question of law under Section 30 of the said Act and examination of the claimant by the medical board is very much essential, since the Insurance Company is precluded from agitating questions of fact before the appellate forum namely, this Court.

6. According to the learned counsel the very fact that the scope of the appeal is restricted sometimes results in grant of exorbitant compensation by the authority based on biased medical evidence that is placed by the Doctors, who are examined by the claimants. He would also point out that the Commissioner, Employees' Compensation, who are tasked with the determining of compensation are mostly neither legally qualified nor legally trained and their ability to appreciate the evidence is also not up to optimum required levels. Therefore, according to the learned counsel, examination of the claimant by the medical board in cases, where the injuries are not specified in the schedule to the Act would only help the Commissioner, Employees' Compensation in arriving at just compensation, when an element of guess work is involved.

7. The learned counsel would also rely upon the judgment of the Hon'ble Division Bench of this Court in Tata AIG General Insurance Company Ltd. Vs. Prabhu and another reported in (2016) 1 TNMAC 609. The learned counsel would also invite my attention to the judgment of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar & Another reported in 2010 (2) TNMAC 581, wherein the Hon'ble Supreme Court has held that the Tribunals, which are tasked with the object of determining compensation should not remain silent spectators or a neutral umpire as in a civil suit. The Tribunals must play a role of an active explorer, since their duty is to determine the just compensation and the cases either under the Motor Vehicles Act or under the Employees' Compensation Act are not adversarial litigations as civil suits. Mr.J.Micheal Visuvasam would also invite me to consider the provisions of the Section 56 of the Rights of Persons with Disability Act, 2016 and guidelines under the said Section notified on 04.01.2018.

8. Contending contra, Mr.F.Terry Chella Raja, learned counsel for the first respondent / claimant would submit that the directions issued by this Court in Prabhu's case reported in 2016 (1) TANMAC 609 have been substantially diluted in the subsequent judgments of this Court in 2017 (1) TANMAC 106 and

the further directions have also been issued by another Division Bench of this Court subsequently. Reliance is also placed by him on the judgment of another Division Bench of this Court in R.Pushpa Vs. Talari Parvathiah & Others reported in 2019 (1) TNMAC 46. I have considered the submissions of the learned counsel.

9. The question that arises is as to whether examination by the medical board should be made mandatory in a cases relating to employees' compensation or should it be restricted to cases where an element of guess work is involved in the determination of the compensation by the Commissioner and in cases where the Commissioner finds medical evidence that is available on record is not sufficient to enable the Tribunal to assess the just compensation.

10. As rightly pointed out by Mr.J.Micheal Visuvasam, learned counsel for the Insurance Company, an element of guess work is involved in cases where the injury is not one specified in the schedule I of the enactment. Schedule I to the enactment lists out certain injuries, which are mostly cases of amputation or loss of a body part. It does not include cases of fracture, which may give raise to a permanent total or permanent partial disablement. Therefore, necessarily the Commissioners, Employees' Compensation has to look into the medical evidence that is made available before them to arrive at the just compensation. It is needless to point out that this involves an element of guess work also. One should also not lose sight of the fact that an appeal against the order of the Commissioner, Employees' Compensation lies to this Court only on a substantial questions of law. This Court cannot go into the questions of fact in an appeal filed under Section 30 of the Act. The scope of the appeal under the Employees' Compensation Act, 1923 has been succinctly stated by the Hon'ble Supreme court in Golla Rajanna & Others Vs. The Divisional Manager & Others reported in 2017 (1) TNMAC 1. The Hon'ble Supreme Court has while concluding that the scope of the appeal is very limited has observed as follows:

"11. Under the scheme of the Act, the Workmen's Compensation Commissioner is the last authority on facts. The Parliament has thought it fit to restrict the scope of the appeal only to substantial questions of law, being a welfare legislation. Unfortunately, the High Court has missed this crucial question of limited jurisdiction and has ventured to re-appreciate the evidence and recorded its own findings on percentage of disability for which also there is no basis. The whole exercise made by the High Court is not within the competence of the High Court under Section 30 of the Act."

11. As already pointed out, in cases which are not covered by the schedule, Section 4(i)(c)(ii) provides that the compensation payable in case of permanent total disablement arising out of injuries which are not specified in the schedule to the enactment. The Commissioner, Employees' Compensation has to necessarily fall back on the medical evidence that is produced by the parties. Even though Section 11 provides for medical examination of the claimant / employee by the employer, with the extension of the scope of the enactment to cases arising out of accidents even outside the work place, in the course of the employment, employers and the fact that the Insurance is made available to cover such claims, the employers do not take the trouble of getting the employees to medically examined. It is common knowledge that cases arising under the Employees' Compensation Act have become almost akin to case arising under the Motor Vehicles Act, where the Insurance Companies are made to defend the cases on their own without any aid from the employers concerned.

12. Yet another aspect highlighted by Mr.J.Micheal Visuvasam should also, in my opinion, be borne in mind. The fact that the Commissioners of Employees' Compensation are not either legally qualified or legally trained persons and when the task of appreciation of evidence is vested in such persons, the element of risk of them misconstruing the evidence is more. No doubt, the Section 25A of the enactment provides for a time limit for completion of the enquiry under the Act but even today, the time period prescribed is followed more in breach than in compliance. The fact that the Act prescribes a time limit cannot deter the Tribunal from seeking the best evidence.

13. As already pointed out by the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar & Another reported in 2010 (1) TNMAC 581, the Tribunals should not be silent spectators or neutral umpires as in civil suits. They will have to be an active explorers and seekers of truth in determining the just compensation payable. In The Branch Manager, TATA AIG General Insurance Company Limited Vs. Prabhu and another reported in 2016 (1) TANMAC 609, the Hon'ble Division Bench of this Court had laid down the following guidelines for medical examination of the claimants in cases of injuries:-

"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."

14. No doubt, these guidelines were framed in a case arising under the Motor Vehicles Act but the same can be applied to a case under the Employees' Compensation Act also, where the injury is not one specified under the schedule. In 2017 (1) TNMAC 106, the another Division Bench of this Court had vested the discretion in the Tribunal to decide whether the medical evidence produced by the claimants are credible and if the Tribunal is satisfied with the evidence the directions issued in Prabhu's case (Supra) would not apply.

15. Looking at from any angle, the object of reference to the Medical Board is to weed out the element of guess work and reduce the uncertainty in the determination of just compensation. Therefore, I do not think that the Commissioner, Employees Compensation was right in dismissing the application filed by the Insurance Company and concluding that decision relating to the reference to the medical board could be taken after the evidence of the claimant's Doctor is recorded. I am of the considered opinion that at least in cases, which are not covered by the injuries mentioned in the schedule, the Commissioner, Employees' Compensation would be justified in referring the injured claimant to the medical board so as to have the final opinion on the nature of the injuries and the extent of disability caused by such injuries. The Division Benches, earlier, have laid down the procedure to be followed in such references. Once the medical board gives an opinion, the necessity of oral evidence, in respect of such opinion can also be dispensed with. This would definitely save lot of time in examination of the medical experts or Doctors of the claimant before the Commissioners concerned.

16. I therefore, conclude that wherever the request made by the Insurance Company or an employer for reference to the medical board, the Commissioner, Employees Compensation shall

refer the claimant to the medical board, if the injuries are not covered by the schedule to the enactment and the injuries are of such nature that there will be an element of guess work in deciding the extent of permanent disability caused by such injuries. The directions issued by the Division Benches of this Court in Prabhu's case reported in 2016 (1) TNMAC 609 and 2017 (1) TNMAC 106 would apply to cases arising under the Employees' Compensation Act also.

17. This revision is therefore, allowed and the Commissioner, Employees Compensation is directed to refer the claimant to the medical board and obtain the report of the medical board for determining the compensation payable to the claimant. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:-

1. The Commissioner for Employees Compensation
(Deputy Commissioner of Labour - I), Chennai.
2. The United India Insurance Company Limited,
No.134, Greams Raod, IV Floor, Anna Salai, Ch-6.

+1cc to Mr.M.Malar, Advocate, S.R.No.30296

C.R.P.No.586 of 2018
and C.M.P.No. 3149 of 2018

AJS (CO)
RV(23/11/2020)

WEB COPY