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C.R.P. (PD) .No.1372 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.1372 of 2017

and

C.M.P.No.6371 of 2017

Bajaj Allianz General Insurance Company Limited,
No.25/26, College Road,
Chennai – 600 034.

.. Petitioner

Vs.

1.S.Ragunathan

2.R.Boominathan

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 17.03.2016 made in M.P.No.187 of 2012 in M.C.O.P.No.1094 of 2010 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Chennai.

For Petitioner : Mr.Michael Visuvasam

For R1 : Mr.A.G.F.Terry Chella Raja
for Ms.M.Malar

For R2 : Not ready in notice

**ORDER**

(The matter is heard through “Video Conferencing/Hybrid Mode”).

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This Civil Revision Petition is filed against the fair and decretal order dated 17.03.2016 made in M.P.No.187 of 2012 in M.C.O.P.No.1094 of 2010 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Chennai.

2.The petitioner is 2nd respondent in M.C.O.P.No.1094 of 2010 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Chennai. The 1st respondent / claimant filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.02.2010 against the 2nd respondent and petitioner. In the said M.C.O.P., the petitioner filed M.P.No.187 of 2012 under Section 169 of Motor Vehicles Act, 1988 read with Section 151 C.P.C. for a direction to the 1st respondent to subject himself for being examined by a Medical Board for an independent evaluation of continuing permanent disability of 1st respondent. According to petitioner, in the claim petition, 1st respondent examined Dr.J.R.R.Thiagarajan as P.W.2 and marked Ex.P6/disability certificate which shows that 1st respondent suffered disability



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at 75%. P.W.2/Doctor during cross examination, in his evidence has admitted that he has not treated the 1st respondent for the injuries sustained by him. He examined the 1st respondent after 2 years of accident and he had not gone through the continuous treatment records of 1st respondent. Further P.W.2/Doctor is not a specialist in Orthopaedics. P.W.2/Doctor has also admitted that he has not seen the radiology report of the 1st respondent. P.W.2/Doctor has not followed any of the guidelines issued by the Medical Council of India. He has assessed the disability of 1st respondent at random and assessed the disability excessively. The 1st respondent is working as Police Head Constable and is continuing in his service. He has not lost his earning capacity or not suffered any functional disability in carrying on his service in the Police Department. In view of the above facts and excessive disability assessed by P.W.2/Doctor, direction to examine the 1st respondent by Medical Board consisting of panel of specialised Doctors is necessary and prayed for allowing M.P.No.187 of 2012.

3.The 1st respondent filed counter affidavit and submitted that P.W.2/Doctor examined the 1st respondent in person clinically and through equipments and also perused the Hospital documents. P.W.2/Doctor was



former Professor in Surgery and Traumatology and Chairman of Medical Board. He retired from service. Hence, there is no need for the experts to depend upon the radiology report to find out the disability through X-Ray.

The 1st respondent has also stated in the counter affidavit the details of injuries sustained by him in the accident and treatment taken as inpatient from 12.02.2010 to 04.03.2010 at Sri Ramachandra Medical Centre, Chennai-600 116. The 1st respondent has further stated that P.W.2/Doctor assessed the disability only for the injuries sustained by him. P.W.2/Doctor assessed the disability of the 1st respondent at 55% for limping and mandible fracture; for the mal-union of Ramus part, the 1st respondent is not able to chew the food and hence, another 20% disability was assessed by P.W.2/Doctor, totaling 75% disability for two parts of the body. The petitioner has filed the present petition only to avoid their liability and to drag on the proceedings. The petitioner / Insurance Company has no locus standi to question the disability assessed by the Medical expert who has long period of service in the Medical field and prayed for dismissal of petition filed by the petitioner.

4.The Tribunal considering the averments in the affidavit, counter



affidavit and judgment of this Court reported in **2004 ACJ 918, [R.James Vs.**

Asst. Manager, National Insurance Company Limited], dismissed

M.P.No.187 of 2012 filed by the petitioner.

5. Against the said order dated 17.03.2016 made in M.P.No.187 of 2012, the petitioner has come out with the present Civil Revision Petition.

6. The learned counsel appearing for the petitioner reiterated the averments in the affidavit filed in support of the above petition and further submitted that no prejudice will be caused to the 1st respondent if he subjects himself for examination by Medical Board. The petitioner who is custodian of public funds will suffer serious and irreparable loss and hardship if an opportunity is not given for proper assessment of exact nature and extent of permanent disability of 1st respondent that he has suffered in the accident. In support of his contention, the learned counsel appearing for the petitioner relied on the following judgments:

(i) The judgment of the Hon'ble Apex Court reported in **2011 ACJ 1, (Raj Kumar Vs. Ajay Kumar and another)**;



(ii) The judgment of this Court reported in **2016 (1) TNMAC 609 (DB), [The Branch Manager, TATA AIG General Insurance Company Limited Vs. Prabhu and another]**;

(iii) The judgment of this Court reported in **2017 (1) TNMAC 106 (DB), [The Branch Manager, TATA AIG General Insurance Company Limited Vs. Prabhu and another]** and

(iv) The judgment of this Court reported in **2017 (2) TNMAC 817, (Iffco Tokio General Insurance Company Limited Vs. Balamuthu and another)**.

7.The learned counsel appearing for the 1st respondent submitted that the petitioner has come out with the present petition only to delay the proceedings and to avoid payment of compensation to the 1st respondent. The 1st respondent examined P.W.2/Doctor, who was the former Professor in Surgery and Traumatology and Chairman of Medical Board. Only after examining the 1st respondent clinically, P.W.2/Doctor has assessed the disability of the 1st respondent as 75%. P.W.2/Doctor also gave oral evidence substantiating the disability assessed by him. The 1st respondent has proved the disability and assessment of P.W.2/Doctor is proper and valid and there is no necessity for referring him to Medical Board for assessment. The learned



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counsel for the petitioner has cross examined P.W.2/Doctor and also examined his witness before the Tribunal and when the claim petition was posted for arguments, the petitioner has come out with the present petition only to avoid their liability. In support of his contention, he relied on the judgment of this Court reported in **2017 (2) TNMAC 817**, *cited supra*, relied on by the learned counsel appearing for the petitioner and prayed for dismissal of the Civil Revision Petition.

8. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

9. From the materials on record, it is seen that when the M.C.O.P. was posted for petitioner's and 2nd respondent's further evidence, the petitioner / Insurance Company has come out with the present petition. According to learned counsel appearing for petitioner, P.W.2/Doctor is stock witness and his assessment of permanent disability of 1st respondent is excessive. According to learned counsel appearing for petitioner, P.W.2/Doctor examined the 1st respondent only after two years of accident and has assessed



the disability without following any guidelines. Hence, as per the judgment of the Division Bench of this Court, the 1st respondent has to be referred to the Medical Board for proper assessment of disability. A reading of the judgment reported in **2016 (1) TNMAC 609 (DB)**, *cited supra*, reveals that referring an injured claimant will come into force with effect from 01.08.2016. In the subsequent judgment reported in **2017 (1) TNMAC 106 (DB)**, *cited supra*, it has been clarified that judgment of earlier Division Bench referring the injured person to Medical Board will come into effect from 01.08.2016. It is further clarified in paragraph No.13.2 of the said judgment that when evidence with regard to permanent disability has already been recorded and matter is ready for hearing, the direction issued for referring the matter to the Medical Board would not apply. In paragraph No.15 of the same judgment, the Division Bench of this Court held as follows:

“... 15. Therefore, while directions have been issued to the Tribunal 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



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proceed in the matter based on the appreciation of the material placed before them.”

10. In the present case, the petitioner has filed the present petition on 29.10.2012 and the same was dismissed on 17.03.2016, holding that the learned counsel for the petitioner cross examined P.W.2/Doctor and examined the witness on their behalf. In view of the same, the Division Bench judgment relied on by the learned counsel appearing for the petitioner for referring the 1st respondent to Medical Board will not apply as the direction given came into effect only with effect from 01.08.2016. In the judgment of the Division Bench of this Court reported in **2017 (1) TNMAC 106 (DB)**, *cited supra*, it has been clarified that when evidence is already recorded and claim petition is ready for hearing, the direction to referring the claimant to Medical Board will not apply. It is further held that if Tribunal satisfies the credibility of witnesses, there is no necessity to refer the claimant to the Medical Board. In the judgment reported in **2017 (2) TNMAC 817**, *cited supra*, [My Order], I held that when the Insurance Company cross examined P.W.2 to P.W.4/Doctors who assessed the disability of the claimant, there is no necessity to refer the claimant to the Medical Board. Further as per the judgment of the Hon'ble Apex Court reported in **2010 (2)**



TNMAC 581 (SC), (Raj Kumar Vs. Ajay Kumar), the Hon'ble Apex Court

has held that the Tribunal has to decide whether the permanent disability would affect the earning capacity of the claimant and what action that claimant would carry on inspite of permanent disability and what he could not do as a result of permanent disability. In the present case, this makes it clear that the Tribunal has ample power to decide whether assessment of permanent disability by P.W.2/Doctor is proper and valid and to what extent it affects the activities of the 1st respondent. Further when the petitioner has let in evidence and claim petition is posted for further evidence of petitioner and 2nd respondent, the present petition has been filed and hence, the same was rightly dismissed by the Tribunal. The accident has occurred on 12.02.2010 and the petitioner has objected for assessment of P.W.2/Doctor as P.W.2/Doctor examined the 1st respondent after two years of accident. Now 11 years have lapsed from the date of accident and no useful purpose will be served referring the 1st respondent to Medical Board. The learned Judge has considered the entire materials and dismissed the application by giving cogent and valid reason. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.



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11.For the above reason, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

29.10.2021

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Index : Yes / No

Internet : Yes / No

To

The learned Special Subordinate Judge No.I,
Motor Accident Claims Tribunal,
Chennai.



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C.R.P. (PD) .No.1372 of 20

V.M.VELUMANI, J.
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C.R.P.(PD).No.1372 of 2017

29.10.2021