

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 220 OF 2023**

Namdev Mardolkar	... Petitioner
<i>Versus</i>	
Chintamani Hemant Amonkar & anr.	...Respondents

**Mr. Paresh Pandurang Sawant, Advocate for the
Petitioner.**

Mr. Amey Kakodkar, Advocate for the Respondent No.2.

**CORAM: M. S. KARNIK, J
DATED: 15th JUNE 2023**

ORAL ORDER

1. Heard learned Counsel for the applicant and learned counsel for the respondent no.2.

2. The petitioner is the claimant in a Claim Petition filed for compensation under the Motor Vehicles Act. The claim petition is pending before the Presiding Officer, Motor Accident Claims Tribunal, at North Goa, Panaji, Goa, under Section 166 of the Motor Vehicles Act.

3. The office report indicates that respondent no.1 is yet to be served. However, learned Counsel for the petitioner submitted that an Advocate's notice has been duly served on respondent no.1. The respondent no.1 is the driver of the offending vehicle. The vehicle was insured with the respondent no.2. The respondent no.2-

Insurance Company is duly represented by their counsel. The petition was opposed by learned counsel for the respondent no.2.

4. In the claim petition, at paragraph 24, the petitioner has stated that after the accident when he suffered a fracture on his right leg, he was operated on 11.12.2019 and subsequently discharged. He however remained bed-ridden due to said injury and due to which he has suffered secondary diseases such as hypertension which led to a stroke sometime in August, 2020. Primary injury of his fracture caused neurovascular related ailments due to the immobility induced on him due to the accident. Such a claim made by the petitioner obviously will be tested by the Tribunal on the basis of the evidence.

5. During the pendency of the claim petition, the petitioner filed an application on 08.04.2023 to place on record a disability certificate of claimant. In the application at paragraphs 2, 3, 4 and 5, it is stated thus :

“2. Subsequent to the accident suffered by the claimant at the hands of the respondent no.1 on 10.12.2019, the claimant was operated upon for fractures in his leg and was recommended complete bed-rest. The claimant was not able to regain his walking ability as the fracture did not heal. During this period, of bed rest, lack of OPD facilities at GMC due to Covid Pandemic induced lockdown, sometime around August 2020, the claimant

who suffers from hypertension, suffered a paralytic stroke which left him significantly paralyzed.

3. The claimant applied for himself to be examined by the Disability Board at Goa Medical College, who upon examining the claimant issued the above mentioned certificate on 08.04.2022.

4. The said certificate indicates the claimant is paralyzed, first due to the accident leading to the fracture in his leg which led to hypertension and in turn the patient suffered a stroke. His disability score is at 80%.

5. The Disability certificate dated 08.04.2022 annexed herein is very relevant to the above mentioned claim petition and will help this court to establish the nature and gravity of the medical illness suffered by the claimant and to do justice in the matter.”

The petitioner therefore prayed for production of medical disability certificate.

6. A reply was duly filed by the respondent no.2 opposing the production of the said document. No reply was filed by the respondent no.1 opposing the application for production of disability certificate.

7. The Tribunal by the impugned order dismissed the application with liberty to the claimant to take steps in the matter to get himself examined for the purpose of ascertaining the disability suffered by

him as a result of the accident in this case. The Tribunal observed that the certificate of disability sought to be produced by the claimant is in respect of the disability suffered by him due to the Cerebrovascular accident of the Right hemiplegia, which in the considered view of the Tribunal, was not relevant for the purpose of his inquiry.

8. In my opinion, there was no question of prejudice being caused to any of the parties if the application were to be allowed. In any case, as set out herein before, in paragraph 24 of the claim petition, the petitioner had stated that he suffered secondary disease such as hypertension which led to a stroke in August 2020, the primary reason being due to the fracture suffered by the petitioner as a result of the accident.

9. The contention of the petitioner that such a disability is a consequence of the accident suffered, is a question which obviously has to be gone into by the Tribunal on its own merits on the basis of the evidence adduced.

10. At this stage, there was no difficulty in allowing the application filed by the petitioner. It needs to be borne in mind that in such matters involving claims in accident cases, a liberal approach needs

to be adopted considering the beneficent object for which statute has been enacted.

11. The claim petition, therefore, is allowed. The impugned order is set aside. The application dated 12.07.2022 for production of the medical disability certificate dated 08.04.2023 is allowed.

12. All contentions as to the relevance of the documents are kept open.

13. Petition stands disposed of. No costs.

M. S. KARNIK, J

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