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C.R.P.No.3352 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P. No.3352 of 2024

and

CMP.No.17997 of 2024

The Chief Executive Claim Officer,
M/s. Bajaj Allianz General Insurance Company Ltd.,
Old No.276 & 277, New No.497, 498,
Isanakatima Building, 5th Floor,
Poonamallee High Road,
Opposite to Tamilnadu Pollution Control Board Building,
Arumpakkam,
Chennai – 106.

... Petitioner

-Versus-

Wajidbasha

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 08.06.2023 passed by the learned Motor Accident Claims Tribunal (Sub Judge) at Gingee in I.A.No.2615 of 2022 in MCOP.No.292 of 2016.

For Petitioner : *Ms.V.Vikma for*
Mr.Michael Visuvasam
For Respondent : *Mr.M.Santhanaraman*



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ORDER

This civil revision petition arises against the order passed by the Motor Accident Claims Tribunal, Subordinate Judge at Gingee in I.A.No.2615 of 2022 in MCOP.No.292 of 2016 dated 08.06.2023.

2. The civil revision petitioner is the Bajaj Allianz General Insurance Company Limited. The respondent is the claimant.

3. The claimant approached the Motor Accident Claims Tribunal at Gingee seeking compensation of Rs.10,00,000/-. According to the claimant, he was riding pillion in a bike on Tirupathur to Tiruvannamalai Main Road. When they reached Nagarajanpatti Cross Road, an auto which was travelling in the same direction dashed against the bike. This accident resulted in the claimant suffering multiple injuries. Hence, he was admitted to Christian Medical College at Vellore. According to the claimant, the accident took place only due to the rash and negligent act of the driver of the auto. The civil revision petitioner is the insurer of the said vehicle.



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4. During the course of trial, the claimant was examined by Department of Psychiatry, Government Villupuram Medical College and Hospital at Villupuram. They issued a certificate stating that he is suffering from 70% mental impairment. It was also certified that the certificate will be valid for a period of five years. In addition, the claimant was also certified as suffering from 70% disability by the District Differently Abled Welfare Officer on 06.08.2019. Both these documents have been exhibited before the Court as Ex.P4.

5. Following the judgment of the Division Bench of this Court in ***The Branch Manager, TATA AIG General Insurance Co. Ltd., v. Prabhu and another, 2016 1 TNMAC 609 (DB)***, the learned Claims Tribunal referred the claimant for examination by the medical board. The medical board also examined the claimant and confirmed the findings that had been returned by the Professor of Psychiatry, Government Villupuram Medical College and Hospital as well as the District Differently Abled Welfare Officer at Villupuram. They gave a certificate that the claimant is suffering from 70% disability.



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6. An application was taken out by the civil revision petitioner/insurer before the learned Tribunal at Gingee in I.A.No. 2615 of 2022 in order to examine the Chairman, Medical Board, Chengalpet Medical College and Hospital, Chengalpet who had issued the certificate for the purpose of deposing on the contents of the document.

7. The claimant, taking into consideration the fact that the matter is being prolonged, tendered no objection to the said application. Despite the fact that the claimant has no objection, the learned Tribunal as the name of the Doctor had not been mentioned in the summon, went on to dismiss the application. Hence, this revision.

8. Ms.V.Vikma representing Mr.J.Michael Visuvasam for the claimant/civil revision petitioner and Mr.M.Santhanaraman for the insurer/respondent.

9. The narration of the aforesaid facts would go to show that the two authorities namely the Professor of Psychiatry, Government Medical College,



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Villupuram as well as the Chairman, Medical Board, Chengalpet Medical

College have certified that the claimant is suffering from 70% disability. In the normal course of events, a certificate of disability issued by the medical board should be received as evidence. However, the Division Bench itself in paragraph 23 (vi) had stated that in an exceptional cases, at request of the contesting parties, the Tribunal has the power to summon the author of the certificate of disability to appear before the court and to depose in this regard.

10. Ms.Vikma would submit that the medical certificate though states the disability of the claimant as 70%, the reasons on the basis of which they have arrived has not been stated. She would plead that unless and until the reasons are stated, the Tribunal ought not to have accepted the certificate as it is. It is only for that purpose that they had taken out an application.

11. When the matter came up for admission, I had requested the learned counsel for the civil revision petitioner to serve notice on the respondent. The respondent has been served and Mr.M.Santhanaraman represents the claimant.

12. Mr.M.Santhanaraman would submit that the matter has been pending



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from the year 2016. He adds the petitioner, who has been suffering from mental disabilities on account of the accident, due to the pendency has been subjected to irreparable loss and prejudice. In order to ensure that the insurance company does not drag on the proceedings, the claimant had tendered “no objection” for the application to be allowed. He would draw my attention to Ex.P4 and state that the three authorities have found that he is suffering from 70% disability namely Professor of Psychiatry in Villupuram, District Differently Abled Welfare Officer as well as the Medical Board, Chengalpet. He would state that he has no objection for the insurance company to summon the author of the document. But he would state that entire proceedings to be completed within a particular date.

13. I have carefully considered the submissions of the parties and gone through the records.

14. This court had evolved the concept of examining the claimant on the percentage of disability and the judgment cited supra. Even in the said judgment, it was made clear that in case the parties to the claim petition dispute the certificate, it is open to the court to summon the author of the document. In



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the present case, the medical certificate that has been tendered is at the instance of the Chairman, Chengalpet Medical College and Hospital, Chengalpet. The name of the person, who examined the claimant, will not be within the knowledge of the insurance company. This is because the examination of the claimant took place in the absence of a representative of the insurance company.

15. The exceptional circumstances that is pleaded by Ms.Vikma is that no reasons have been given in the medical certificate and the disability as to how they concluded that the petitioner is suffering from 70% disability. She also referred to Ex.A4 in order to substantiate this point. Therefore, I find some merit in the case of the civil revision petitioner. At the same time, I have to take into consideration the submission of Mr.M.Santhanaraman. The accident has taken place at least 8 years ago and the claimant is suffering without seeing the colour of the coin.

16. Both sides agree that the case is listed for hearing on 04.11.2024 for respondent side evidence.



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17. Hence, while setting aside the order of the Tribunal refusing to issue summons, I will issue the following directions:

(a) the learned subordinate judge is requested to advance the hearing from 04.11.2024 to 23.09.2024.

(b) the insurance company will not await the examination of the author of the disability certificate. It shall proceed further to tender evidence on its behalf.

(c) the Motor Accident Claims Tribunal shall issue summons to Chairman, Medical Board Chengalpet Hospital or any competent person, Chengalpet to come and depose before the Court on any date between 23.09.2024 and 23.10.2024. It is up to the insurance company to ensure that the summons are served on the Chairman Medical Board Chengalpet. If necessary, the Tribunal can also issue handover summons to the insurance company.

(d) It is the lookout of the insurance company to ensure that the Chairman of the Medical Board or any person, who is connected with the disability certificate, is brought forth before the court on or before 23.10.2024.

(e) In case the witness has not brought forth before 23.10.2024 then the Tribunal shall proceed further and pronounce the judgment in the claim petition



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on the merits of the case.

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18. With the above direction, this civil revision petition stands allowed.

No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

Speaking Order/Non-speaking order

Neutral Citation : Yes/No

To

1.The Motor Accident Claims Tribunal (Sub Judge) at Gingee



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V.LAKSHMINARAYANAN, J.

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