



C.R.P(PD)(MD)No.2731 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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Minor Sidharth
rep. by his natural guardian/father
Prabhu ... Petitioner/Petitioner/Petitioner

VS.

1.Ramamurthy ... Respondent/Respondent/1st Respondent

2.The Manager,
HDFC ERGO General Insurance Company Ltd.,
B-1, CC-1, Rakha Towers,
No.248-B, Kamarajar Salai,
Madurai. ... Respondent/Respondent/2nd Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.1210 of 2023 in M.C.O.P.No.1942 of 2018 on the file of the Special Sub Court for MCOP Cases, Madurai dated 05.08.2023.

For Petitioner : Mr.K.Kumaravel
For Respondents : Dispensed with for R1
Mr.J.S.Murali for R2



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ORDER

The Civil Revision Petition is filed against the order dated 05.08.2023 made in I.A.No.1210 of 2023 in M.C.O.P No.1942 of 2018 on the file of the Special Sub Court for MCOP Cases, Madurai.

2.By the said interlocutory application, the petitioner had prayed the Tribunal to refer him to the very same Medical Board which assessed the disability to reassess him with the presence of one Ortho specialist.

3.The case of the petitioner is that the minor petitioner suffered a fracture in right leg just above the knees. When he was sent to the Medical Board for assessment, by the report dated 12.01.2022, the Medical Board assessed the total disability as 12%. According to the petitioner, his disability is more and hence the petition.

4.The petition was resisted by the respondents. The trial Court considered the case of the parties and rejected the petition. The



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trial Court rejected the petition for two reasons. Firstly, the trial Court found that the the minor child is taking part in swimming competitions and is winning laurels and therefore, the child must be alright and cannot claim a disability percentage of more than 12. The second reason is that merely because the Orthopedician is absent in the Medical Board, the same would not render the medical opinion invalid. As against which, the present civil revision petition is filed.

5.The learned counsel for the petitioner would rely upon the Assessment and Certification Guidelines and Explanations issued on behalf of the National Institute for The Orthopedically Handicapped persons, which is based on the guidelines and gazette notification of the Ministry of Social Justice and Empowerment, Government of India. He would submit that as per the guidelines an expert from the speciality from the concerned disability subject should be part of the Board. He would further submit that the said guidelines also further provide that in case a person is aggrieved of his assessment of disability percentage, he can seek review by the same Medical Board



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and even then if he is aggrieved, he can file further appeal upto the Director General of Health Services, Government of India and the assessment of the disability percentage in the appeal will be final. Therefore, the trial Court ought to have considered the same and taken a decision in the matter.

6.Per Contra the learned counsel appearing on behalf of the second respondent would firstly submit that the trial Court considered the facts in detail. When the minor son is participating in so many competitions and has also won so many certificates, on the basis of the principles of *res ipsa loquitur*, the trial Court concluded that the child does not have any disability at all and in any event cannot claim larger than 12%. If this kind of petitions, filed by the parties are allowed by this Court, then the same would open floodgates and in every case, the parties would be aggrieved by the percentage fixed and that would only result in protracting of the proceedings. Only to avoid delay and contest in respect of the percentages of disability, the very idea of examination of the person by a Medical Board is mooted and is



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ordered by our Court earlier and now, which is followed uniformly in all cases. Therefore, the present application would defeat the very purpose. This apart, when the earlier civil revision petition was filed in the connected matter, the same was dismissed by this Court by an order dated 10.03.2023 in CRP(MD)No.480 of 2023.

7.I have considered the rival submissions made on either side and perused the material records of the case.

8.Firstly, with reference to the earlier order made in C.R.P(MD) No.480 of 2023, it can be seen in paragraph No.4, this Court has categorically held that the minor petitioner had suffered injuries and a separate M.C.O.P. is filed in MCOP.No.1942 of 2018 and this Court has categorically held that application, if at all, should be filed in the said MCOP and not in MCOP No.1941 of 2018, which is filed in respect of the injuries of the father. Therefore, in the teeth of the said observations, the present application is correctly filed. As far as the reasoning by the trial Court is concerned, the reasoning that the



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appropriate expert need not be there in the Medical Board is directly against the guidelines, which is framed in this regard. The relevant portion of the guidelines is extracted here under:-

"Authority: As per the act, authorities to give disability certificate will be a Medical Board duly constituted by the Central and State Government. The Medical Board should consist of at least three members. Out of which, one shall be a specialist in the concerned disability subject."

9. Here the injury is a fracture just above the knee and therefore, the concerned speciality is Orthopedics. On a perusal of opinion of the Medical Board, it is seen that no Orthopedician was present in the Medical Board. Therefore, the said reasoning is incorrect. As a matter of fact, the guidelines provide a review by the same Medical Board and also the appeal. The relevant provision is quoted hereunder:-

"Appeal: In case of controversy arises on percentage of disability given by a board, the individual can appeal to the same board to reassess his/her disability. The board is authorized to consider and reassess the individual and modify



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its certificate with reasons. In case of further controversy, the individual can approach to higher state government medical authority to get reassessed by board/designated authority. The Director General Health Services, Government of India shall be final appellate authority."

10. Therefore, if any person is dissatisfied with the Medical Board and assessment of disability, he can always request the same Medical Board for reassessment and even then, if he is aggrieved further appeal is also provided. Therefore, there is no reason to deny the present petitioner of the said chance.

11. As far as the other reasoning of the trial Court that the petitioner is winning the swimming competition is concerned, whether a person has a disability or not and if so, how much percentage is for the expert to decide. A person, who is having a disability, will have the willpower and will participate in the competition and will win laurels. For instance, consider athletes participating in para-sports. In a high jump competition, they will clear a height which most of us cannot. A



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person having disability with his hands, and drawing by using his legs, can be a better artist than most of us. Therefore, the person's achievements and laurels or participating in the competitions, cannot be the reason to deny proper evaluation. The same would be a stereotypical assumption of the Court and is not based on expert opinion. Therefore, the percentage of disability has to be decided only by the experts in the field as per the guidelines framed by the Government and the Court cannot substitute its own opinion.

12.As a matter of fact, the petitioner is running the risk by asking for reassessment at this stage. It is made clear that once the case is sent for reassessment and if the assessment percentage is lesser, thereafter, once again the petitioner cannot go back. Therefore, with the said condition and in the special facts and circumstances of the instant case, where, the claimant has suffered fracture and he is an athlete and considering the overall facts and circumstance the case, I am inclined to allow the prayer of the revision petitioner.



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13. Accordingly, the Civil Revision Petition is allowed on the following terms:

(i) The order dated 05.08.2023 made in I.A.No.1210 of 2023 in MCOP No.1942 of 2018 on the file of the Special Sub Court for MCOP Cases, Madurai, shall stand set aside. Consequently, I.A.No.1210 of 2023 is allowed on the following terms:

(a) The petitioner minor is referred to the same Medical Board and the Medical Board with the presence of an Orthopedician shall assess the disability of the petitioner afresh and render its findings relating to the percentage of permanent disability;

(b) The petitioner shall appear before the concerned Medical Board on **07.08.2024** and the Medical Board can assess the petitioner on the same



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day or any other date convenient and fixed by the Medical Board itself and return the finding to the trial Court, which shall be relied upon by the trial Court.

No costs.

26.07.2024

NCC : Yes / No
sjj

To

The Special Sub Court for MCOP cases, Madurai.



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D.BHARATHA CHAKRAVARTHY, J.

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