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W.P. No.29602 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.29602 of 2022

and

W.M.P. No.28982 of 2022

Sungwoo Stamping Pvt. Limited,
represented by its Assistant General Manager .. Petitioner

vs.

1. Joint Commissioner of Labour II at Chennai
Joint Commissioner of Labour Welfare Board Building,
DMS Compound, Teynampet, Chennai-600 006.

2. B. Prabhu S/o. Balaraman .. Respondents

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus calling for the records in E.C. No.156 of 2018, pending on the file of the 1st respondent and quash the order dated 14.07.2022 passed in I.A. No.59 of 2022 in E.C. No.156 of 2018 and direct the 1st respondent to refer the 2nd respondent to the Medical Board for assessing nature and extent of his disability, if any.

For Petitioner : Mr. P.V.S. Giridhar,
Senior Counsel for



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Mr. M. Nirmalkumar

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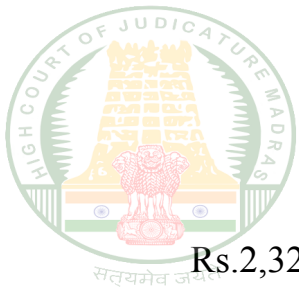
For Respondent : Mr.L.S.M. Hasan Fizal
Additional Government Pleader
[for R1]

Mr. A. Subadra for M/s. Ramya V Rao
[for R2]

ORDER

This Writ petition has been filed by the petitioner to quash the order passed by the Joint Commissioner of Labour II, Chennai in I.A. No.59 of 2022, wherein the 2nd respondent herein filed a petition for compensation as against the Writ petitioner and while pending petition, the Writ petitioner herein filed an Interlocutory Application to refer the 2nd respondent to Medical Board to ascertain the disability and the same was dismissed by the 1st respondent. Aggrieved over the said order, the present Writ petition has been filed.

2. The learned Senior counsel appearing for the petitioner would submit that the 2nd respondent was engaged as apprentice with the petitioner and on 03.07.2017, the 2nd respondent suffered injuries in an accident and he was given treatment and thereafter, he was discharged from the hospital on 13.07.2017. The petitioner paid the entire medical expenses to the tune of



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Rs.2,32,154/-. Thereafter, again the petitioner paid a sum of Rs.1,90,000/- to the 2nd respondent. On an internal enquiry, it was found that the 2nd respondent was not authorized to enter the LPS line unless he was assisted by a Supervisor. However, on 03.07.2017, the 2nd respondent entered into the LPS line without authorization and sustained injuries due to his negligence. Therefore, they issued a Warning letter dated 20.11.2017 directing not to repeat the same in the future. In the meantime, the 2nd respondent filed a petition before the 1st respondent for compensation and the same is pending in E.C. No.156 of 2018. At that stage, the petitioner filed an I.A. No.190 of 2018 raising preliminary issue on the point of maintainability and the 1st respondent refused to entertain the application and therefore, the petitioner filed a Writ petition in W.P. No.13116 of 2019 and the same was disposed of. Thereafter, the petitioner filed an I.A. No.59 of 2022 to ascertain the disability of the 2nd respondent and the same was dismissed. The 1st respondent has arrived at a conclusion that the request is premature and failed to consider several relevant factors, while pending main petition. Sri Ramachandra Medical Centre, where the 2nd respondent took treatment, gave a certificate that the 2nd respondent is now fit to do work and for routine activities from 16.11.2017. Therefore, it is appropriate to refer the 2nd



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respondent to assess medical disability, but the 1st respondent failed to consider the same and erroneously dismissed the petition and the same has to be set aside by allowing the present Writ petition.

2(i) The learned counsel appearing for the petitioner, in support of his contention, has relied upon the following Judgment of this Court:

***The United India Insurance Company Limited vs. Venugopal and another
in C.R.P. No.586 of 2018.***

3. The learned counsel appearing for the 2nd respondent would submit that the 2nd respondent sustained injuries while he was working under the petitioner Management. Therefore, he filed a petition claiming compensation. As per Section 4(1)(c)(ii) of the Workmen Compensation Act, the percentage of the injury has to be assessed by a Qualified Medical Practitioner and in assessing the loss of earning capacity or the purpose of sub-clause (ii), the Qualified Medical Practitioner shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Schedule I. Further, as per Section 2(i) of the Act, a 'Qualified Medical Practitioner' means any person registered under any Central Act, Provincial Act or an Act



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of the Legislature of a State, providing for the maintenance of a register of medical practitioners, or, any area where no such last mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act. Therefore, the petitioner cannot compel the 2nd respondent to appear before the Medical Board and it is for the 2nd respondent to decide that whether he has to get certificate for the injuries sustained by him. Moreover, the main case has been posted for examination of witnesses and specifically posted for the evidence of a Doctor to ascertain the percentage of disability. At this stage, the petitioner has filed the petition only to drag on the proceedings. As per the judgment of the Hon'ble Division Bench of this Court, the petitioner is entitled to examine the Doctor and when the witnesses produced by the claimants are credible and if the Tribunal is satisfied that the matter is not required to be referred to the Medical Board, then the direction of the Division Bench would not apply and the discretion of the Tribunal in that regard was not taken away by the directions. Therefore, it is for the Tribunal to decide that whether the witnesses produced by the claimants are credible or not. Therefore, the Tribunal has passed a reasoned order after referring the judgment of the Hon'ble Division Bench of this Court and only



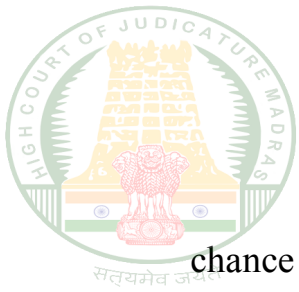
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after examining the Doctor, if it is necessary, then the petitioner can take steps for examination by the Medical Board for ascertaining the disability. Therefore, the Tribunal came to a fair conclusion and hence the present Writ petition is liable to be dismissed.

4. Heard both sides and perused the entire materials available on record.

5. In this case, there is no dispute that the 2nd respondent was working under the 1st respondent and he met with an accident during the course of employment and he had taken treatment for the injuries sustained by him and thereafter, he joined duty. Thereafter, the 2nd respondent filed a petition before the 1st respondent for compensation due to the injuries sustained by him during the course of employment. It is also an admitted fact that in the compensation petition, the petitioner's side witnesses were examined and now the case is posted for examination of Doctor. At this stage, the petitioner Management filed a petition to send the 2nd respondent to Medical Board for assessing the percentage of disability. The Tribunal has passed an order stating that it is premature stage and it has to be decided only after giving



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chance to the petitioner to prove the disability through a Medical Practitioner and if the witness produced by the Claimant is not credible and the Presiding Officer is satisfied that the matter ought not to be referred to the Medical Board, then they should proceed in the matter based on the appreciation of the materials placed before them.

6. The above said observation made by the Tribunal is based on the judgment of Hon'ble Division Bench of this Court in ***C.M.A. No.2380 of 2015 & 428 of 2016 reported in 2017 (1) TN MAC 106***, wherein the Hon'ble Division Bench of this Court issued guidelines in respect of examination of medical witnesses to assess the disability, where this Court issued clarifications as follows:-

"a) Procedure as prescribed in C.M.As. 428/2016 & 2380/15 for disposal of claims applicable w.e.f.1/8/16.

b) Procedure also applicable to all pending and part heard cases in which awards to be passed after 1/8/16: However, where evidence regarding disability already recorded and matter ripe for hearing, directions would not apply.

c) Where witnesses produced by Claimants are credible and Tribunal satisfied that matter not required to be referred to Medical Board, directions would not apply.

d) Discretion of Tribunal in that regard not taken away by directions".

Therefore, the above said order passed by the Authority based on the well established settled principles. It is for the 2nd respondent, who is the



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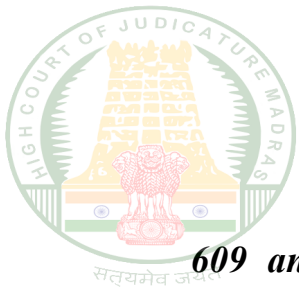
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petitioner in the claim petition, to examine medical witnesses to assess the disability. If any objections, then the petitioner can adduce the evidence of Doctor to rebut the evidence of other side. Therefore, as per the judgment of this Court, if the witnesses produced by the claimants are credible and the Tribunal satisfies that the matter is not required to be referred before the Medical Board, then the above directions would not apply. Moreover, the discretion of the Tribunal has not been taken away. Therefore, without examining the witness on the side of the 2nd respondent, the petitioner cannot seek remedy to examine the 2nd respondent before the Medical Board as a matter of right.

7. The learned counsel appearing for the petitioner, in support of his contention, has relied upon the following Judgment of this Court:

The United India Insurance Company Limited vs. Venugopal and another in C.R.P. No.586 of 2018.

On perusal of the above said judgment, it is clear that the directions issued by the Division Bench in *Prabhu's* case reported in **2016(1) TNMAC**



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609 and 2017(1) TNMAC 106, would apply to cases arising under the

Employees' Compensation Act also. However, in that case, there is no reference about the guidelines issued by the Hon'ble Division Bench of this Court that if the witnesses produced by the Claimants are credible and the Presiding Officers are satisfied that the matter is not required to refer before the Medical Board, the directions would not apply and the discretion of the Tribunal has not been taken away and the same has not been dealt with by the learned single Judge. Moreover, in this case, already the 2nd respondent was examined as witness and now the case is posted for examination of medical witness. At this stage, the petitioner cannot compel the 2nd respondent to appear before the Medical Board for assessing disability. However, the petitioner is at liberty to adduce Doctor evidence to rebut the evidence on the other side in the manner known to law, if necessity arises. Therefore, the order passed by the Authority is in order.

8. In view of the above discussions, this Court is of the opinion that the Writ petition has no merits and deserves to be dismissed.

9. Accordingly, the Writ petition is dismissed. There shall be no order as to costs. Consequently, the miscellaneous petition is closed.



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Index : Yes/No
Speaking order/non-speaking order
mjs

To

The Joint Commissioner of Labour II at Chennai
Joint Commissioner of Labour Welfare Board Building,
DMS Compound, Teynampet, Chennai-600 006.

P. DHANABAL, J.,

mjs



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