

C.R.P(MD)No.416 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.416 of 2025

Rajangam

... Petitioner/Petitioner/
Petitioner

Vs.

1.Vijayakumar

2.R.R.Infraa Construction,
No. Visalakshipuram,
Madurai.

3.United India Insurance Co.Ltd.,
7-A, 3rd Floor, West Veli Street,
Madurai-625 001.

.. Respondents/Respondents/
Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.1851 of 2024 in M.C.O.P.No.871 of 2021 on the file of Special Sub-Judge/Motor Accident Claims Tribunal, Madurai, dated 18.12.2024.



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For Petitioner : Mr.K.Kumaravel

For R3 : Mr.A.Ilango

ORDER

The claimant in M.C.O.P.No.871 of 2021 on the file of Motor Accident Claims Tribunal, Madurai is the revision petitioner herein

2. The claim petition has been filed by an injured claimant seeking compensation of a sum of Rs.25 Lakhs for the injuries sustained by him in an accident that has taken place on 27.01.2021. The claimant was referred to medical board attached to Government Medical College Hospital, Theni and the disability certificate has already been marked as Exhibit C.1. The claimant is not satisfied with the percentage of disability assessed by the medical board and he had filed I.A.No.1851 of 2024 to allow the petitioner to examine a private Orthopaedic Surgeon as an expert witness on his behalf. This application was resisted by the Insurance Company on the ground that private doctors cannot be permitted to be examined as witnesses to assess the disability. The



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tribunal has accepted the said contention and has relied upon the judgment of Hon'ble Division Bench of our High Court reported in **2016 (1) TN MAC 609 (The Branch Manager, TATA AIG General Insurance Co. Ltd Vs. Prabhu & Another)** and has proceeded to dismiss the application. Challenging the same, the present revision petition has been filed.

3. According to the learned counsel appearing for the revision petitioner, the Hon'ble Division Bench has not given any finding that a private doctor cannot be examined at all. It has only framed guidelines for compulsorily referring a claimant to a medical board attached to a Government Hospital. When the claimant is not satisfied with the assessment of disability by the medical board, he should be permitted to examine any other private doctor on his side to establish the level of disability.

4. Per contra, the learned counsel appearing for the Insurance Company relied upon the judgment of the Hon'ble Division Bench of this Court in **2016 (1) TN MAC 609 (The Branch Manager, TATA AIG**



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General Insurance Co. Ltd Vs. Prabhu & Another) and 2011 ACJ 175

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(National Insurance Co.Ltd., Vs. R.Sivakumar & Others) and had

contended that the claimants are in the in the habit of producing stock witnesses from the doctors and therefore, in order to eradicate the same, the Hon'ble Division Benches have directed the concerned tribunals to mandatorily send the claimants for appearing before the medical board attached to the Government hospitals, so that the disability certificate could be relied upon by the Courts. According to them, the disability certificate issued by the medical boards would be more valuable and therefore, the request of the claimant to examine an Orthopaedic Surgeon cannot be accepted.

5. I have carefully considered the submissions made on either side and perused the material records.

6. The injured claimant has filed the above claim petition seeking compensation. As per the orders of the Hon'ble Division Bench in a judgment reported in **2016 (1) TN MAC 609**, the petitioner has been referred to the medical board attached to the Government Medical

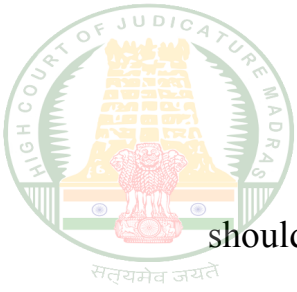


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College Hospital, Theni which has assessed the disability of the claimant at 20%.

7. The claimant is not satisfied with the level of assessment by the medical board. Therefore, he intends to examine a private Orthopaedic Surgeon to establish that he had incurred higher disability than what is pointed out in the certificate issued by the medical board. The Hon'ble Single Judge of this Court in a judgment reported in **2023 (2) TN MAC 202 (G.Chitra Gunasekaran Vs. V.Natarajan (Died) & Others)** after referring to the judgment of the Hon'ble Division Bench in **2016 (1) TN MAC 609** has permitted the claimant to examine a private medical expert, who had given disability certificate. The Court has also permitted the Insurance Company to cross-examine the medical expert.

8. A perusal of the judgment of the Hon'ble Division Bench in **2016 (1) TN MAC 609** clearly discloses that it has not prohibited examination of any private medical practitioner from being examined on the side of the claimant. It has only laid guidelines to the effect that whenever a claimant approaches the tribunal seeking compensation, he



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should be mandatorily referred to a medical board attached to a district level hospital and the disability certificate should be placed before the Court. These guidelines were issued only to avoid various contradictory certificates being issued by private medical experts.

9. In the present case, the medical board has already issued a disability certificate to an extent of 20%. The claimant is not satisfied with the level of assessment made by the Board. Therefore, he wants to examine a private Orthopaedic Surgeon so as to establish his higher level of disability. The Court cannot prohibit a claimant from producing evidence before the Court. It is for the Court to assess the expert opinion of the medical board and the private doctor and arrive at an independent conclusion. The expert opinions under Section 45 of the Indian Evidence Act are merely opinions and they are not binding upon the Court. It is for the Court to assess the validity of those opinions in the light of the other oral and documentary evidence and the pleadings and to arrive at a decision. In such circumstances, the claimant or Insurance Company or Transport Corporation cannot be prevented from letting in evidence through a private medical expert.



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WEB COPY 10. In view of the above said deliberations, the order impugned in the revision petition is set aside and I.A.No.1851 of 2024 stands allowed. The claimant shall be permitted to examine a private Orthopaedic Surgeon to establish his disability who will be subjected to cross-examination by the respondents in the claim petition.

11. With the above said observations, this Civil Revision Petition stands allowed. No costs.

19.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Special Sub-Judge/
Motor Accident Claims Tribunal,
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR,J.

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Order made in
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