

Civil Miscellaneous Appeal No. 2380 of 2015

TATA AIG General Insurance Co. Ltd. v. Prabhu

2016 SCC OnLine Mad 16854 : 2017 ACJ 285 : (2017) 2 TAC 653 : (2016) 1 TN
MAC 609 (DB)

In the High Court of Madras
(BEFORE R. SUDHAKAR AND S. VAIDYANATHAN, JJ.)

The Branch Manager, M/s. TATA AIG General Insurance Co. Ltd.,
Jaya Enclave, 3rd Floor, 1057, Avinashi Road, Coimbatore
Appellant/2nd Respondent

v.

1. Prabhu,
2. A. Nataraj Respondents/Petitioner

Civil Miscellaneous Appeal No. 2380 of 2015

Decided on April 12, 2016

Motor Vehicles — Motor Vehicles Act, 1988 — S. 169 — Compensation — Permanent disability — Uniform and consistent assessment — One of major causes for continued pendency of claims either before claims tribunals or before this Court — Is divergence in views with regard to assessment of permanent disability and prevalent practice thereof — Directions issued that in motor accidents claims, Claims Tribunals shall issue a letter to Medical Board in District of Tamil Nadu — Within whose jurisdiction claim petition was pending — And in case there is no Medical Board in District to nearest District Medical Board — To examine injured claimant/victim and issue a certificate of disability within such time as may be specified by claims tribunal — Medical Board/s directed to assess permanent disability or lack thereof as per Disability (Permanent Physical Impairment) Assessment and Certification-Guidelines & Gazette Notification — Issued by Ministry of Social Justice & Empowerment, Government of India-Regd No. DL33004/99 (Extraordinary) Part II, Sec 1, 13-6-2001

(Paras 15 and 28)

(Paras 11, 13, 15, 18 to 24)

Raj Kumar v. Ajay Kumar, 2011 ACJ 1 (SC); *National Insurance Co. Ltd. v. R. Sivakumar*, 2011 ACJ 175 (Mad)(DB); *N. Obalaranga v. United India Ins Co. Ltd.*, relied on

Captain Itbar Singh v. British General India Insurance Company Limited, AIR 1959 SC 1331; *Skandia Insurance Company Limited v. Kokilaben Chandravadan*, (1987) 2 SCC 654; *Sohan Lal Passi v. P. Seshreddy*, (1996) 5 SCC 21; *National Insurance Company Limited v. Swaran Singh*, (2004) 3 SCC 297 : 2004 SCC (Cri) 733; *The Oriental Insurance Co. Ltd. v. Rajesh*, CMA No. 428/2016 dt. 11/3/2016; *Royal Sundaram Alliance Ins Co. Ltd. v. Jaffar Sadiq*, 2015 (2) TN MAC 717 (Mad)(DB); *General Insurance Council v. State of A.P.*, (2007) 12 SCC 354 : (2008) 1 SCC (Cri) 384, referred

For appellant: Mr. N. Vijayaraghavan

For 1st respondent: M/s. Ma. P. Thangavel and B. Devagi Thangavel

For 2nd respondent: Not ready in notice

The Judgment of the Court was delivered by

R. SUDHAKAR, J.:— The TATA AIG General Insurance Company is the appellant in the above appeal challenging the award and decree dated 17.7.2014 passed in

M.C.O.P. No. 980 of 2011 on the file of the Motor Accidents Claims Tribunal (Additional Sub Court), Tiruppur.

2. Heard Mr. N. Vijayaraghavan, learned counsel appearing for the appellant and Mr. Ma. P. Thangavel, learned counsel appearing for the 1st respondent herein. It is stated that the second respondent is not served. In view of the order to be passed in this matter the notice to the 2nd respondent is dispensed with.

3. It is a case of injury. The brief facts of the case are as follows:—

The accident in this case happened on 1.7.2011 at 22.45 hours. While the claimant, the first respondent herein, was going by TN 38 TIJ 0967 from South to North in the Tirupur to Palladam Road, in front of Ramasamy Muthammal Kalyana Mandapam, the vehicle bearing registration No. TN 39 AE 6215 driven by 2nd respondent's driver came from North to South rashly and negligently and dashed against the claimant. Due to the accident, the claimant sustained injuries as follows:

“back side head, severe head injury, right maxille lower law fracture, nose fracture, upper three tooth broken over and all over and injuries the body”

4. The claimant was employed in Greenway Clothing at Bhuvanewari Nagar, Andipalayam, Tirupur as a Machine Operator and earned Rs. 19,000/- per month. After the accident, the claimant is unable to attend the work. Hence, he filed a claim petition before the Tribunal claiming compensation in a sum of Rs. 24,00,000/-.

5. Before the Tribunal, the injured claimant was examined as P.W. 1. One Mr. Velmurugan, was examined as P.W. 2 and Dr. Dhanasekaran, was examined as P.W. 3. Exs. P-1 to P-7 were marked, the details of which are as follows:—

Text in vernacular

6. On the side of the respondents, one Mr. Sivamurugan was examined as R.W. 1 and one Mr. Selvasubramanian was examined as R.W. 2. Exs. R-1 to R-8 were marked the details of which are as follows:—

Text in vernacular

7. Considering the oral and documentary evidence, the Tribunal granted the following amounts as compensation with 7.5% interest:—

Sl. No.	Head	Amount granted by the Tribunal
1	Future loss of earnings for the injury sustained by the claimant in the accident	Rs. 12,66,840/-
2	Medical expenses	Rs. 3,71,000/-
3	Pain and sufferings	Rs. 50,000/-
4	Metal Agony	Rs. 50,000/-
5	Loss of amenities	Rs. 50,000/-
6	Transport expenses	Rs. 20,000/-
7	Nutrition expenses	Rs. 30,000/-
	Total	Rs. 18,37,840/-

8. The appeal is canvassed only in respect of the quantum of compensation awarded by the Tribunal. The learned counsel for the appellant insurance company has no serious objection with regard to the finding of the Tribunal that the insurance company has to pay the compensation to the claimant and recover the same from the owner of the vehicle involved in the accident. Hence, the same is confirmed.

9. To sustain the injury aspect, the claimant examined the doctor P.W. 3. P.W. 3 doctor deposed with regard to the disability assessed by him. The Tribunal in para 12 of its order discussed with the injury sustained by the claimant as follows:—

Text in vernacular

10. To disbelieve the above evidence of the doctor and the findings of the Tribunal, no witness was examined on behalf of the respondents. Further, the Tribunal fixed the income of the injured at Rs. 6,000/- and by adding 50% future prospects, the Tribunal calculated the loss of future income of the injured at Rs. 12,66,940/- (Rs. 9,000 × 12 × 17 × 69/100 = Rs. 12,66,940/-).

11. Considering the date of accident (1.7.2011), the age (27 years) and the profession of the injured (Machine Operator), this court is not inclined to interfere with the compensation granted in a sum of Rs. 12,66,940/- towards loss of future income. On the basis of the medical bills produced, the Tribunal granted a sum of Rs. 3,71,000/- towards medical expenses. Hence, the same is confirmed. The amounts granted under other heads are just and reasonable. Learned counsel for the appellant has also no serious objection.

12. Before parting, we would like to make the following observations for the Tribunals to follow *stricto sensu*. As per Sec. 169 of MV Act, 1988, the procedure to be adopted by the tribunal is Summary in nature. Strict rules of evidence are not applicable. Expeditious disposal of claims is the primary look out so as to ensure early payment and receipt of Just compensation by the innocent motor accident victims/claimants. As per Sec. 168(2), on pronouncement of award, the claimants shall be furnished with a copy of the award within 15 days of such pronouncement. Sec. 146 contemplates mandatory insurance cover for third parties to protect the community of unfortunate victims. The Courts, Hon'ble Supreme Court downwards construe the provisions in this beneficial jurisdiction liberally and in favour of the victims alone as held in *Captain Itbar Singh v. British General India Insurance Company Limited* AIR 1959 SC 1331, *Skandia Insurance Company Limited v. Kokilaben Chandravadan*, AIR 1987 SC 1184, *Sohan Lal Passi v. P. Seshreddy*, 1996 (5) (SC) 21, *National Insurance Company Limited v. Swaran Singh*, (2004) 3 SCC 297. The entire look out is to ensure that the innocent motor accidents victims get the benefit of Just compensation as early as may be possible, so as to enable the claimants/victims to get back on track from the derailment suffered from the traumatic accident. In line with this intention, this Court in *The Oriental Insurance Co. Ltd. v. Rajesh* (CMA No. 428/2016 dt. 11/3/2016) had recently framed Guidelines for the conduct of trial proceedings and in the disbursement of compensation commending adoption of Direct Bank transfer to the bank accounts of the claimants/victims affording them an opportunity to take full control of the awards granted to them to manage their lives. We felt it was time to embrace technological change to dispense justice and meaningfully at that. We had directed implementation of the comprehensive scheme for the betterment of the community of victims and hope our intention is translated on the ground as it is intended it to be.

13. Earlier, this Court had in *Royal Sundaram Alliance Ins Co. Ltd. v. Jaffar Sadiq*-2015 (2) TN MAC 717 (Mad)(DB) mandated the compliance with Sec. 158(6) of the Act, as per law laid down in the said provision and directions of the Supreme Court in *General Insurance Council v. State of AP* in (2007) 12 SCC 354. The Director General of Police, State of Tamil Nadu has issued a Circular for such compliance and it has been incorporated in the order of this Court as well. This mandate enjoins the Police authorities to prepare the FIR and the Accident Information Report as envisaged in Sec. 158(6) read with Rule 150 of CMV Rules, 1989 and Form 54 thereof, to be filed before the jurisdictional claims tribunal. The said FIR could be treated as the claim petition and claim proceedings triggered for awarding Just compensation to innocent accidents victims, without any loss of time. The Accident Information report shall not only contain all the particulars required but also be accompanied certified copies of the vehicular records such Registration Certificate of the vehicle/s involved in the accident, Driving Licence of the driver. Permit and such other records. In addition, the Police are

required to obtain the hospital and medical records of the victims as on date of such compilation. Besides capturing the facts at the earliest point of time, and avoiding chances of fabrication, it would also avoid the need for claimants to summon such records or examine witnesses to support their cause. The insurers and transport corporations shall also be provided with copies of the said documentation ridding the need for them to seek verification of the same. Such a procedure would save on time and possibly lead to early settlement of claims, as was observed by the Supreme Court.

14. While so, we do not find the claims being disposed of as early as has been mandated or facilitated. In our experience, one of the primary or major causes for the continued pendency of claims either before the claims tribunals or before this Court is the divergence in views with regard to the assessment of permanent disability and the prevalent practice thereof. Despite the plethora of case-law on the issue of assessment of disability and fixation of functional disability, the rival stands taken by the contesting parties necessitates detailed examination. The claims tribunals may have the benefit of say a decision as in *Raj Kumar v. Ajay Kumar* in 2011 ACJ 1 (SC), where the Apex Court has laid down parameters and guidelines in this regard. In this very decision the pitfalls associated in assessment of permanent disability has been gone into as there is no one strait jacket formula and the fact the claimants choose to adduce evidence to through Doctors of their choice, makes it more litigation friendly. Of course, the evidence of a certificate of disability from Medical Board was commended for acceptance in that decision.

15. We do find that the claimants choose to examine a 'select group of Doctors' virtually 'practising' in this jurisdiction. The insurance companies and transport corporations repeatedly complain that they are 'stock witnesses' and challenge their assessments, even if accepted by claims tribunals after discounting the same. We have noted some decisions which have been critical of the mode and manner of assessment of disability by these Doctors who regularly appear before the claims tribunals. It is not rocket science to identify the personnel who appear in these proceedings as they are found in the list of witnesses before various claims tribunals all over the State, very regularly. That has been the major grouse or grievance of the insurance companies and transport corporations that these medical professionals do not follow proper practices and their assessments are tilted to advance the interest of the claimants, at times, unfairly. This procedure and practice in assessment of permanent disability by various Doctors in various claims tribunal have led to huge pendency of appeals before this Court also. In fact, one could say without fear of contradiction, that divergence in views on the assessment of disability is the major contributor to the filing of appeals in this portfolio. We are regularly called upon to play the arbiter in the assessment of disabilities. If only we could introduce an 'uniform and consistent' assessment of disability, the pendency would significantly come down, as scope for challenge would be diminished. That is our endeavour in this case.

16. The said sequence of facts, has led us now to believe that if there was a uniform and consistent practice and procedure in the assessment of permanent disablement and possibly functional disability thereof, then the scope for expeditious disposal of claims may be possible and avoidance of appeals may also become feasible. Our attention is drawn to the decision in *National Insurance Co. Ltd. v. R. Sivakumar* in 2011 ACJ 175 (Mad)(DB), which we extract below:

"We are astonished by the award. The Law relating to accident claims requires the court to award compensation which is just and reasonable and it is better for the Claims Tribunal to bear this in mind. They should neither be niggardly while awarding compensation to somebody, who is totally paralysed and who comes to

court claiming that because of this accident he is reduced to living death position. At the same time, the accidents claim petition is not an occasion for bonanza for persons, who have sustained fractures. The injury sustained must always be co-related to the avocation of the injured to assess the degree of disability or loss of earning capacity as the case may be."

"The injured had, in this case, a mere fracture on his right tibia. We will even accept the Doctor's evidence that there is slight difficulty in straightening the leg and therefore there is some incapacity to walk fast. We will also accept the Doctor's evidence that there is slight bending and shortening of the leg. We cannot accept that this injury had in any way resulted in loss of status for the injured in the society and that he had suffered mental agony on account of such status loss."

"The erratic manner in which disability is assessed for fractures and other injuries which are not as grievous as loss of limbs or amputation is neither fair nor just. We feel that there should be some consistency and some uniformity. It pains us to see extravagant awards, for what is really not a major disability. The pain that the injured feels is not something we are ignoring but what we have to assess is the diminishment of his capacity to work and to the loss of earning capacity.

(Emphasis Ours)."

"In "A Critique on Motor Vehicles Laws" (by Justice K. Kannan & N. Vijayaraghavan, Advocate, 13th Edition, 2008), it is precisely this predicament that is referred to. They observed that the expert witnesses or Doctors, who appear before the Tribunals are stock witnesses. They know no standards, do not conform to any uniform practices. They do not follow any criteria. The Tribunals are also under work pressure and therefore, they just accept or slightly modify the disability as certified by those Doctors. In 2005 (ACJ) 344 (AP) (*M. JAYANNA'S CASE*), the unhealthy practices in this field are referred to. In this book, there is a reference to the Notification issued by the Ministry of Social Justice and Empowerment dated 1.6.2001 for applying consistency and uniformity in the assessment of permanent disability. Guidelines have been drawn and if it is adopted, the falsification of the degree of disability may be avoided. The authors of this book have made a salutary suggestion which is that, a Medical Board shall be constituted in each District and as a matter of rule, the injured shall appear before the Medical Board and the disability shall be assessed by the Board and the certificate of disability by the Medical Board shall normally be accepted as binding on the Tribunal without need for examination of the author of the same. They have also suggested that a clause may be introduced in the Motor Vehicles Act itself so that some uniform practice is achieved. We hope the Parliament will take note of this."

(emphasis supplied)

17. We feel it is possible to introduce changes in the present scheme of things even without seeking a statute change or waiting for one. We make no change in the substance of the law. We feel none is called for also. We feel that what we propose to direct need not and is not tied to the need for such a change. There is no fetter to provide a practice and procedure route of difference, within the existing scheme of things, for introducing the crucial element of 'uniformity and consistency' in the assessment of disability. We find that Road Safety & Transport Bill is now in its Version 5.0 and there is as yet no consensus. And in Version 5.0, we are told that the change discussed in this decision does not form a part. But, we do not think that the directions proposed by us need a statute change. What we are proposing is a procedure and practice change and reference to Medical Board which is embraced every now then, even today. In the meanwhile, we are distressed to note that claim petitions are languishing at various stages due to the divergence in views with regard to the assessment of permanent disability. The views expressed in *Sivakumar case*

(Mad) and reference made to *Jayanna's case* (AP) are not stray instances. It may be time for this Court to take note and come up with a solution in the larger interest of motor accidents claims and in fact all stake holders in this jurisdiction. The earlier we come up with a solution the better it would be for all concerned.

18. Our attention has been drawn to a decision of the Karnataka High Court in *N. Obalaranga v. United India Ins Co. Ltd.*, Manu KA 0062/2009 where reference has been made to the Central Government Circular dated 13/6/2011 and for assessment of disability by Medical Boards. It makes instructive reading.

"The Ministry of Social Justice and Empowerment, Government of India, has issued a Notification dated 1.6.2001 providing guidelines for evaluation of various disabilities and procedure for certification. This was in modification of the guidelines issued earlier in the year 1986 and in view of the provisions of Persons with Disabilities (Equal opportunities, Protection of Rights and full Participation) Act, 1995, the Government of India had set up four Committees, in terms of its order dated 28.8.1998, under the chairmanship of the Director General of Health Services, one each in the area of Mental Retardation, Locomotor and Orthopaedic Disability, Visual Disability and Speech and Hearing disability. Further, in the year 1999, a fifth Committee was constituted for evaluation of assessment of Multiple Disabilities. The Government has under the said notification approved the recommendations of the Committees and has issued guidelines. The office of the State Commissioner for Persons with Disabilities, Bangalore has published the same as a booklet. The guidelines provide for evaluation of disability and the procedure for certification.

19. The disabilities are classified as follows:

- a) Visual impairment
- b) Locomotor/Orthopaedic disability
- c) Speech and hearing disability
- d) Mental Retardation
- e) Multiple Disabilities

20. The above are defined and categorised according to the degree or percentage of disability. Minute details as to the manner in which the particular disabilities are to be assessed are provided. These include ready-reckoner tables and formulae for computing the percentage of disability. The authority to issue a Disability Certificate is a Medical Board duly constituted by the Central and State Governments. Every such Board must consist of at least three members, of which, at least one member is a Specialist from either the field of Physical Medicine and Rehabilitation or Orthopaedics.

21. There is no reason why a Disability Certificate issued in accordance with the above guidelines by a Medical Board duly constituted, as above, ought not to be accepted for purposes of determining compensation payable under the Motor Vehicles Act. This would ensure a reasonably safe, accurate and consistent assessment of disability that can be acted upon by all concerned. A minimum disability of 40% is to be prevalent in a person, to claim benefits under the Disabilities Act, 1995. This, of course, would not be relevant for purposes of claims under the Motor Vehicles Act.

22. It is however to be kept in view that the Medical Board or the Medical Practitioners address the impairment in relation to the human body and not in relation to a person with a particular avocation. The guidelines prescribed do not envisage a procedure to assess the disability suffered by an individual with reference to his particular avocation, geographical location, educational background, family conditions and such other factors. The evidence of a Medical Practitioner as regards the physical impairment is thus limited in scope, its consequence on the avocation or activity of a claimant are matters which are to be established at the trial and it is for the Court or Tribunal to assess the loss of earning capacity with reference to the same."

23. We do feel that standardization has been strongly advocated in the above decision. We also find that an RTI query was made to the health commissioner, medical services and medical education on the issuance certificates of disability by Medical Board etc., We find that the authority has confirmed that Private Hospitals were not allowed to give disability certificates. Only government hospitals, medical college hospitals, District Hospitals and Sub District Hospital were empowered to do so. Obviously medical board constituted by the government would be entitled to do so, more so, when attached to Major Government Hospitals or District Hospitals. This fortifies our stand that need as come to introduce the much needed element of uniformity and consistency in assessment of disabilities and standardization in issuance of Certificates of disability. If consistency and uniformity can be achieved then the disputed area would be significantly reduced. We find that the primary reason for the gross divergence and alleged exaggeration in assessment of permanent disability arises from the twin causes of i) failure to follow one framework in face for such assessment and ii) and the personnel applying their own varies lines to assess permanent disability as is their wont. As pointed out by the apex court in *Raj Kumar's case* it may not be proper to accept the physical disablement at 45% as is reflective of the medical evidence, without critical examination or construe the functional disability also to be of the same percentage. We find that the Doctors assess percentage without identifying the basis for the same and the claims tribunal mechanically reduce say 5% or 10% and conclude that the reduced percentage was functional disability. This is not a healthy practice. The cause for this problem is the near arbitrary assessment of permanent disability by the set of Doctors who regularly appear before the claims tribunals. We deem it is now time to introduce or usher in a uniform and consistent procedure for such assessment which would rid the need for even examining such Doctors and save time for the claims tribunals to dispose of claims. More importantly, it may rid the jurisdiction of the one 'sore point' which is adding to the pendency and appeals too.

24. This Court has pointed out to Central Government Notification on assessment of disability. As pointed out in *Raj Kumar's case* by the apex court that reference and reliance on Persons with Disability (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 may not afford a solution for all kinds of disablements suffered in a motor accident. Instead, we find that Disability (Permanent Physical Impairment) -Assessment and Certification-Guidelines & Gazette Notification-issued by Ministry of Social Justice & Empowerment, Government of India-Regd No. DL33004/99 (Extraordinary) Part II, Sec 1, June, 13, 2001-published by National Institute for the Orthopaedically Handicapped, is a comprehensive test and manual put in place. On going through the same we find that it has been drafted and crafted meticulously and has given formula which may lead to arithmetical accuracy in assessment of permanent disability. Or at least it reduces the scope for divergence in assessment and introduces the much needed element of uniformity and consistency in assessment of permanent disability. We find that the Guidelines have the backing of scientific analysis and data and methods devised to reduce the scope for speculation or arbitrariness. This is what this Court had commended acceptance in Sivakumar's judgment.

25. We feel that time has come to take advantage of this readily available scientific method of assessment of permanent disability. There is even a Format of the certificate devised herein and if the certification was on these line s, it would surely rid the gross divergence and dispute and enable an element of uniformity and consistency sorely missing as of now. It would at least enable the claims tribunals and courts to confidently rely upon the said certificates. It is true that as on date there is no bar for private practitioners to adduce evidence on behalf of claimants or even the insurance companies and transport corporations. This practice allied with the absence of one

scientific method followed in practice are the causes for the ails in this area. We need to rid the same to enable certainty in expeditious disposal of claims and also avoid the scope and chances for continued challenge in appeals too.

26. If the scientific basis identified by us as the basis for assessment of permanent disability is followed then it may lead to uniformity and consistency in assessment. To strengthen it further and ensure it was so, we feel that such assessments of permanent disability may now be vested with the Medical Boards in the Districts of Tamil Nadu, to lend it further credibility and authenticity, instead of allowing them to be challenged as the assessment of 'stock witnesses'. Hitherto, reference to Medical Board is sought for in exceptional cases and not as a matter of rule. There are even instances of such relief being declined and challenges mounted before this Hon'ble Court. Be that as it may, we feel that if certificates of permanent disability are issued by Medical Boards in the Districts where the claims are pending and they are based on the Central Government Circular dt. 13/6/2001, then scope for challenge of the same may be driven out to a large extent. In addition thereto, a positive fall out could be that such certificates could be marked without the need to examine the Medical Doctors, who are otherwise required to be examined. Time taken for proving the permanent disablement may be shortened and the proof also would be credible, authentic, uniform and consistent. It would be much needed and most welcome medicine for this jurisdiction now infested with far too many claims thanks to the burgeoning number of motor accidents. We have little hesitation in commending its acceptance as early as possible.

27. We are aware that the infrastructure must be in place before the Medical Boards for facilitating the issue of such certificates of disability. Equally, the stake holders need to get ready for this changed dispensation which would result in marking of the certificate of disability from the Medical Boards as a matter of course without need to have them marked through witnesses or be subjected to cross examination as before. There should be no difficulty to embrace this procedure is mandated to be Summary in nature (Sec. 169). So be it. There cannot be complaint or grouse from either side for the remedy of credibility, authenticity allied with uniformity and consistency would overwhelm any other aspect. The stakeholders in this jurisdiction would get to gain immensely considering that the claimants/victims may no longer need to seek certification from Doctors or have them examined and matters disputed and delayed based on assessment of disability. Equally, the insurance companies and transport corporations, in particular, may have their major grouse and grievance of 'stock witnesses' certifying disability be ruled out. Medical Board has the authority of law and is an independent body. The Medical Board is also required to assess the permanent disability based on the Central Government circular dt. 13/6/2001. The sorely missing element of uniformity and consistency would surely lead to early disposal of claims and possible settlements of the same. Further, scope for dispute in appeals on divergence in assessments of disability would be considerably reduced. In effect, the procedure we have hit upon and devised for follow up and practice would go a long way in aiding and assisting the Parliamentary mandate to provide speedy succor and relief to innocent motor accidents claims. It would truly be a win win situation for all stakeholders concerned.

28. For any and all the above reasons, we hereby deem it fit and proper to issue the following directions:

- i) We hereby direct that in motor accidents claims the claims tribunals shall issue a letter to Medical Board in the District of Tamil Nadu. Within whose jurisdiction the claim petition was pending and in case there was no Medical Board in the said District to the nearest District Medical Board, to examine the injured claimant/victim and issue a certificate of disability within such time as may be

specified by the claims tribunal

- ii) We hereby direct that the Medical Board/s shall assess the permanent disability or lack thereof as per the Disability (Permanent Physical Impairment) - Assessment and Certification-Guidelines & Gazette Notification-issued by Ministry of Social Justice & Empowerment, Government of India-Regd No. DL33004/99 (Extraordinary) Part II, Sec 1, June, 13, 2001-published by National Institute for the Orthopedically Handicapped.
- iii) We hereby direct that the Medical Board shall be at liberty to follow its procedures and practices or conduct tests as they may deem fit, for issuance of such certificates of disability while following the procedure laid down in the Manual above
- iv) We hereby direct that the Medical Board/s shall be at liberty to charge such fee as may be required from the insurance companies or transport corporations or such other contesting parties, as the case may be, to pay the same as part of the costs of the proceedings, to the concerned Medical Board.
- v) We hereby direct that the Claims Tribunal shall, upon receipt of the certificate of disability, in sealed cover from the medical Board/s concerned, shall issue a certified copy of the said certificate to the contesting parties, on application
- vi) We hereby direct that Claims Tribunals shall mark the certificates of disability without need for any oral evidence or insisting upon the appearance of Medical Board official or personnel or Doctor, ordinarily, as a matter of course. However, in exceptional cases, this would not preclude the Claims Tribunals, for reasons to be recorded in writing, suo motu or at the request of the contesting parties to direct the author/s of the certificate/s of disability, from the Medical Board/s, to appear before the Claims Tribunal to answer clarifications, if any, sought for.
- vii) We hereby direct that the above said procedure and procedure shall come into force on and from 1/8/2016 and time granted thereof shall be utilized by all the stakeholders to arrange for necessary logistics support for smooth conduct of proceedings under the new dispensation
- viii) We hereby direct that High Court Registry shall issue a Circular on these directions along with the judgment with reasons to be sent to Medical Boards in all Districts of Tamil Nadu through the Registry of the District Courts in Tamil Nadu, as soon as possible
- (ix) We hereby make it clear that it shall be open all stakeholders including the Registries and Medical Boards concerned, to approach this Court for any clarifications or changes or modifications they envisaged for the better implementation of this new dispensation, intended to serve the cause of the innocent motor accidents victims/claimants, as the case may be and this Court shall be obliged to consider the same in the circumstances of the case.

29. In the result, the award and the decree passed by the Tribunal are confirmed. Civil Miscellaneous Appeal is dismissed with the above observations. By order dated 16.10.2015 in M.P. No. 1 of 2015, the appellant insurance company was directed to deposit the entire award amount. On such deposit the claimant was permitted to withdraw Rs. 10,00,000/-. Hence, the claimant is permitted to withdraw the balance award amount on filing appropriate application before the Tribunal. There will be no order as to costs.



The surest way to legal research!