

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 3605 of 2025**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

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Approved for Reporting	Yes	No

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TATA AIG GENERAL INSURANCE CO. LTD.
Versus
SUNIL ISHWARBHAI PANCHAL & ORS.

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Appearance:

MS KIRTI S PATHAK(9966) for the Petitioner(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 1,2,3,4,5,6

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CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 03/03/2026

ORAL JUDGMENT

- 1) The present petition has been filed under Articles 226 and 227 of the Constitution of India and under the provision of Section 166 of the Motor Vehicles Act, 2019, (which shall hereinafter be referred to as "**the Act**" for short) by the petitioner - - original opponent no.3 - TATA AIG General Insurance Co. Ltd., challenging the order dated 18.09.2024, below Exhibit 61, passed by the learned Motor Accident Claims Tribunal, Panchmahals at Godhra, (which shall hereinafter be referred to

as "**the Tribunal**" for short) in MAC Petition No.264 of 2017, whereby, the learned Tribunal has rejected the application filed by the applicant - petitioner herein below Exhibit 61 for production of a Disability Certificate issued by the District Medical Board or any authorized body.

- 2) Heard learned Advocate Ms. K. S. Pathak, for the petitioner – Insurance Company. The respondents are duly served but remained absent.
- 3) Learned Advocate for the petitioner has submitted that the original claimant – respondent no.1 herein has filed MAC Petition No.264 of 2017 before the learned Tribunal for getting compensation in a vehicular accident in which he sustained injuries. During the period 25.01.2017 to 09.02.2017, the claimant underwent treatment at Param Orthopaedic Hospital and operated for an open Grade III C injury with dislocation fracture of the capitate bone and partial loss of the carpal bone. She has further submitted that the surgical procedure involved amputation of the index finger, removal of the second metacarpal and flap surgery over the right thumb extending to half of the dorsum of the right hand. Thereafter, Dr. Dilip Solanki (M.S. Ortho) has issued Disability Certificate at Exhibit 38, who had not treated the claimant, however, the said Doctor has assessed 90% disability in the Disability Certificate. The said

Doctor was examined at Exhibit 36, wherein, he has opined that the disability could be considered as 55% permanent disability of the whole body. She has further submitted that as the Doctor gave an evasive reply and the Insurance Company seeks a reevaluation of the disability which falls under the domain of Medical Expert, hence, the petitioner has filed the application at Exhibit 61 before the learned Tribunal and argued that the Disability Certificate is required to be issued by the Medical Board or authorized body and requested to direct the claimant to produce Disability Certificate issued by the Medical Board or competent authority. However, the learned Tribunal has rejected the said application vide order dated 18.09.2024, which is impugned herein. She has further submitted that in the number of injury cases false and vexatious medical claims are being increased alarmingly. It has become easier to get a claim from the Insurance Company rather from a private person by filing a concocted cases based upon the concocted documents. The Motor Vehicles Act which has been called as beneficial legislation is being abused by unscrupulous elements and the claim petitions are being filed based upon the concocted medical documents through the victims have not sustained injuries as written in the medical records, false implication of the vehicles, manipulation of the accident, false implication of the same vehicles at regular intervals and looting the public money in a

planned manner to dupe the Insurance Companies who are the custodian of the public money. She has further submitted that the fraudulent activities of seeking compensation through the bogus and dubious claims are being made in connivance with police officials, medical practitioners and the medical practitioners also involved who diddled and fudge the records produced in the Tribunal. She has relied upon the judgment of the Hon'ble Supreme Court in ***Bajaj Allianz General Insurance Co. Ltd., Vs. Union of India***, which directed that Disability Certificates must be issued by the District medical Board or any authorized body. Hence, she has requested to allow the present petition.

- 4) Having heard the learned Advocate for the petitioner and perusing the fact it appears that it is true that the Motor Vehicles Act is a benevolent legislation and the benefits of such benevolent provision and compensation granted under the Act is required to be reached to the actual sufferer or the needy claimant but many times the benevolent legislation being misused and abused by unscrupulous elements and sometime concocted record or medical documents are also produced on the record. Though direction is issued by the Hon'ble Supreme Court in ***Gohar Mohammed Vs. Uttar Pradesh State Road Transport Corporation***, reported in ***(2023) 4 SCC 381***, and

Bajaj Allianz General Insurance Co. Ltd., Vs. Union of India, reported in **(2021) 17 SCC 530**, to scrupulously follow the provision of Section 158 of the Act and timely send the Accident Information Report by concerned jurisdictional police to jurisdictional Tribunal but the same is not followed in its true letter and spirit. If in time prompt Accident Information Report is forwarded to the concerned jurisdictional Tribunal then it may be treated as claim petition which may avoid such concoction of documents.

- 5) It is true that, in many cases the Disability Certificate issued by the Doctor who has not treated the victim and exorbitant disablement is opined without any reference book or any specific guidelines. The guidelines are issued by the Ministry of Social Justice and Empowerment, Government of India vide Gazette Notification S. No.61, dated 05.01.2018, wherein, exhaustive guidelines have been issued for issuance of Disability Certificate in order to bring Pan India uniformity and the same is also taken into consideration by the Hon'ble Supreme Court in the case of of ***Bajaj Allianz (supra)*** has issued certain directions, reads as under:

"(iv) As far as the aspect of the issuance of certificate on disability of victims is concerned it is reiterated that the guidelines laid down by this Court in Raj Kumar v. Ajay Kumar and Anr., (2011) 1 SCC 343 mandatorily must be followed by the MACTs, in respect of loss of income due to

injury/disablement. The District Medical Board is also directed to follow the guidelines issued by the Ministry of Social Justice and Empowerment, Government of India vide Gazette Notification S. No.61, dated 05.01.2018, for issuance of Disability Certificate in order to bring Pan India uniformity.

The consequence is that the MACT would ascertain that permanent disability certificate issued by the District Medical Board or body authorized by it is in accordance with the Gazette Notification alone. Once the certificate is issued in this manner, the same can be marked for purposes of being taken into consideration as evidence without the necessity of summoning the concerned witness to give formal proof of the documents unless there is some reason for suspicion on the document."

- 6) Similarly, the Hon'ble Apex Court in the case of ***Union of India & Anr. Vs Talwinder Singh***, reported in ***(2012) 5 SCC 480***, has been pleased to hold that opinion of Medical Board which is an expert body must be given due weightage and Medical Certificate issued by the Medical Board is required to be accepted without further proof. Even, as per the law laid down in the case of ***Anoop Maheshwari vs Oriental Insurance Co., Neutral Citation – 2025 INSC 1075***, so far the disability is concerned, the Certificate issued by the Medical Board can be accepted, even without a witness being examined.
- 7) At this juncture, it is apposite to say that when "ready to use" Disability Certificate is produced on record at that time the learned Tribunal cannot sit as a mute spectator and the Tribunal has directive role in the decision making process. If the Tribunal

having doubt regard to authenticity and correctness of the certificate then second opinion can be sought for. While recording the evidence of the Doctor the Tribunal ought to have played active role equipped with the medical document and ask the Doctor. It is the duty of the Court and the Tribunals to ascertain the functional disability of claimant in all injury cases filed under the MV Act for getting compensation. At the same time in ***Raj Kumar Vs. Ajay Kumar and Anr***, reported in **(2011) 1 Supreme Court Cases 343** the Hon'ble Supreme Court has taken the note and further observed about duty and role of learned Tribunal in paragraphs 16 to 18, read as under :-

"16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in

different types of injuries, in the case of workmen.

17. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and, if so, the percentage.

18. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the

disability.”

- 8) In the present case the Doctor is cross-examined, wherein, he has given an evasive reply. It is needless to say that its the matter of appreciation of evidence, however, the assessment of the physical and functional disability both are all together difference. The Doctor has to opine about the physical disablement while the Tribunal has to consider functional disablement. The Tribunal must have to consider functional disablement with reference to the impact of the injury on the claimant overall earning capacity and not merely on his inability to continue the same avocation.
- 9) Mere production of the Disability Certificate or Discharge Certificate is not the proof of the physical or functional disablement. The Tribunal ought to have considered the impact of injury on the earning capacity and considering the aforesaid fact to assess functional disability is under the domain of the Tribunal. The application filed by the appellant – original opponent no.3 came to be dismissed by the learned Tribunal but moot question remains that, if the disability is assessed at 90% and without any reason straightaway the learned Tribunal accept the same or body as a whole, even though the same cause prejudice to other side qua evidence produced on record. In view of above, if the party who wants to prove or rebut or wants to

produce any rebuttal evidence on record to disprove the fact then it is always open for the party to lead an evidence to disprove the said fact and even keeping in mind the legal principle that who asserts the fact has to prove the same.

- 10) Herein the petitioner – opponent no.3 has disputed the said disability certificate hence, it is always open for the Insurance Company to tender the rebuttal evidence to disprove the fact, therefore, this Court is of the view that opportunity to rebut the evidence is required to be given to the parties as well as the impugned order passed by the learned Tribunal is required to be quashed and set aside up to that extent and if the Insurance Company is intended to rebut the evidence then it is kept open for the appellant - Insurance Company to make an application before the learned Tribunal to direct the claimant to remain present before the Medical Board along with treatment papers and to produce the Disability Certificate issued or disability assessed by the Medical Board or the competent authority.
- 11) If any such order has been passed by the learned Tribunal and the original claimant fails to appear before the Medical Board or to tender such evidence pursuant to such order, at that event, the learned Tribunal ought to have draw an adverse inference against claimant / injured and then based on, if any, material or corroborative piece of evidence or expert opinion of the Medical

Board based on the medical treatment or discharge papers considering the avocation of the claimant, the learned Tribunal has to assess the functional disability to award just compensation, keeping in mind the directions issued by the Hon'ble Supreme Court in ***Bajaj Allianz (supra)***.

- 12) In the wake of above, the present petition is **allowed**. The order dated 18.09.2024, below Exhibit 61, passed by the learned Motor Accident Claims Tribunal, Panchmahals at Godhra, in MAC Petition No.264 of 2017, is quashed and set aside.
- 13) With the aforesaid directions the present petition stands disposed of. Notice is hereby discharged. Interim relief granted earlier stands vacated forthwith.

(HASMUKH D. SUTHAR,J)

ANKIT JANSARI