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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 25th October, 2016

+ MAC.APP. 833/2015

PAWAN KUMAR

..... Appellant

Through: Mr. I.C. Mishra and Mr. P.K.
Jha, Advocates

versus

M/S THE NEW INDIA ASSURANCE CO LTD..... Respondent

Through: Ms. Shubhada Khosla,
Advocate

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the order dated 28th May, 2015 whereby the Claims Tribunal dismissed the claim petition for non-prosecution.
2. The Claims Tribunal framed the issues on 11th April, 2014 and listed the matter for the appellant's evidence on 11th July, 2014. On 11th July, 2014, the appellant filed an application for examination of the appellant by a Medical Board to determine his disability whereupon the Claims Tribunal vide order dated 11th July, 2014 directed the appellant to appear before the Medical Board of Lal Bahadur Shashtri Hospital on 17th September, 2014. The report of the Medical Board of Lal Bahadur Shashtri Hospital dated 09th October, 2015 was submitted before the Claims Tribunal. In the meantime, the Claims Tribunal dismissed the claim petition on 28th May, 2015 without waiting for the report of the Medical Board.

3. Learned counsel for the appellant submits that the Medical Board of Lal Bahadur Shastri Hospital gave its report on 09th October, 2015, whereby the permanent disability of the appellant was assessed at 9%. It is submitted that the appellant was awaiting the report of the Medical Board. It is further submitted that the dismissal of the claim petition before the receipt of the report of the Medical Board was not warranted.

4. The appeal is allowed and the order dated 28th May, 2015 dismissing the claim petition in default is set aside and the case is remanded back to the Claims Tribunal for conducting the enquiry from the stage of recording of appellant's evidence.

5. The parties shall appear before the Claims Tribunal on 07th December, 2016 when the appellant shall file his evidence by way of affidavit before the Claims Tribunal. The appellant shall also file the list of witnesses along with the application for summoning the witnesses on the said date. The Claims Tribunal shall give the summons to the witnesses *dasti* to appellant to serve them on his own responsibility. The Claims Tribunal shall thereafter fix the case for recording of appellant's evidence.

6. Learned counsel for the appellant submits that he shall not seek any unnecessary adjournment for leading the appellant's evidence. The statement of the appellant is taken on record.

7. The trial Court record be sent back forthwith.

8. Copy of this judgment be given *dasti* to counsels for the parties under signatures of the Court Master.

OCTOBER 25, 2016

rsk

J.R. MIDHA, J.