

29.11.2022

DL No. 09

BM

Court No.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 24629 of 2022

Suvankar Dalapati

Vs.

Union of India & Ors.

Mr. Dilip Kumar Shyamal

Mr. Gourav Ghosh

... for the petitioner

Mr. A. K. Upadhyay

Ms. Supriya Mahajan

... for the respondent no.5

Ms. Nabanita Mondal

Mr. T. K. Chatterjee

... for the respondent nos.2, 3, 4 & 6

Mr. Raj Kumar Sain

... for the Union of India

Affidavit of service filed in Court today be retained with the records.

The petitioner claims to be an employee of P. S. Earthmovers Pvt. Ltd., an institution that is covered by the Employees State Insurance Scheme (in short 'ESI Scheme').

The petitioner met with an accident on May 10, 2019 resulting in permanent disability. After assessing the percentage of disability of the petitioner, a disability certificate was issued by the ESI Corporation showing 20% disability. The said certificate was issued on June 11, 2021. The petitioner got himself checked by a medical Board at the District Hospital, Tamruk, Purba Medinipur, Government of West Bengal. As per the disability

certificate dated March 25, 2022 issued by the Government Hospital, Tamluk, it appears that the disability of the petitioner was calculated as 60%. After receiving the said disability certificate the petitioner made representation on May 6, 2022 and July 18, 2022.

Mr. Shyamal, learned counsel appearing for the petitioners submits that despite the said representation there was no response from the ESI Corporation/respondents. The petitioner will be entitled to a paltry sum of Rs.7,240/- which was not at all commensurate to the percentage of disability suffered by the petitioner.

Ms. Nabanita Mondal, learned counsel appearing on behalf of the respondent nos.2, 3, 4 & 6 submits that the petitioner should have approached the authorities for a review medical examination being conducted upon him instead of making the representation for greater financial benefits. The petitioner straight away went on to examine himself by the medical board of a Government Hospital. Since, the petitioner did not follow the statutory rules relating to the Corporation, the petitioner is not entitled to his representation being considered.

Having considered the rival submissions of the parties and the materials placed on record, this court directs the respondent no.3 to consider the

representations of the petitioner dated May 6, 2022 and July 18, 2022 keeping in mind calculation that appears from the disability certificate dated March 25, 2022. In case, the petitioner is required to be examined before a review medical board, for calculation of the percentage of his disability such a decision may be taken by the respondent no.3 as per the extant rules and policy governing ESI Corporation. The representation of the petitioner be disposed of by six weeks from date by passing a reasoned order. The reasoned order shall be communicated to the petitioners within two weeks of passing thereof.

Since no affidavits have been invited in the present writ petition, the allegations contained in the writ petition are deemed not to have been admitted by the parties.

With the direction aforesaid **WPA 24729 of 2022** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)