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

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Date of decision: 05.07.2022

+ **LPA 380/2022**

DR. V.P. APPAN

..... Appellant

Through: Appellant in person.

versus

SECRETARY (DLSA, SOUTH-EAST)

..... Respondent

Through: Mr Amit George with Ms Piyo
Harold Jaimon, Mr Rayadurgam
Bharat, Mr Amol Acharya with Mr
Arkareil Bhaumik, Advs.
Ms Isha Singh, Secretary, DLSA,
South East.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

Rajiv Shakdher, J. (Oral)

1. This appeal is directed against the judgment dated 22.09.2021 passed by the Learned Single Judge in MAC. APP.164/2021.
2. The appeal preferred before the Learned Single Judge sought to assail the recommendation made by the District Victim's Compensation Committee [in short "DVCC"] and the consequential order dated 20.06.2019 passed by the Secretary, District Legal Services Authority, South-East.
3. A perusal of the aforesaid order would show that the DVCC recommended payment of Rs.2 lakhs as compensation to the appellant under



the Delhi Victim Compensation Scheme, 2015 [in short “2015 Scheme”].

3.1. This determination was based on a disability certificate issued by the Safdarjung Hospital, which was placed in record at a relevant time. This disability certificate, concededly, is dated 15.04.2019, although, the same is not in our record. Admittedly, as per the disability certificate, the appellant’s disability was pegged at 39%.

4. A perusal of the record shows that the appellant had obtained a disability certificate dated 22.07.2019 from All India Institute of Medical Sciences [in short “AIIMS”].

4.1. The AIIMS disability certificate, contrary to what is indicated in the earlier certificate issued by Safdarjung Hospital, pegged the appellant’s disability at 67%.

4.2. It is not disputed that the said certificate characterized the appellant’s disability as “permanent physical impairment in relation to his left lower limb”.

5. A perusal of the impugned judgment shows that the respondent had raised a preliminary objection before the Learned Single Judge that the appeal (MAC. APP. 164/2021) was not maintainable.

5.1. It was, *inter alia*, submitted that, although, the appellant had preferred an appeal before the Learned Single Judge under Section 173 of the Motor Vehicles Act, 1988 [hereafter referred to as “the Act”], such an appeal could only be instituted against an order passed by the Motor Accident Claim Tribunal.

5.2. This apart, the respondent’s counsel, it appears, had also, addressed



arguments on merits before the Learned Single Judge.

6. The Learned Single Judge, while passing the impugned judgment, ruled on the merits of the matter. Since on merits, the Learned Single Judge was not able to persuade himself to set aside the determination made *via* the order dated 20.06.2019, he did not deem it necessary to rule on the preliminary objection raised on behalf of the respondent, with regard to the maintainability of the appeal. This course adopted by the Learned Single Judge has resulted in an appeal being preferred before us.

7. There is no doubt, in our minds, that the appellant had taken recourse to an incorrect remedy. Perhaps, the writ route was available to the appellant.

8. That said, on merits there was something to be said insofar as the disability certificate that has been issued by AIIMS, where the appellant underwent a surgery for knee replacement.

9. The appellant's case, both before the Learned Single Judge, as well as before us, is simply this, had the certificate issued by the AIIMS been taken into account, he would have been entitled to compensation amounting to Rs.3 lakhs, and not Rs.2 lakhs, as recommended by DVCC.

10. We are of the view that there is weight in this submission, especially, if one has regard to the disability certificate issued by AIIMS.

11. We may also record the concerns of the respondent, which have been articulated by Dr Amit George. It is Dr George's submission that there is no power of review vested in the respondent under the 2015 Scheme and therefore, the disability certificate issued by the AIIMS could not have been taken into account, once the determination was made on 20.06.2019.



12. It is for this reason, we noted, at the outset, the error committed by the appellant in taking recourse to the wrong remedy. Had the appellant taken recourse to a correct remedy, perhaps, the concerned court would have directed a reexamination of the matter by the DVCC in the light of the fresh material obtained by the appellant.

12.1. The appellant would, then, have possibly explained his circumstances in its entirety.

12.2. There is no dispute that the appellant is today nearly 83 years of age, and has, by way of support, only his wife, who is also a senior citizen. The fact that the appellant has spent a considerable amount of money, as asserted by him, in pursuing his case, are also aspects which the DVCC could have taken into account, if the matter was directed to be placed before it - a situation which did not arise because the appellant had taken recourse to a statutory remedy which was, otherwise, not available to him.

13. Therefore, the best course forward, according to us, would be to set aside the judgment of the Learned Single Judge, who, according to us, ought not to have ventured into the merits of the matter.

13.1. It is ordered accordingly.

14. Furthermore, since the respondent has expressed difficulty in reviewing the order dated 20.06.2019, we set aside the same as well and direct the respondent to reexamine the quantum of compensation that ought to have been paid to the appellant, having regard to the disability certificate issued by AIIMS and any other material that the appellant would like to place in support of his plea that he is entitled to compensation, in the very least, amounting to Rs.3 lakhs.



15. Resultantly, the appellant is directed to appear before the DVCC on 11.07.2022 at 3.00 p.m.

15.1. The DVCC will hear the appellant and make a fresh recommendation having regard to the observations made hereinabove.

15.2. While doing so, the DVCC will take into account the disability certificate issued by AIIMS and/or any other fresh material that the appellant may wish to place before it. Once the DVCC makes a fresh recommendation, the Secretary, DLSA, will pass the necessary order in the matter.

16. List the matter for compliance on 15.07.2022.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JULY 5, 2022/pmc

Click here to check corrigendum, if any