

IN THE HIGH COURT AT CALCUTTA
Special Civil Jurisdiction
Appellate Side

Judgment (2)
Moumita
Daily List Item No. 11

Present :
The Hon'ble Justice Aniruddha Roy

WPA 14228 OF 2023
Suvankar Dalapati

Vs.

The Union of India & Ors.

For the Petitioner	:	Mr. Gourab Ghosh, Adv.
For the Union of India	:	Mr. Amit Chakraborty, Adv.
For the ESI Corporation	:	Mr. Shiv Chandra Prasad, Adv.
Heard on	:	13.08.2025
Judgment on	:	13.08.2025

Aniruddha Roy, J.:

1. Affidavit-of-service, filed in Court today, is taken on record.
2. On the prayer of Mr. Gourab Ghosh, learned advocate appearing for the writ petitioner, the exception on behalf of the petitioner filed in Court today is taken on record.
3. Mr. Amit Chakraborty, learned advocate appears for the Union of India.
4. Mr. Shiv Chandra Prasad, learned advocate appears for the ESI Corporation.
5. The petitioner at all material time was an employee in the PS Earth Movers Private Limited. In course his employment the petitioner has suffered an

accident and the medical board of the ESI has assessed the disablement of the petitioner **being 20%, annexure p-4 at page 27** to the writ petition.

6. Immediately, the petitioner went to a District Government Hospital at Purba Medinipur, he had been assessed to be physically **disabled by 60%**. The disability certificate was dated **March 25, 2022** is **annexure p-5 at page 28** to the writ petition.
7. The ESI regulations/norms provides for an appellate/review remedy, from the decision of the ESI Medical Board. Admittedly, the petitioner has not availed of such remedy.
8. In this backdrop, a previous writ petition was filed **WPA 24629 of 2022**. The previous writ petition was disposed of by a co-ordinate bench by an order dated **November 29, 2022, annexure p-7 at page 35** to the writ petition. Under the said order the co-ordinate bench had directed as follows:

“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.”

9. Pursuant to and in terms of the said direction of the co-ordinate bench, the ESI authority has passed its impugned reasoned order dated **December 29, 2022, annexure p-8 at page 38** to the writ petition. Under the said impugned order the ESI authority has held that since there has been no fresh evidence available on the issue and since the petitioner did not avail of the remedies laid down under **Section 75** and **Sub-Section 2 to Section 55** of **The Employees’ State Insurance Act, 1948** (for short the ESI ACT), the request of the petitioner was not accepted and accordingly the said assessment of the ESI Medical Board assessing the petitioner to be disabled by 20% has been affirmed.
10. Mr. Shiv Chandra Prasad, learned counsel for the ESI authority submits that the remedy provided under the statute not being availed of the petitioner cannot challenge the decision by way of the instant writ petition. He further submits that the finding of the Medical Board of ESI has not been controverted by the petitioner by producing any subsequent evidence later than **March 25, 2022** being the certificate of the District Government Hospital. Mr. Prasad prays for dismissal of this writ petition.
11. Mr. Amit Chakraborty, learned advocate for the Union of India has also adopted the submissions of Mr. Prasad.

12. After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this court that, this writ petition was initially considered by a co-ordinate bench on **August 7, 2023** and pursuant to the direction made therein the parties have filed their report on affidavit and the exception on affidavit thereto.
13. The materials on record show that the Medical Board of ESI assessed the petitioner to be 20% disabled on July 6, 2021 at page 27 to the writ petition and the petitioner thereafter on March 25, 2022 obtained the medical certificate from the District Government Hospital showing that he is 60% disabled. When the previous writ petition was filed and the order was passed therein on November 29, 2022, both these reports were there before the co-ordinate bench and upon considering those reports the co-ordinate bench passed its order. So, both the said reports had received judicial consideration of the co-ordinate bench in the previous writ petition. Thereafter, no subsequent development has taken place nor any new material has come on the field.
14. Pursuant to the said order dated November 29, 2022, the impugned reasoned order has been passed on **December 29, 2022 at page 38** to the writ petition. The impugned reasoned order shows that both these medical certificates, as referred to above were taken into consideration and the impugned order was passed. No new or fresh evidence was produced. Admittedly, the petitioner did not avail of the statutory remedies available to him under the ESI Act.

15. The report of the Medical Board of the ESI is an experts' opinion. The law is well settled that court cannot sit in appeal on a decision and opinion of experts', neither the court can substitute the experts' opinion. The said experts' opinion of the ESI Medical Board could have been challenged by the petitioner by availing of the statutory remedies provided under the ESI Act, as already discussed above, but the same has not been done. The court seldom interferes with an experts' opinion unless and ex facie mala fide, arbitrariness or inconsistency is there on the face of the experts' opinion. This is not such a case.
16. Inasmuch as, if this practice is accepted by the court that whenever and wherever a person is aggrieved by the opinion of one medical expert and obtains a second report from the second different medical expert on the same issue and on the face value of it, if the first report is interfered with, then it will be a never ending process with an eternal journey, which is not permitted in law.
17. In view of the forgoing reasons and discussions, this court is of the firm view that, this writ petition is devoid of any merit.
18. Accordingly, this writ petition being **WPA 14228 of 2023** stands ***dismissed***, without any order as to costs.

(Aniruddha Roy, J.)