

**2022 SCeJ 1065**

Supreme Court of India

*M.R. SHAH, KRISHNA MURARI, JJ.*

**Suresh Paswan v. M/s. Kla Construction Technologies Pvt. Ltd.**

CIVIL APPEAL NO. 6523 OF 2022

16th September 2022

**Employees' Compensation Act, 2010 - injury during employment - Permanent disability - Medical Board constituted on orders of the High Court after 9 years, in 2017, of the report submitted before the commissioner has opined that the appellant has not suffered any permanent disability - Disability certificate issued by Civil Surgeon-cum-Medical Officer, was of the year 2009 and the Medical Board constituted pursuant to the order passed by the High Court examined the injured employee after a period of approximately nine years from the date of accident - At the relevant time, the employer did not make any application before the Commissioner, Employees' Compensation to constitute a Medical Board and the injured be examined by the Medical Board - Employer ought to have made such a request before the Commissioner, Employees' Compensation at the earliest opportunity - Appellant did suffer the injuries due to fall and at the relevant time, it affected his 60% earning capacity, it may not be that nothing was to be awarded to the appellant - injured employee by way of compensation.**

*Petitioner Counsel: AJAY CHOUDHARY, Respondent Counsel: PULKIT TARE, ANAND SHANKAR*

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**M.R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Delhi at New Delhi in First Appeal No. 511 of 2016, by which the High Court has allowed the said appeal preferred by the respondent - employer and has set aside the order passed by the Commissioner, Employees' Compensation awarding compensation of Rs.3,74,364/- to the appellant herein, the injured employee has preferred the present appeal.

2. That the appellant filed an application for compensation before the Commissioner, Employees' Compensation. It was the case on behalf of the appellant that while he was working at the construction site under the respondent-employer, he fell down from the roof of the first floor and suffered grievous injuries, which resulted in 60% permanent disability. The appellant relied upon the disability certificate dated 13.09.2009 issued by Dr. Umesh Kumar Singh, Civil Surgeon-cum-Medical Officer, Gardiner Road Hospital, Patna certifying

that the appellant sustained 60% disability, which was as a result of the accident. It appears that the respondent – employer disputed the disability certificate dated 13.09.2009 as well as his disability as assessed 60% under the said disability certificate. The learned Commissioner, Employees' Compensation awarded a total sum of Rs. 3,74,364/- towards the compensation taking the permanent disability of the appellant as 60%.

2.1 Feeling aggrieved and dissatisfied with the order passed by the Commissioner, Employees' Compensation awarding Rs. 3,74,364/- towards the compensation considering the permanent disability of the appellant as 60%, the respondent – employer preferred appeal before the High Court. Before the High Court, an application was submitted by the employer to constitute a Medical Board to examine the permanent disability of the appellant. By order dated 21.03.2017, the High Court directed the Medical Superintendent of Dr. Ram Manohar Lohia Hospital to constitute a Medical Board to examine the disability of the appellant. The Medical Board submitted the report dated 09.11.2017 and according to the said report the appellant did not suffer any permanent disability. Therefore, the High Court by the impugned judgment and order has allowed the said appeal preferred by the respondent No.1 herein and has set aside the order passed by the Commissioner, Employees' Compensation. Hence, the present appeal is at the instance of the original claimant – employee.

3. We have heard the learned counsel for the respective parties at length. We have also gone through and considered the earlier disability certificate dated 13.09.2009 relied upon by the claimant as well as the learned Commissioner, Employees' Compensation as well as the report dated 09.11.2017 of the Medical Board constituted pursuant to the order passed by the High Court dated 21.03.2017. It is true that the Medical Board in its report dated 09.11.2017 has opined that the appellant has not suffered any permanent disability. However, at the same time, it is required to be noted that the disability certificate issued by Dr. Umesh Kumar Singh, Civil Surgeon-cum-Medical Officer, Gardiner Road Hospital, Patna was of the year 2009 and the Medical Board constituted pursuant to the order passed by the High Court examined the injured employee after a period of approximately nine years from the date of accident. At the relevant time, the employer did not make any application before the Commissioner, Employees' Compensation to constitute a Medical Board and the injured be examined by the Medical Board. The employer ought to have made such a request before the Commissioner, Employees' Compensation at the earliest opportunity. Be that as it may, considering the fact that the appellant did suffer the injuries due to fall and at the relevant time, it affected his 60% earning capacity, it may not be that nothing was to be awarded to the appellant – injured employee by way of compensation.

4. It is reported that pursuant to the earlier order passed by the High Court, out of total sum of Rs. 7,52,471/- deposited by the respondent, the appellant has already withdrawn 50% of the amount, i.e., Rs. 3,76,236/-. Under the circumstances and in the facts of the case, we are of the opinion that the appellant is entitled to Rs. 3,76,236/- by way of compensation with interest, which the appellant has already withdrawn, it shall meet the ends of justice.

5. In view of the above and for the reasons stated above, present appeal succeeds in part. The impugned judgment and order passed by the High Court is hereby quashed and set

aside. It is directed that the appellant is entitled to a total sum of Rs.3,76,236/- towards compensation with interest for the disability suffered by him, which the appellant has already withdrawn earlier. Therefore, the aforesaid amount of Rs. 3,76,236/- withdrawn by the appellant be treated as full and final settlement of the claim of the appellant towards compensation with interest for the disability suffered by him. The balance amount lying in deposit with the High Court/Commissioner may be withdrawn by the respondent/employer, if not withdrawn so far.

Present appeal is accordingly disposed of in terms of the above.