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IN THE HIGH COURT OF DELHI AT NEW DELHI

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MAC.APP. 317/2009

RAJ KUMAR

..... Appellant

Through: Mr. R.D.Sharma, Adv.

versus

ANUJ SARAF & ORS.

..... Respondent

Through: Mr. Nikhil Majithia, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

ORDER

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28.11.2011

This Appeal relates to a motor accident which took place on 29.03.2008. The Claim Petition was filed before the Tribunal on 30.07.2008; the pleadings were completed on 13.10.2008; issues were framed on 2.12.2008. 21.01.2009 was the first date of evidence. Appellant was given last opportunity to produce the evidence on the next date. On the next date, the Presiding Officer of the Tribunal was on leave. On 21.04.2009 the case was fixed for Appellant's evidence on 11.05.2009. On 11.05.2009 it was represented by the counsel for the Appellant that the Appellant was not available as he was suffering from headache. The submission did not find favour with the Tribunal resulting closure of the Appellant's evidence and dismissal of the Claim petition.

Learned counsel for the Appellant has produced before me the original record of Lok Nayak Jai Prakash Hospital which shows that the Appellant had suffered *fracture of occipital bone with hemorrhagic convulsion*. Unfortunately, the record was not produced before the Tribunal. The Tribunal thus believed that the Appellant was not interested in the progress of the Claim Petition.

In the circumstances of the case, some more time ought to have been given to the Appellant for production of his evidence. The impugned award dated 11.05.2009 is accordingly set aside and the case is remanded back to the Tribunal for its decision on merits in accordance with law.

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Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

The Appellant shall be granted only two opportunities to produce his evidence before the Tribunal.

The parties are directed to appear before the Tribunal on 20.12.2011.

Trial Court Record be returned immediately along with the copy of the order.

Copy of the order may also be given to the counsel for the parties DASTI.

G.P. MITTAL, J.

 **NOVEMBER 28, 2011**
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