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

Date of Decision: 23rd March, 2016

+ **CM(M) 151/2016**

MOHD YUNUS QURESHI

..... Petitioner

Through Mr. Habibur Rahman, Adv.

versus

MADHU & ORS (IFFCO TOKYO GENERAL INSURANCE CO LTD)

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The petitioner was impleaded as fourth respondent in the accident claim case presented in 2011 by the first respondent Madhu (claimant) for compensation for injuries suffered by her in a motor vehicular accident involving scooter bearing No.DL 9SS 0581 (offending vehicle), he having been described as the person in possession and use of the said offending vehicle, it having been driven by his minor son Ayub (first respondent before the tribunal). The claimant had tendered her affidavit (Ex.PW1/A) in September, 2012 when she appeared as PW1. In spite of repeated opportunities and deferments, the opportunity to cross-examine the said witness was not availed. Thus, the right of the petitioner to cross-examine

the said witness stood closed. It was at the stage of final arguments that he moved an application (dated 29.05.2015) for recall of PW1 for cross-examination. The said request was declined by the tribunal by order dated 02.12.2015 referring to the past conduct.

2. The petitioner has come up through the petition at hand invoking Article 227 of the Constitution of India seeking the order to be set aside and the opportunity to be granted. In spite of notice, the first respondent (claimant) has not appeared.

3. The counsel for the petitioner has been heard and the tribunal's record perused.

4. On being called upon to justify the past conduct, the counsel for the petitioner submitted that for some personal reasons the petitioner could not appear. He elaborated that the petitioner's son was suffering from cancer. This, however, does not justify non-appearance of the counsel.

5. Be that as it may, in the facts and circumstances, in view of the assurance for due diligence, now held out on behalf of the petitioner, the petition is allowed with cost of ₹5,000/- to be paid to the claimant by the petitioner on the next date of hearing before the tribunal. Subject to payment of costs, the right to cross-examine PW1 is revived. It is directed that the tribunal shall fix a date convenient to its calendar for such purposes calling upon PW1 to remain present and be subjected to cross-examine. It is made clear that the right to cross-examine shall be subject to payment of costs only and shall stand closed if the opportunity hereby revived is not availed on the date the witness is tendered for such purposes. It shall be responsibility of the petitioner to arrange presence of his counsel

duly briefed and ready to assist the tribunal in the conduct of the proceedings on the first call of the case.

6. The petition stands disposed of in above terms.

7. A copy of this order shall be sent forthwith with the tribunal's record.

8. *Dasti.*

MARCH 23, 2016
VLD

R.K. GAUBA
(JUDGE)

