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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 147/2017 & CM Nos.12960-61/2017**

M/S UPEX EXPRESS INDIA PVT LTD Appellant
Through: **Mr.Gautam Gupta, Advocate**

versus

AKHILESH KUMAR Respondent
Through: **Mr.Triloki Pandit, Advocate**

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

% **ORDER**
29.08.2017

1. The appellant has challenged the order dated 21st October, 2016 whereby the Commissioner, Employees' Compensation has awarded compensation of Rs.1,89,178/- to the respondent.
2. The respondent instituted an application for compensation before the Commissioner, Employees' Compensation on 31st July, 2014 claiming compensation for injuries suffered in an accident dated 17th February, 2007. The appellant contested the application on the ground of delay of more than 7 years in filing the application. The appellant also disputed that the alleged accident did not occur during the course of the employment of the respondent with the appellant.
3. Learned counsel for the appellant submits that the delay has not been sufficiently explained in the application for condonation of delay. It is further submitted that the Commissioner, Employees' Compensation has recorded that the appellant has admitted that the accident occurred during the course of the employment whereas there was no such admission by the appellant.
4. The record of the Claims Tribunal has been perused. There is no

admission by the appellant with respect to the accident having occurred during the course of employment. The Claims Tribunal has clearly erred in recording that '*It is an admitted fact that the claimant met with an accident while he was performing official duty on tour from Delhi to Haridwar*'. The application for condonation of delay filed by the respondent before the Commissioner, Employees' Compensation does not sufficiently explain the delay.

5. This Court is of the view that the impugned order is liable to be set aside and it is in the interest of justice to remand the matter back to the Commissioner, Employees' Compensation to adjudicate the matter afresh.

6. The appeal is allowed, the impugned order is set aside and the case is remanded back to the Commissioner, Employees' Compensation for fresh adjudication after hearing the parties. The respondent is granted liberty to file an additional affidavit to explain the delay in filing the application for compensation. Pending applications are disposed of.

7. The parties shall appear before the Commissioner, Employees' Compensation on 22nd September, 2017.

8. The amount deposited by the appellant with Registrar General of this Court be transferred to the Commissioner, Employees' Compensation. The Commissioner Employees' Compensation shall pass a fresh order after hearing the parties within six months from today and the amount shall be disbursed in terms of fresh order which would be passed.

9. The record of the Commissioner, Employees' Compensation be returned back forthwith.

J.R. MIDHA, J.

AUGUST 29, 2017/mamta