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

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Decided on:05.08.2019

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MAC.APP. 709/2019

SURENDER SINGH

..... Appellant

Through: Mr. Amarish Chandra Tiwari, Advocate.

Versus

NATIONAL INSURANCE CO LTD & ANR.

.....Respondents

Through: Mr. Pankaj Seth, Advocate for Respondent
No.1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 35095/2019 (for delay) & MAC.APP. 709/2019

1. There is delay of 779 days in filing this appeal. The same is sought to be explained by a simple statement of the counsel that the case file had been misplaced in his office and the same was recovered just a couple of days prior to the filing. The said ground is flimsy and not believable. Furthermore, the application has not been signed by the appellant – Surender Singh and has only been signed by the counsel. If Surender Singh knew that the file had been misplaced immediately after the counsel had been engaged by him, then he should have taken requisite remedial steps. There is nothing on record to show as to why Surender Singh did not ask his counsel to file this appeal earlier. Furthermore, if the facts mentioned in the application

were known to the appellant, then the appeal should have been supported by his affidavit. That not being the position, the application is without merit and is dismissed.

2. Even otherwise, the Court would note that the accident happened on 18.06.2010 at about 5:10 p.m, when the appellant's passenger bus, which was being driven in a rash and negligent manner, hit against a motorcycle, on which a young mother was riding pillion alongwith her infant child. Her body and her head were crushed under the bus. The offending bus was seized from the spot as per Seizure Memo dated 18.06.2010, the date of the accident itself. The said Seizure Memo had been filed with the Detailed Accident Report (DAR). Additionally, criminal proceedings were ensued against the driver of the offending vehicle as well as the appellant. There is ample proof on record to establish that the bus was involved in the accident. The learned counsel for the appellant admits that the bus was released on *Superdari* and subsequently sold. Surely, the appellant knew fully well about his vehicle being involved in a fatal motor vehicular accident and the fact that his vehicle had been seized. He chose not to participate in the proceedings before the learned Tribunal despite having been served due notice. Indeed, in this regard, the learned Tribunal has recorded as under:-

*"5. It is pertinent to mention here that respondents no. 1 & 2 failed to file their WS in this case. Respondent no. 2 was served, by way of publication in newspaper " **Rashtriya Sahara**" vide publication dt. 28.04.11 for 11.05.11. Hence, the defence of respondent no. 2 was struck off on 08.09.11. Respondent no. 1 was also served for 30.05.12 as reflected in the proceedings of the said date. Since he failed to put his appearance, his defence was struck off on 30.05.12."*

3. It is evident that the appellant knew fully well that a case was pending against him and he chose not to participate in the proceedings. Now, he says that the learned Tribunal erroneously proceeded against him *ex parte*. The said argument is untenable on the face of the record.

4. There is no error in the impugned order. The appeal is without merit. It is dismissed both on the count of delay and laches, as well as for being without merit.

AUGUST 05, 2019

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NAJMI WAZIRI, J.



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