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

% *Decided on: 13.02.2020*

+ **MAC.APP. 775/2019 & CM APPL. 40440/2019**

DAYA KISHAN

..... Appellant

Through: Mr. Mayank Khurana, Adv.
(Mob.-9990990891)

versus

**SUNIL & ORS (M/S CHOLAMANDALAM MS GENERAL
INSURANCE CO LTD)**

..... Respondents

Through: Mr. Pankaj Gupta, Adv. for Ms.
Suman Bagga, Adv. for R-3.

**CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI**

NAJMI WAZIRI, J. (Oral)

CM APPL. 40439/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed-off.

MAC.APP. 775/2019 & CM APPL. 40440/2019

3. Issue notice.
4. The learned counsel named above accepts notice on behalf of the insurance company.
5. At joint request, the appeal is taken up for disposal.
6. The appellant is aggrieved by the order dated 08.01.2019 passed by the learned MACT in MACP No. 6199/16, to the extent that despite the appellant having suffered a permanent physical disability of 28% in his right lower limb, the corollary functional disability has not been taken into consideration, all the more so for the appellant who was working in a

uniformed force, such disability would be vital towards his functioning. The learned counsel for the appellant relies upon the dicta of this Court in *Vikas Kumar vs. Sunit Kumar & Anr.*, MAC. APP. No. 599/2013 decided on 27.08.2014. It reads as under:-

“12. Being a uniform force, judicial notice of the fact can be taken that given the condition of the appellant and his being physically unfit, in all probabilities chances of any promotion in Delhi Police are quite remote. In these circumstances, it would be appropriate that some compensation be awarded to the appellant on account of his loss of pay due to loss of promotion chances.”

7. The Court would note that despite an opportunity having been granted to the appellant, his functional disability was not proven, nor has the impugned order taken into consideration any resultant functional disability. The appellant seeks to adduce relevant records from the Police Department apropos the appellant's medical condition and its affect on his promotion and earnings.

8. Lest the claimant suffer an irreparable prejudice, the impugned order is set aside and the claimant is granted one opportunity to lead evidence in this regard. The appellant's physical disability has resulted in a functional disability which could have a concomitant monetary and promotional loss. The parties shall appear before the learned MACT on 06.03.2020. The learned Tribunal is requested to endeavour to dispose-off the case, preferably within a period of six months from the date when the case is so listed before it. The learned counsels for the parties assure the Court that they shall assist the learned Tribunal promptly and shall not seek any adjournment whatsoever.

9. No interest shall be payable on amounts, if any, enhanced by the learned Tribunal from 08.01.2019 till the date of fresh adjudication.

10. The appeal, alongwith pending applications, is disposed-off in the above terms.

11. A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

NAJMI WAZIRI, J

FEBRUARY 13, 2020/RW

