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

Date of decision: 11.08.2023

+ MAC.APP. 95/2021

DELHI TRANSPORT CORPORATION Appellant
Through: Mr.Vikrant N Goyal,
Mr.Mrutunjay Mishra,
Ms.Tania Sharma, Advs.

versus

JITENDER PRASAD Respondent
Through: Mr.R.K. Tripathi, Adv.

**CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA**

NAVIN CHAWLA, J. (ORAL)

CM APPL 39869/2023

1. This application has been filed by the appellant seeking waiver of the cost imposed on the appellant vide order dated 13.03.2023.
2. The learned counsel for the appellant submits that the additional affidavit explaining the reasons for the delay in filing of the appeal was not filed as, in fact, there is no delay in filing of the appeal. He further submits that the counsel could not appear on 13.03.2023 as he was in some personal difficulty.
3. The learned counsel for the respondent no.3 does not oppose the application.
4. Accordingly, the cost imposed shall stand waived.
5. The application stands disposed of.

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6. This application seeks condonation of the delay of 338 days in filing of the appeal.

7. The learned counsel for the appellant submits that, in fact, keeping in view the orders passed by the Hon'ble Supreme Court in Suo-Moto Writ (Civil) No.3 of 2020 in ***Re: Cognizance for Extension of Limitation***, there is no delay in filing of the appeal. He submits that the Impugned Award was passed on 29.11.2019; an application seeking certified copy thereof was filed on 17.01.2020; and the same was supplied to the appellant by the Court on 12.03.2020. He submits that therefore, the limitation for filing of the present appeal expired during the period that stands excluded for the purposes of the limitation by the orders of the Supreme Court.

8. I have considered the submission made, and find merit in the same.

9. Accordingly, the present application is disposed of, observing that there was no delay in filing the present appeal.

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10. This appeal has been filed by the appellant challenging the Award dated 29.11.2019 passed by the learned Motor Accidents Claims Tribunal-02, North, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal'), in MAC Petition No. 4373/16, titled ***Delhi Transport Corporation v. Sh.JitenderPrashad***.

11. The limited challenge of the appellant to the Impugned Award is on the ground that the learned Tribunal has erred in not awarding compensation to the appellant towards the loss suffered because of the



appellant not being able to run the bus in question during the period of its repair. The learned counsel for the appellant submits that said loss suffered is also a loss of damage of property and therefore, the appellant should have been held entitled thereto.

12. On the other hand, the learned counsel for the respondent no.3, placing reliance on the following judgments, submits that such a claim has rightly been rejected by the learned Tribunal:

- i) *National Insurance Co.Ltd. v. Rajesh Kumar & Anr.*, 2011 SCC OnLine Del 2844;
- ii) *New India Assurance Co. Ltd. v. Andhra Pradesh State Road Transport Corpn., Musheerabad & Anr.*, 2008 SCC OnLine AP 275;
- iii) *Amar Singh v. Ranbir Singh &Ors.*, 2011 SCC P&H 1261;
and,
- iv) *National Insurance Co. Ltd. v. Himachal Road Transport Corporation & Ors.*, 2009 SCC OnLine HP 2854.

13. The learned counsel for the respondent no. 3 submits that it is well settled law that under Section 165 of the Motor Vehicles Act, 1988 (in short 'Act'), it is only the loss of "damages to any property" that can be awarded as compensation. He submits that the remote loss like loss of income during the period of repair cannot be granted under Section 165 of the Act.

14. I find merit in the submission made by the learned counsel for the respondent no. 3.

15. In *Rajesh Kumar & Anr.* (supra), this Court has held as under:

"4. Record shows that the "Repaired Damages" under the head of compensation



awarded had been in the sum of Rs.1,45,000/-; this was keeping in view the 14 bills which had been proved by the petitioner (Ex.PW-1/1 to Ex.PW-1/14) which bills had not been disputed; the final bill dated 11.7.2003 was in the sum of Rs.1,44,460/-. This amount of Rs.1,45,000/- awarded under the head of "Repaired Damages" calls for no interference.

The other amounts awarded as towing charges, inconvenience caused to the petitioner, conveyance charges i.e. the amount spent by the petitioner while his vehicle was being repaired, loss of income in this intervening period are illegal and impermissible."

16. In ***Musheerabad & Anr.***(supra), the Andhra Pradesh High Court has held as under:

"3. The point for consideration is whether the Tribunal constituted under the Act has jurisdiction to pass an award for the loss suffered by the 1st respondent during the period of repair of its damaged vehicle or not?

4. Section 165 of the Act reads:

xxxx

5. Rajkumar case, AIR 1985 MP 4 (supra) relied on by the learned Counsel for the appellant is a case that arose under the Motor Vehicles Act, 1939 (for short the 1939 Act). In that case a Division Bench of Madhya Pradesh High Court while considering Section 110(1) of that Act which is almost in parimateria with Section 165 of the Act, held that the words "damages to any property" used in Section 110(1) of 1939 Act, do not take in their sweep 'loss of business' on account of the damaged vehicle remaining idle during the period of damage, which may be a to owner. Similar view was taken a Division Bench of Kerala High Court also in Saradamma case, AIR 1989 Ker 23 (supra) relied on by the learned Counsel for the appellant, where it is held that



the direct damage to property alone is taken by the words 'damages to property'. That decision was followed by a learned Judge of this Court in KonalaManiyya case 2000 AIHC 970 (supra). In view of the ratio in the above decisions I also am of the considered opinion that the Tribunal constituted under the Act can pass an award with regard to the damage caused to the property only, but it is not empowered to pass any award relating to the damage or loss suffered by the owner of the vehicle due to its remaining idle during the period of its repair. For that purpose the civil Court only is competent to pass a decree and so I hold that the Tribunal erred in granting damages towards loss of earnings to the 1st respondent. The point is answered accordingly."

17. In **Amar Singh** (supra), the High Court of Punjab & Haryana has held as under:

"2. The claimant also makes a plea that the vehicle had not been run for nearly 5 months and the income which the claimant was earning by the use of the vehicle had been deprived to the owner. The claim for damages for loss to property in the manner contemplated under Section 165(1) and Section 168 of the Motor Vehicles Act shall be only the actual damages to the property and cannot also include the resultant loss by the non-user of the vehicle. This aspect has been considered by several Courts and particularly our own Court has held in Ved Parkash Sethi v. MusaffirTansport Corporation, reported as 1974 ACJ 367, and B.S. Nath v. Bachan Singh, 1971 ACJ 37, that "a Claims Tribunal does not have jurisdiction to award compensation for loss resulting from non-user of the vehicle and the Tribunal will have jurisdiction only to award compensation for the actual damages to the vehicles themselves". Every other Court in India has also approached the issue in the



same fashion. I do not, therefore, find a scope for entertaining a plea for the resultant loss of income arising by the damage to the property as claimable before the Tribunal.”

18. In ***Himachal Road Transport Corporation*** (supra), the High Court of Himachal Pradesh, has held as under:

“The question which arises is whether even the owner should be made liable to pay this amount under the Motor Vehicles Act or not? In my view, the intention of the legislature was only to grant jurisdiction to the Motor Accidents Claims Tribunal to award damages for the loss to the property. The consequential business loss could not have been assessed or awarded by the Tribunal. The loss caused due to the vehicle remaining idle is not damage to the property but a loss to the owner. In my opinion the Claims Tribunals constituted under section 165 of the Act have no jurisdiction to entertain such claims. Section 175 of the Act bars the jurisdiction of the civil court only with respect to claims for compensation which can be adjudicated upon by the Claims Tribunals. The loss to the business cannot be termed to be a damage to the property and in my humble opinion is not covered under Section 165 of the Act.”

19. In view of the above pronouncements, I find no merit in the present appeal. The same is accordingly dismissed.

NAVIN CHAWLA, J

AUGUST 11, 2023/Arya/rp

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 16.08.2023

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