

\$~

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

Date of decision: 22.05.2023

+ MAC.APP. 104/2022, CM APPL. 16340/2022 (additional evidence), CM APPL. 16341/2022 (delay 293 days) & CM APPL. 7041/2023 (directions)

RAKESH VERMA Appellant

Through: Mr. Mrinal Harsh Vardhan, Adv.

versus

UTTAM LOOMBA & ORS. Respondents

Through: Mr. Pankaj Seth, Mr. Sunil Singh,
Mr. Anil Singh Kalgotra, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal preferred by the claimant seeks to assail the award dated 18.01.2021 passed by the learned Motor Accidents Claims Tribunal. Vide the impugned award, the learned Tribunal has awarded compensation of Rs.1,90,000/- with interest @8% p.a. in favour of the appellant. Along with the appeal, the Appellant has preferred an application seeking to lead additional evidence.

2. On the last date, this Court had adjourned the matter to enable the learned Counsel for the Appellant to obtain instructions as to the number of witnesses which the Appellant wanted to examine by way of additional evidence. Today, the Appellant has moved an application with a prayer that since some of the documents including the Disability Certificate and the Income Tax Returns, which the Appellant wishes to prove by way of

additional evidence were already before the Learned Tribunal, and were not taken into consideration only because they could not be proved as per law, the matter be remanded back to the learned Tribunal with permission to him to lead additional evidence before the Learned Tribunal.

3. In support of his plea, he submits that a similar course of action was adopted by a Coordinate Bench in MAC. APP. 134/2019 titled ***Ratan Majumdar vs Vipul Goel & Anr*** and therefore prays that the matter be remanded back to the Learned Tribunal so that the effect of the additional evidence can in the first instance be appreciated by the Learned Tribunal.

4. Learned counsel for the respondents is not in a position to deny that the documents which the Appellant by way of the additional evidence seeks to prove, were already before the Learned Tribunal but were not considered only on account of the Appellant's failure to lead appropriate evidence in support thereof. Consequently, despite the Disability Certificate of the Appellant showing that he was suffering from 48% permanent disability, no compensation towards future loss of income has been granted by the learned Tribunal.

5. Taking into account that the Tribunal is the initial forum for appreciation of the evidence led in support of the claim petition, as also the appellant's plea that most of these additional documents were already before the learned Tribunal but were not taken into consideration only on account of the relevant witnesses not appearing before the learned Tribunal, I am of the considered view that it would be appropriate that the effect of these documents which the Appellant wants to prove by leading additional evidence, should first be considered by the Learned Tribunal. Accordingly, following the ratio of the decision in ***Ratan Majumdar*** (Supra), I am

inclined to remand the matter back to the learned Tribunal with liberty to the Appellant to lead additional evidence before the Tribunal.

6. The impugned award is, accordingly, set aside and the matter is remanded back to the learned Tribunal for reconsideration of the appellant's claim on merits after granting him an opportunity to lead additional evidence not only in respect of his disability, but also in respect of his Income Tax Returns.

7. Needless to state, while passing a fresh award, the learned Tribunal will take into account the amount which has already been released in favour of the appellant, as per the impugned award.

8. List before the learned Tribunal on 12.07.2023, for further proceedings in accordance with law.

(REKHA PALLI)
JUDGE

MAY 22, 2023
al