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

Date of decision: 15.09.2023

+ **MAC.APP. 430/2023**

JITENDER AGGARWAL

..... Appellant

Through: Mr.Shaharyar Ali, Mr.Puran
Pratap Singh, Advs.

versus

UDAY SHARMA AND ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 47732/2023

1. This is an application seeking condonation of 7 days delay in re-filing of the appeal.
2. For the reasons stated in the application, the delay is condoned and the application is allowed.

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3. This appeal has been filed by the appellant challenging the Award dated 01.10.2022 passed by the learned Motor Accidents Claims Tribunal, Shahdara, Karkardooma Courts, Delhi (hereinafter referred to as 'Tribunal') in Petition no.2225/2016, titled *Uday Kumar Sharma v. Abhishek Jindal & Anr..*
4. The appeal has been filed with a delay of 298 days. The appellant

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seeks condonation of this delay by contending as under:

“2. That the appellant is a business man and having good reputation in society that the during the covid-19 there were huge loss occurred in the business and the appellant could not overcome with this holocaust .that the most of the orders of business was suffered as money was stuck during pandemic. That the appellant took so much time to cope with his situation and triumphed against this financially burdened situation.”

5. I do not find it to be a sufficient reason /justification for condoning the huge delay in filing of the present appeal.
6. The appeal is, therefore, dismissed on the ground of limitation alone.
7. I even otherwise do not find any merit in the present appeal.
8. It is the case of the appellant that the appellant had transferred the offending vehicle that is, Santro Car bearing No.UP-14AM 4118, to the respondent no.2, on 13.03.2012. The learned counsel for the appellant submits that, therefore, liability to pay the compensation to the respondent no. 1 should not have been fastened on the appellant.
9. The next challenge of the appellant to the Impugned Award is on the award of compensation towards ‘Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure’ awarded in favour of the respondent no.1.
10. The learned counsel for the appellant submits that the learned Tribunal itself takes note of the fact that the respondent no.1 had not produced any document in support of his claim for medical treatment and expenses incurred. He submits that in spite of the



same, the learned Tribunal has awarded a sum of Rs.75,000/- to the respondent no.1 towards expenses in relation to the treatment, hospitalization and medicines.

11. The appellant also challenges the award of compensation of Rs.40,000/- in favour of the respondent no.1 towards attendant charges. The learned counsel for the appellant submits that even though the respondent no.1 had not filed any document regarding the appointment of an attendant, the learned Tribunal has awarded the above amount.
12. The appellant further submits that the learned Tribunal has erred in taking the functional disability of the respondent no.1 as 12%. The learned counsel for the appellant submits that as per the disability certificate, the respondent no.1 had suffered 24% permanent disability only in relation to his left upper limb and right lower limb. He submits that the same would have no effect on his income and therefore, the learned Tribunal has erred in taking the functional disability of the respondent no.1 as 12% to the whole body.

Analysis:

13. I have considered the above challenge of the appellant to the Impugned Award, however, find no merit in the same.
14. As far as the liability to pay the compensation to the respondent no. 1, the appellant admits that the vehicle was registered in his own name and had not been transferred in the records of the Transport Authority in the name of the respondent no.2 as on the date of the accident. In terms of the judgment of the Supreme Court in *Naveen Kumar v. Vijay Kumar and Others.*, (2018) 3 SCC 1, therefore, the



appellant shall remain to be the “owner” of the offending vehicle and liable to pay the compensation to the Claimants. I therefore, find no merit in the challenge of the appellant.

15. The learned Tribunal in its Impugned Award has noted that the respondent no.1 suffered 24% permanent disability in relation to his left upper limb and right lower limb. He remained hospitalized between 14.06.2009 to 29.06.2009. The respondent no.1 was working as a helper. The learned Tribunal states that he would have remained bedridden for almost 5 months. Taking the overall circumstances into account, the Award of Rs.75,000/- towards expenses incurred by the respondent no.1 for his treatment, hospitalization and medicines cannot be said to be unreasonable so as to warrant an interference from this Court.
16. In ***Sunita and Ors v. Rajasthan State Road Transport Corporation and Ors.***, (2020), it has been held that the claimant is not to prove his claim to a mathematical exaction. The onus of proof on the claimant for the compensation is not one beyond reasonable doubt but only to ‘preponderance of probabilities’. I may quote from the judgment as under:

“22. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal’s role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the



standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.”

17. In fact, on the quantum of compensation, the learned Tribunal is also allowed to proceed on some amount of guess work.
18. I, therefore, find no merit in the challenge of the appellant on the compensation awarded to respondent no. 1 towards ‘Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure’.
19. On the attendant charges, the Supreme Court, in **Kajal v. Jagdish Chand** (2020) 4 SCC 413, has recognized that a person may not be in a position to actually hire an attendant and may take the assistance of the family members for the said purpose, however, this would not disentitle the claimant from seeking adequate compensation towards the services given by the family members.
20. I, therefore, find no reason to interfere with the award of compensation of Rs.40,000/- towards attendant charges. As far as the functional disability is concerned, the learned Tribunal has rightly relied upon the judgment of the Supreme Court in **Raj kumar v. Ajay Kumar & Anr.** (2011) 1 SCC 343, and the statement of PW-3 Dr.Sanjeev Gambhir, in order to assess the functional disability of the respondent no.1 at 12%. I do not find any reason to interfere with the above determination of the learned Tribunal at the behest of the appellant.
21. Accordingly, I find no merit in the present appeal, even on merits. The appeal is dismissed both on account of delay as also on merit.



There shall be no order as to costs.

22. It is made clear that as notice of this appeal has not been issued to the respondent no. 1 and the assessment of compensation awarded by the learned Tribunal is being adjudicated only after hearing the appellant, this judgment shall not be binding on the respondent no. 1 in case the respondent no. 1 is to challenge the impugned award on the compensation awarded.
23. The statutory amount deposited by the appellant be released to the appellant along with interest accrued thereon.

NAVIN CHAWLA, J

SEPTEMBER 15, 2023
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