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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **MAC.APP. 71/2021**

ARVIND KUMAR Appellant
Through: **Mr. S.N. Parashar, Adv.**

versus

RAM NARESH & ANR. Respondents
Through: **Mr. Shadab Khan, Advocate for**
R-2(UPSRTC).

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
% **24.01.2024**

CM APPL. 4734/2021 (delay in filing)

1. This is an application moved on behalf of the appellant/injured seeking condonation of delay of 1314 days in filing the present appeal.
2. Reply has not been filed on behalf of respondent No.2/registered owner of the offending bus.
3. Learned counsel appearing for respondent No.2 submits that the records have since been destroyed at the end of respondent No.2 and he also requests for some more time to file a reply.
4. Sufficient opportunity has already been granted, therefore, no further opportunity is warranted.
5. The long and short of the submissions advanced on the application seeking condonation of delay is that the appellant has suffered permanent disability in his right lower limb. Although PW-2/Dr. Sunil R. Mallojwar was examined during the course of trial, it was deposed that it was not possible to ascertain the extent of the



disability since the injured was still under medical treatment. It appears that the learned Tribunal directed the Medical Board to medically examine the injured and submit a disability certificate. In response, a letter dated 28.05.2015 was written by the Medical Superintendent, Madan Mohan Malviya Hospital, Delhi to the effect that a disability assessment was not possible at that stage and the process required at least one more year. The Tribunal did not wait for the final outcome and came to pass the impugned award whereby compensation to the tune of Rs.1,93,324/- was awarded.

6. Subsequent to the impugned award dated 18.05.2016 being passed, the disability certificate has been obtained and it is shown that the appellant has suffered amputation of his right lower limb and the disability certificate dated 18.02.2020 shows that he has suffered 70% disability.

7. For the aforesaid reasons and in the interest of justice, the application is allowed. Delay of 1314 days in filing the present appeal is hereby condoned.

8. The application stands disposed of.

CM APPL. 4735/2021 (additional evidence)

9. This is an application moved on behalf of the appellant for consideration of the disability certificate dated 28.02.2020 which has been issued subsequent to the passing of the impugned judgment-cum-award.

10. For the reasons stated in the application and in the interest of justice, the same is allowed.

11. The application stands disposed of.

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12. Having regard to the peculiar facts and circumstances of the



case, wherein the physical disability of the appellant/injured could not be ascertained during the trial and the extent of the injuries were such that they warranted regular medical treatment, it is a fit matter to be decided afresh. Evidently, since the appellant has suffered permanent disability owing to the injuries sustained in the motor accident that occurred on 06.03.2012, it would be appropriate that the present matter is remanded back to the learned Presiding Officer, MACT, South-East District, to allow the parties to lead evidence and make a fresh assessment of compensation.

13. Accordingly, the present appeal is allowed. The impugned judgment dated 18.05.2016 passed in MACP 542/2012 is hereby set aside. Learned MACT is directed to allow the appellant/claimant to lead fresh evidence as regards to the nature of injuries suffered by him and permanent disability resulting in loss of earning capacity. In essence, a fresh assessment be made with regard to the compensation to be awarded to the claimant under all possible heads.

14. The parties shall appear before the learned MACT on 01.03.2024 and it is expected that the trial be concluded within six months thereafter.

15. With the aforesaid, present appeal stands disposed of.

16. Copy of this order be sent to the learned MACT for information and compliance.

DHARMESH SHARMA, J.

JANUARY 24, 2024/ck