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

+ **MAC.APP. 220/2023, CM APPL. 31024/2023** (for summoning of witness)

SHAHID KHAN

.....Appellant

Through: Mr. F.K. Jha and Mr. Gaurav Jha and
Mr. Taun Verma, Advocates.

versus

RAJ KUMAR & ORS.

.....Respondents

Through: Mr. Sankar N. Sinha, Advocate for
R3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

07.11.2024

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CM APPL.31025/2023 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

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3. The Appeal under Section 173 of the *Motor Vehicle Act, 1988* has been filed on behalf of the Appellant/injured against the Award dated 17.12.2022 *vide* which he has been granted compensation in the sum of Rs.4,47,383/- along with interest @7% p.a.

4. During the Appeal, it was submitted that the injured has suffered Permanent Disability. Consequently, *vide* Order dated 22.05.2023, this Court sought the assessment of the Permanent Disability of the injured. The Disability Certificate issued by the Department of Empowerment of Persons



with Disabilities, Ministry of Social Justice and Empowerment, Government of India, dated 21.02.2023, which was exhibited as Ex-AW1/1. The Disability Certificate has been obtained at the time of disposal of the Petition by the learned Tribunal and an Application was filed for bringing the same on record but the Application was declined on 26.11.2022. In the said Certificate, it was stated that the Appellant has suffered 46% of Permanent Disability of right lower limb.

5. *Learned counsel on behalf of the Appellant/Injured* has contended that the injured was an auto-rickshaw driver and on account of the Permanent Disability, he has not been able to follow any vocation. Moreover, aside from having suffered complete loss of earnings, he has also suffered losses on account of future prospects.

6. *Learned counsel on behalf of the Insurance Company* has refuted that the Permanent Disability as certified in Certificate, Ex.AW-1/1 has resulted in any kind of permanent loss of earnings capacity. The Permanent Disability of the injured cannot be taken as 100% functional disability.

7. **Submissions heard.**

8. There are disputed fact about the extent of functional disability and whether the injured has not been able to follow any vocation after the accident. Considering that some Doctor is required to prove the Disability Certificate and also evidence is required to ascertain the functional disability, the case is remanded back to the learned Tribunal, for adjudicating in respect of the 'Permanent Disability' and to work out the Compensation amount afresh.

9. Both the parties shall be at liberty to place on record additional documents/Disability Certificate or examine the witnesses/doctors to



substantiate their respective claims.

10. The Appeal is, therefore, allowed to the extent mentioned above.

11. The Appeal is disposed of accordingly along with the pending Application.

12. The parties are directed to appear before the learned Tribunal on 19.11.2024.

NEENA BANSAL KRISHNA, J

NOVEMBER 7, 2024/RS