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

+ **MAC.APP. 256/2024**

SUDHIR KUMAR GUPTA Appellant

Through: Mr. Kartik Gupta and Mr.
Aman Deep, Advs.

versus

**NITIN KUMAR & ORS. (IFFCO-TOKIO GENERAL
INSURANCE CO. LTD.)** Respondents

Through: Mr. Yuvraj Sharma, Adv. for
R-2/Insurance Company

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **15.05.2024**

CM APPL. 28973/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 28972/2024 (Delay of 410 days in filing the present appeal)

3. This application has been moved on behalf of the appellant/applicant seeking condonation of delay of 410 days in filing the present appeal.

4. For the reasons stated in the application, the application is allowed and delay of 410 days in filing the present appeal is condoned.

5. The application stands disposed of.

MAC.APP. 256/2024 and CM APPL. 28971/2024 (Stay)

6. The appellant, who is the registered owner of the offending vehicle, is assailing the impugned judgment-cum-award dated



30.11.2022 passed by the learned Presiding Officer, MACT, North-West District, Rohini Courts, Delhi, whereby recovery rights have been granted to the respondent No.2/Insurance Company.

7. Learned counsel for the respondent No.2/Insurance Company is present on advance notice through video conferencing.

8. Learned counsel for the appellant has alluded to paragraph (53) of the judgment and it is pointed out that although the learned Tribunal held that respondent No.1/driver, respondent No.2/owner and respondent No.3/Insurance Company were jointly and severally liable, the Insurance Company has been erroneously accorded recovery rights so as to recover the amount of compensation payable to the claimant/injured from respondent No.2.

9. It is further pointed out that there is an error computation of the compensation inasmuch as the amount of compensation which is arrived at under the head 'loss of earning capacity/functional disability' has been wrongly arrived at Rs. 2,04,017.04, whereas it should have been Rs. 1,94,302/-.

10. Lastly, it is urged that the claimant/injured was also guilty of contributory negligence as he was a pillion rider on the ill-fated motor cycle and he was not wearing a helmet.

11. At the outset, none of the submissions made by learned counsel for the appellant cut any ice. Evidently, the appellant was not having a valid permit to ply the offending Tata Dumper Truck bearing No. DL-1LM-6858, and therefore, the learned Tribunal committed no error in granting recovery rights to the Insurance Company.

12. Insofar as, the quantum of compensation is concerned, with regard to computation of compensation towards loss of earning and functional disability, there is no error whatsoever.



13. Lastly, merely because the claimant/injured was not wearing a helmet does not make him guilty of contributing negligence. The said aspect was not even put to the witness for the claimants when he came in the witness box.

14. The present appeal being devoid of any merits is dismissed. The pending application is also disposed of.

DHARMESH SHARMA, J.

MAY 15, 2024

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