

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

+ **CM(M) 212/2009**

% Date of Decision : March 17, 2009

USHA TANWAR

Through:

..... Petitioner
Mr. Shital Tyagi,
Advocate

Versus

STATE & ANR.

Through:

..... Respondents
Mr. Pradeep Gaur,
Advocate with Mr. Amit
Kumar Pandey, Advocate
for Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?No
2. To be referred to the Reporter or not?Yes
3. Whether the judgment should be reported in the Digest?Yes

J U D G M E N T

MANMOHAN, J (Oral)

1. Present petition has been filed under Article 227 of Constitution of India seeking to set aside order dated 07th January, 2009 whereby Motor Accident Claim Tribunal has dismissed petitioner's application for issuance of a fresh cheque for an amount of Rs.2,71,406/- in place of dishonoured cheque for same amount issued by respondent No.2 in lieu of compensation awarded by Court.

2. Learned counsel for petitioner states that aforesaid cheque was the second cheque which was to be kept in Fixed Deposit Receipt for a period of five years. He further states that said cheque was dishonoured as it was mutilated in the process of

clearing. Learned counsel for petitioner has drawn my attention to Certificate dated 15th April, 2008 issued by State Bank of India wherein it has been stated that though they had received the cheque in good condition but the cheque had been mutilated in the process of clearing. The said certificate states as under:-

"TO WHOM IT MAY CONCERN

THIS IS TO CERTIFY THAT THE CHEQUE NO. 607926 IN FAVOUR OF MRS. USHA TANWAR BEARING ISSUED BY NATIONAL INSURANCE COMPANY LTD. DRAWN ON UCO BANK, HAUZ KHAS, NEW DELHI BRANCH. WE HAVE RECEIVED THIS CHEQUE IN A GOOD CONDITION BUT THIS CHEQUE WAS MUTILATED IN PROCESS OF CLEARING. KINDLY ISSUE A FRESH CHEQUE.

THANKS & REGARDS,

FOR STATE BANK OF INDIA

*Branch Manager
Mehrauli Branch
New Delhi – 110030"*

3. He also points out that after receiving this certificate from State Bank of India, petitioner had approached the Insurance Company, which agreed to issue a new cheque but as Insurance Company had misplaced its own file, respondent No.2 requested the petitioner to move Motor Accident Claim Tribunal for an appropriate order. However, by impugned order, Motor Accident Claim Tribunal has refused to pass an order in petitioner's favour by observing as under:-

"From perusal of the photocopy of the said mutilated cheque, it is clear that it is not a simple case of mutilation of the cheque during the clearing process since a portion of the cheque on the upper side has been separated from the cheque horizontally from one side to other side in a perfect symmetry which could be possible only when the document is cut with a scissor or blade or separated with exact precision. Since State Bank of India, Mehrauli Branch had issued a

certificate that cheque in question was received by them in a good condition, which was mutilated in the clearing process, it was an act by design and a deliberate act on the part of someone either from State Bank of India, Mehrauli Branch or by someone in the clearing bank branch or otherwise associated with the clearing process and since it was a deliberate act, an illegal act and no one else was to be benefited except the petitioner, it can be fairly inferred that petitioner herself was responsible and instrumental to the same. Even, the Insurance Company appears to be more than helpful to the petitioner as directions were made for issuance of a duplicate cheque immediately on the application itself on 22.5.2008 and later on, it was told by the Insurance company that mutilated cheque so deposited by the petitioner with them for issuance of duplicate cheque had been lost. It cannot be a mere coincidence again and again that first, petitioner delays the deposit of the cheque, then a portion of the cheque is separate in the clearing process and then cheque itself lost by the Insurance Company. In any case, the job of the Tribunal was over when award was passed and the cheques deposited by the Insurance Company for discharging the liability were released to the petitioner and what happened thereafter, were the deliberate actions of the petitioner to circumvent the directions of the Tribunal and in case, she suffers any loss, she alone is responsible.

Passing directions and directing the Insurance Company to deposit duplicate cheque shall be rewarding the illegal acts of the petitioner. The application moved for issuance of duplicate cheque is dismissed."

4. Learned counsel for petitioner submits that findings rendered by Motor Accident Claim Tribunal are unwarranted and contrary to facts and circumstances of case.

5. Learned counsel for respondent No.2 who appears on advance notice states that he has no objection in issuing a fresh cheque in petitioner's favour provided petitioner undertakes to keep the cheque in a fixed deposit receipt as directed by the award. He reiterates that file had been misplaced by insurance

company. He also prays for expunging remarks made against insurance company on the ground that same are baseless and unwarranted.

6. On a perusal of impugned order as well as relevant papers, I am of the view that findings rendered by Motor Accident Claim Tribunal is contrary to the certificate issued by the bank as well as the admitted fact that respondent No.2 had misplaced its file. It is not understood as to how Tribunal has reached the conclusion that petitioner has committed a 'deliberate illegal act' and that by passing a direction to deposit a duplicate cheque would amount to 'rewarding an illegal act of petitioner'. In my opinion, the approach of learned Judge is based on surmises and conjectures. Just because the cheque was mutilated in a particular manner, the Tribunal could not have reached the conclusion that the bank, petitioner and insurance company were in collusion with each other. At the highest, if the Tribunal had a suspicion, it could have ordered an inquiry instead of reaching the unwarranted conclusion that it did. In any event, on a perusal of file, I am of the view that even the suspicion of Tribunal was misconceived on facts. Consequently, the remarks passed by Motor Accident Claim Tribunal against the Bank as well as Insurance Company and petitioner are expunged.

7. The MACT also fell in error in reaching the conclusion that its job was over as soon as it passed the Award. In my opinion, job of Tribunal does not get over till cheques are utilized for the purpose mentioned in the Award like creation of an FDR.

8. I am also surprised that MACT failed to appreciate the impact of impugned order inasmuch as it would have meant that petitioner would have received only half of the compensation that it was found entitled to.

9. Consequently, impugned order dated 07th January, 2009 is set aside and respondent No.2 is directed to issue a duplicate cheque in favour of petitioner and deposit the same before Motor Accident Claim Tribunal within a period of four weeks from today who shall hand over the same to petitioner in terms of the Award. Petitioner in turn is directed to use the said cheque for creating a fixed deposit receipt for a period of five years.

10. A copy of this order will also be placed before the Inspecting Judge of the concerned trial court Judge. With aforesaid observations, present petition is allowed.

MANMOHAN, J

MARCH 17th, 2009
js