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

+ CM(M) 589/2016

HARVINDER SINGH

..... Petitioner

Through: Mr. Rajat Aneja & Mr. Toyesh
Tewari, Advs.

versus

SHRI BHARAT BHUSHAN & ORS

..... Respondents

Through: Mr. Ravi Sabharwal, proxy for Mr.
Pradeep Gaur, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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01.06.2016

By judgment dated 25.09.2012, in accident claim case (Case No. 494/2008), wherein the petitioner was impleaded as second respondent, he being the owner of the offending vehicle, the motor accident claims tribunal (tribunal), while awarding compensation in favour of the first respondent herein (the claimant) for injuries suffered by him in a motor vehicular accident that had occurred on 17.11.2007, upheld the plea of the insurance company (third respondent herein) about breach of terms and conditions of the insurance policy on the basis of finding that there was no valid permit held and granted it recovery rights. It is the contention of the petitioner that the insurance company had misled the tribunal and a valid permit in fact existed, which could not be shown at the inquiry.

Be that as it may, the petitioner later moved an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (CPC), which was not considered by the tribunal since the file of the accident claim case had in the meantime been requisitioned by this Court for purposes of consideration of MAC Appeal No. 86/2013, which had been filed by the claimant seeking enhancement of the compensation.

The petitioner had earlier preferred MAC Appeal No. 251/2016 before this Court, submitting that his application under Order 9 Rule 13 CPC was not being considered by the tribunal. The said appeal, however, was withdrawn and liberty was granted by this Court by order dated 22nd March, 2016, for the prayer for interim protection to be pursued in the course of application under Order 9 Rule 13 CPC, already preferred and pending on the file of the tribunal. While dismissing the said application and granting liberty to above effect, this Court, by order dated 22nd March, 2016, had clarified that the tribunal would have the liberty to requisition the file for considering the said application since the same had been tagged with the MAC Appeal No. 86/2013, statedly pending here.

It appears that the tribunal first issued a requisition for the file from the record room by order dated 05.04.2016. The file, however, not having been received, eventually by order dated 20th May, 2016 of the tribunal, the proceedings arising out of application under Order 9 Rule 13 CPC of the petitioner are stated to have been adjourned *sine die* and directed to be taken up as and when the file is returned by this Court.

The proceedings arising out of the execution application since taken out by the insurance company (third respondent), in the meanwhile, are

stated to have resulted in duress processes having been issued and thereupon the petitioner faces imminent threat of arrest. It is also submitted that some property of the petitioner has since been sealed by the recovery officer.

It is against the above-noted backdrop that the petitioner has come up before this Court with this petition under Article 227 of the Constitution of India.

Issue notice to the third respondent (insurer).

Mr. Ravi Sabharwal, Advocate appears and accepts notice on behalf of third respondent.

Having heard both sides and having gone through the record, this petition deserves to be allowed immediately with suitable directions for return of the record of the accident claim case to the tribunal and, in the meanwhile, interim protection being granted to the petitioner.

It is directed that the registry shall forthwith return, through special messenger, the record of the accident claim case bearing No. 494/2008 to the tribunal which is lying tagged with file of MAC Appeal No. 86/2013. Compliance shall be made positively on or before 3rd June, 2016.

The parties (the petitioner herein and the insurance company) shall appear before the tribunal on 7th June, 2016 when the file of the application under Order 9 Rule 13 CPC shall be taken up for consideration and appropriate orders thereupon and on the interim applications stated to have been filed therewith.

The petitioner shall not be subjected to arrest or detention pursuant to the proceedings arising out of the execution application for enforcement of

the recovery rights till 7th June, 2016, or till the tribunal considers and passes an order on the application for interim protection, whichever is later.

The petition stands disposed of with above observations.

Copy of the order be given *dasti* under the signature of Court Master to both sides.

R.K.GAUBA, J

JUNE 01, 2016/nk