

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

Date of Order: September 24, 2018

+ **CM(M) 1396/2017 & C.M. 44835/2017**

DELHI TRANSPORT CORPORATION Petitioner

Through: Ms. Avnish Ahlawat & Ms. Palak
Rohmetra, Advocates

Versus

NEHA & ORS. Respondents

Through: Mr. Pankaj Gupta, Advocate for
respondent No.3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Impugned order of 14th September, 2017, dismisses petitioner's application for recalling of order of 17th November, 2016, vide which petitioner's evidence was closed. Petitioner is the owner of bus in question. Petitioner's application to recall order of 17th November, 2016 has been dismissed by the Motor Accident Claims Tribunal (*henceforth referred to as the "Tribunal"*) on the ground that the application has been filed by petitioner at the stage of final arguments and also because despite sufficient opportunities given, petitioner has not led evidence.
2. Learned counsel for petitioner assails the impugned order on the ground that the report regarding the driving license being fake was not

proved on record earlier and so, the occasion for petitioner to get its witness examined did not arise earlier. It is submitted by counsel for petitioner that petitioner wants to get examined *Dharamvir Singh (DW2/1)*, whose evidence by way of affidavit was placed on record before 17th November, 2016 and due to communication gap, petitioner's witness *Dharamvir Singh (DW2/1)* could not be got examined on 17th November, 2016, when petitioner's evidence was closed. It is further submitted by petitioner's counsel that evidence of aforesaid *Dharamvir Singh (DW2/1)* is essential for the just decision of this case.

3. There is no representation on behalf of first two respondents despite service.

4. The opposition to this petition by learned counsel for respondent-Insurer is on the ground that witness of respondent-Insurer was not cross-examined by petitioner and by filing frivolous application, the proceedings before the Tribunal are being delayed. It is submitted that petitioner cannot be permitted to fill the lacuna. Thus, dismissal of this petition is sought.

5. Upon hearing and on perusal of impugned order and the material on record, I find that the Tribunal has erred in dismissing petitioner's application on the ground of delay, as the occasion to lead evidence had arisen only when respondent-Insurer has placed on record the licensing authority's report regarding driving license in question being fake. It is the case of petitioner that due to communication gap, its witness-*Dharamvir Singh (DW2/1)* could not be got examined on 17th November, 2016. For the lapse on the part of petitioner, substantial cause cannot be sacrificed, as for the lapse occasioned, petitioner can always be put to

terms.

6. In the considered opinion of this Court, instant case is not of filling up the lacuna. At best, it is a case of negligence, for which petitioner can be subjected to terms. The evidence sought to be led by petitioner appears to be essential for proper adjudication of the case by the Tribunal.

7. In view of aforesaid, impugned order of 14th September, 2017, is set aside to the extent that it dismisses petitioner's application for recalling of order of 17th November, 2016, subject to petitioner depositing cost of ₹10,000/- with the Prime Minister's National Relief Fund within four weeks. Upon petitioner placing on record proof of deposit of cost before the Tribunal, petitioner be granted one effective opportunity to get its witness- *Dharamvir Singh (DW2/1)* examined. Parties through their counsel are directed to appear before the Tribunal concerned on 3rd November, 2018 for expeditiously proceeding further in accordance with the law.

8. This petition and application are accordingly disposed of.

Dasti.

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**(SUNIL GAUR)
JUDGE**

SEPTEMBER 24, 2018

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