$~

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

\+ **CM(M) No.21/2018**

Reserved on: 28.02.2018
Date of decision: 07.03.2018

SHEHNAZ ..... PETITIONER
Through Mr.Ashish Sharma, Adv.

versus

AVTAR SINGH & ORS ..... RESPONDENTS
Through Mr.Yogesh Rathee, Adv. for R-1 & 3.
Mr.Kunal Dhingra, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

1. This is a petition challenging the order dated 20th September, 2017, passed by the Motor Accident Claims Tribunal, Delhi (hereinafter referred to as 'MACT') in MAC No.32/16, whereby the Tribunal has rejected the petitioner's application praying for release of a sum of Rs.3,00,000/- out of the total sum of Rs.15,00,000/- lying in FDRs in the name of the petitioner.

2. Vide order dated 8th January, 2018, notice was issued in the present petition. Learned counsel for the respondents have not opposed the present petition.

3. Learned counsel for the petitioner submits that the petitioner had met with an accident on 6th January, 2013, in which she suffered grievous injuries leading to 75% physical

disability. He submits that in these circumstances, the petitioner had filed a claim petition before the Presiding Officer, MACT, Karkardooma, Delhi wherein her Claim Petition No.47/14 was allowed vide order dated 26th April, 2017, with a direction to the respondent no.2 to pay a compensation of Rs.13,77,292/- along with interest at the rate of 10% per annum from the date of filing of the petition till the date of realization. He, further, submits that accordingly, the respondent no.2 had deposited a sum of Rs.17,41,350/- which included the upto date interest on 26th April, 2017 with the Manager, UCO Bank, Karkardooma Court, Delhi.

4. Learned counsel for the petitioner further submits that upon the said deposit being made by respondent no.2, the MACT had while disbursing a sum of Rs.2,41,350/- to the petitioner, directed that the remaining amount of Rs.15,00,000/- would be kept in 120 FDRs of Rs.12,500 each, in her name for period varying from one month to 120 months. He submits that since the petitioner is suffering from 75% physical disability, it is her husband who alone is taking care of her needs. Learned counsel further submits that the petitioner's husband is a labourer and keeping in view the 75% physical disability of the petitioner, it is very difficult for her husband to take care of her day to day needs while doing labour work at far-off places. He submits that in these circumstances, petitioner's husband wants to open a small shop near their residence so that he could while running his shop also simultaneously take care of the petitioner. He submits that in view of the dire need of the

petitioner for a sum of Rs.3,00,000/- to enable her husband to open a shop, the petitioner had through her husband, moved an application no.32/2016 in MAC 47/2014 before the MACT, Delhi seeking release of a sum of Rs.3,00,000/-, which has been dismissed by the Tribunal on a wholly erroneous premise that as the amounts of FDRs have been prepared in the name of the petitioner, it could only be released to the petitioner and not on the basis of an application filed by any other person including the petitioner's husband. He submits that the Tribunal has passed the impugned order without appreciating the fact that the present application had been filed by the petitioner herself though in view of her medical conditions, the same had been filed through her husband. He further submits that the Tribunal has also overlooked the fact that even the original claim application, had been filed by the petitioner through her husband. He draws my attention to the order dated 26th April, 2017 passed by the MACT, Delhi vide which the Claim Petition No.47/14 was allowed, which supports his plea that even the claim petition, records that the same had been made by the petitioner, through her husband Gulfan.

5. Having heard learned counsel for the parties, I am of the considered opinion that the present petition deserves to be allowed. In my view, the Tribunal has taken a hyper-technical view by rejecting the application on the ground that the same was not filed by the petitioner. The Tribunal has also failed to appreciate the fact, that the prayer in the application was to release the amount in the petitioner's

favour only and not in the favour of her husband.

6. I am also of the view that the Tribunal has, keeping in view her medical condition, also ignored the fact that the petitioner's request to seek premature release of a sum of Rs.3,00,000/- in order to help her husband to open a small shop in the neighbourhood so as to take care of the petitioner, cannot be said to be unjust in any manner. It needs no reiteration that whenever amount of compensation is kept in the FDRs, the Tribunal must in suitable cases, consider the request for premature release of the FDR amount whenever the circumstances so warrant and the only consideration which has to be kept in mind, is the welfare of the claimant.

7. Pursuant to the order dated 15th February, 2018 of this Court, learned counsel for the petitioner has filed a list of 24 FDRs totalling a sum of Rs.3,00,000/- in respect whereof the petitioner is seeking premature release.

8. Having perused the same, I find that even after the release of the amount of Rs.3,00,000/-, as prayed for by the petitioner, the amount of the remaining FDRs totalling Rs.12,00,000/- would, in accordance with the original order dated 26th April, 2017 passed by the MACT, be released to the petitioner from time to time and would, therefore, take care of the petitioner's financial needs in the future also.

9. The impugned order dated 20th September, 2017, passed by the MACT, Delhi in MAC No.32/16 is set aside.

10. The Manager, UCO Bank, Karkardooma Courts, Delhi, is directed to forthwith release the amount lying in the twenty four FDRs being FDR Nos.189876 to 189899, for a

total sum of Rs.3,00,000/- to the petitioner along with the accrued interest, if any.

11. The petition is accordingly allowed in the aforesaid terms with no order as to costs.

(REKHA PALLI)
JUDGE

MARCH 07, 2018/aa