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

Date of decision: 02.08.2023

+ CM(M) 218/2017
RAJESH RANI

..... Petitioner

Through: Mr.Vinod Dahiya & Ms.Preeti
Nair, Advs.

versus

HAST BAHADUR

..... Respondent

Through: Mr.Pradeep Gaur & Ms.Sweta
Sinha, Advs. for R-3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 21061/2022

1. The present petition has been filed challenging the order dated 08.07.2016 (hereinafter referred to as the 'Impugned Order') passed by the learned Motor Accidents Claims Tribunal, South West District, Dwarka Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 469/2008 titled *Hast Bahadur & Anr. v. Prem Kumar @ Manoj Kumar & Anr.*, dismissing the application filed by the petitioner herein under Order IX Rule 13 of the Code of Civil Procedure, 1908 (in short 'CPC').

2. The learned counsel for the petitioner submits that the learned Tribunal has failed to appreciate that the correct address



of the petitioner was available with the Investigating Officer of the accident (hereinafter referred to as the 'IO') that gave rise the claim petition, since 2003. The same was also given in the Execution Proceedings, as recorded in the order dated 07.03.2014 passed in Execution Petition bearing No. 78/12/11. He submits that in spite of having knowledge about the correct address of the petitioner, the IO did not bring it to the notice of the learned Tribunal and the Award was passed by the learned Tribunal without affording an opportunity of hearing to the petitioner.

3. I am unable to accept the submission made by the learned counsel for the petitioner.

4. In the present case, the date of the accident is 16.01.1998; and the Claim Petition was filed on 17.04.1998. Thereafter repeated attempts were made to serve the petitioner, who was respondent no.2 in the Claim Petition, with notice of the Claim Petition, however, every time it was reported that the respondent no.2 was not available at the given address. The petitioner herein admits that she was not residing at the address that was given in the Registration Certificate, and had shifted her residence. The petitioner herein was served by in the Claim Petition by way of publication on 19.03.2007 in the newspaper National Herald, New Delhi, and as recorded in the order dated 28.04.2007. The Award came to be passed by the learned Tribunal on 01.09.2009. It is only on 25.03.2014, that the petitioner finally filed her application under Order IX Rule 13



on 25.02.2014 when the same was sought to be executed. The learned Tribunal has dismissed the said application as being devoid of any merit, especially on account of the huge delay in filing of the same. I find no infirmity in the order passed by the learned Tribunal.

5. The petitioner does not deny that the address given by the Claimant in the Claim Petition is the one which is on the registration certificate of the offending vehicle, that is, the bus bearing no. DL-1PA-1422. The alleged information given by the petitioner to the IO of the change of her address is of no relevance or consequence. It appears that the petitioner intentionally stayed away from appearing before the learned Tribunal.

6. I, therefore, find no infirmity in the Impugned Order.

7. At the same time, the learned counsel for the petitioner submits that the offending vehicle was duly insured with the newly added respondent no.3, that is, the Oriental Insurance Company Limited (hereinafter referred to as the 'Insurance Company'). He submits that, therefore, the liability to honour the Award should be on the Insurance Company/respondent no. 3.

8. On the other hand, the learned counsel for the respondent no.3 submits that the respondent no.3 cannot be made liable to honour the compensation awarded by the Award passed by the learned Tribunal, as notice of the Claim Petition was not issued to the Insurance Company. He submits that in the absence of a

notice of the Claim Petition to the Insurance Company, liability



to pay the compensation amount cannot be fastened on the Insurance Company and would cause great prejudice to the respondent no. 3 herein, inasmuch as it cannot raise the statutory defence that is available to it in terms of Section 149 of the Motor Vehicles Act, 1988 as was applicable then.

9. This Court is, today, not concerned with the question of whether the petitioner herein can claim reimbursement of the awarded amount from the respondent no.3 herein. The petitioner shall have to initiate appropriate proceedings to claim the said amount from the respondent no.3 in accordance with law.

10. I, therefore, find no merit in the same. The same is accordingly dismissed.

NAVIN CHAWLA, J

AUGUST 2, 2023/rv/AS

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 05.08.2023

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