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

Date of decision: <u>08.11.2023</u>

\+ CM(M) 1136/2022 & CM APPL. 45849/2022

NEM SINGH & ANR. ..... Petitioners

Through: Mr.M.A.Inayati, Mr.Sajjad Hussain, Advs.

versus

USHA ..... Respondent

Through: Ms.Anupama Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

<u>NAVIN CHAWLA, J. (ORAL)</u>

1. This petition has been filed challenging the orders dated 15.07.2022 and 01.09.2022 (hereinafter collectively referred to as the 'Impugned orders') passed by the learned Motor Accident Claims Tribunal, South-East District, Saket Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACT.No.407/2019, titled ***Usha (DAR) v. Nem Singh & Ors.***.

2. By the Impugned order dated 15.07.2022, the learned Tribunal was pleased to *inter-alia* direct the petitioner herein, who is the driver and the owner of the offending vehicle, that is the Tanker bearing no. HR 55T 3692, to deposit in the name of the learned Tribunal an amount of Rs.7 lakhs in a fixed deposit as a security, failing which he would not be allowed to contest

the Claim Petition.

3. By the subsequent Impugned Order dated 01.09.2022, the application filed by the petitioner seeking recall of the above order was dismissed by the learned Tribunal.

4. The learned counsel for the petitioner submits that in terms of the Clause 20 of the Scheme for Motor Accident Claims formulated by this Court by its judgment in ***Rajesh Tyagi & Ors. v. Jaibir Singh & Ors.*** Neutral Citation no.2021:DHC:76, in case the offending vehicle is not insured, the only remedy or direction that can be passed is for the sale of the said vehicle by way of public auction and the proceeds thereof to be deposited with the Claims Tribunals. He submits that a similar provision is also made in the Rule 6 of the Delhi Motor Accidents Claims Tribunal Rules, 2008.

5. He further submits that the learned Tribunal itself, by its order dated 16.08.2019, had directed the sale of the offending vehicle by way of a public auction and for the deposit of the proceeds with the learned Tribunal. However, the order still remains un-complied. He submits that, therefore, there was no occasion for the learned Tribunal to direct the petitioner to deposit an amount of Rs.7 lakhs as a security and further directing that the failure thereof shall result in the petitioner being denied the right to defend/contest the Claim Petition.

6. On the other hand, the learned counsel for the respondent submits that in the present case, the offending vehicle is admittedly not insured. She submits that to secure the interest of the respondent, therefore, the impugned

direction was passed by the learned Tribunal.

7. I have considered the submissions made by the learned counsels for the parties.

8. Clause 20 of the 'Scheme for Motor Accident Claims formulated by the Delhi High Court', reads as under:

> *"20. **Un-insured vehicle not to be released to the owner***
> *If the offending vehicle is not covered by the policy of insurance against third party risks; or if the driver was not holding a valid driving licence; or if the registered owner fails to furnish copy of the insurance policy or the driving licence of the driver, the offending vehicle involved in the accident shall not be released, unless the registered owner furnishes sufficient security to the satisfaction of the Court to pay compensation that may be awarded. On expiry of three months of the vehicle being taken in possession by the Investigating Officer, such vehicle shall be sold off in a public auction by the Magistrate having jurisdiction over the area where the accident occurred and proceeds thereof shall be deposited with the concerned Claims Tribunal within 15 days for satisfying the compensation that may be awarded by the Claims Tribunal."*

9. Similarly, Rule 6 of the Delhi Motor Accidents Claims Tribunal Rules, 2008 reads as under:

> *"6.**Prohibition against release of motor vehicle involved in accident**.-(1) No court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish copy of such insurance policy despite demand by investigating police officer, unless and*

until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of such accident.

(2) Where the motor vehicle is not covered by a policy of insurance against third party risks, or when registered owner of the motor vehicle fails to furnish copy of such policy in circumstance mentioned in sub-rule (1), the motor vehicle shall be sold off in public auction by the magistrate having jurisdiction over the area where accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating police officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident."

10. A reading of the Clause 20 and Rule 6 shows that in case the offending vehicle is not insured, the same shall not be released to the owner unless the owner furnishes sufficient security to the satisfaction of the Court/Tribunal to pay the compensation that may be awarded in the Claim Petition. In case the owner fails to provide such security, on the expiry of three months of the offending vehicle being taken in possession by the Investigating Officer, such vehicle shall be sold in a public auction by the learned Magistrate having jurisdiction over the area where the accident had taken place, and the proceeds thereof shall be deposited with the concerned Claims Tribunal within a period of 15 days, for satisfying the compensation that may be awarded by the Claims Tribunal. In the present case, the learned Tribunal has already taken recourse to this power vide its order dated 16.08.2019.

11. In my view, therefore, the Impugned Orders cannot be sustained and are liable to be set aside. It is ordered accordingly.

12. The learned Metropolitan Magistrate of the concerned area shall ensure that the order dated 16.08.2019 passed by the learned Tribunal is duly complied with; the offending vehicle is sold in a public auction; and, the proceed of the sale are deposited with the learned Tribunal within a period of 15 days of such auction.

13. The present petition alongwith the pending application is disposed of in the above terms.

14. There shall be no order as to costs.

NAVIN CHAWLA, J

NOVEMBER 8, 2023/Arya/AS

Click here to check corrigendum, if any