HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Appeal No. 1799/2011

1. Prem W/o Ram Lal, aged 41 years, R/o Saroli, Tehsil Deoli, District Tonk

2. Morpal S/o Ramlal, aged 21 years, R/o Saroli, Tehsil Deoli, District Tonk

3. Nirma D/o Ram Lal, aged 19 years, R/o Saroli, Tehsil Deoli, District Tonk

----Claimants/Appellants

Versus

1. Amar Jeet Singh S/o Gurdev Singh, R/o B-45, Ashok Vihar, Delhi.

2. Oriental Insurance Company Limited Division Office Tonk having its Regional Office at Anand Bhawan, Sansar Chand Road, Jaipur through its Regional Manager.

3. Jarnel Singh (Deleted)

----Non-Claimants/Respondents

For Appellant(s) : Mr. Sandeep Mathur
For Respondent(s) : Mr. Rishipal Agarwal

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Judgment

11/03/2022

Reportable:

This appeal is directed against the impugned judgment and award dated 14.07.2009 passed by the Court of learned Additional District Judge (Fast Track)-cum-Motor Accident Claims

Tribunal, Tonk (Raj.) (for short 'the Tribunal') in Motor Accident Claim Case No. 73/2008 by which the claim petition filed by the claimants-appellants has been dismissed on the ground that the claimants-appellants have already got compensation in a claim petition filed by them under the provisions of Workmen's Compensation Act, 1923 (for short 'the Act of 1923').

The issue involved in this appeal is that 'Whether the claimants-appellants can file two parallel claim petitions for getting compensation under section 22 of the Workmen's Compensation Act, 1923 and under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988')?'

The brief facts of the case are that the claimants-appellants filed a claim petition before the Tribunal seeking compensation on account of death of Ramlal who died in an accident occurred on 07.11.1991. It was pleaded in the claim petition that at the time of accident, deceased Ramlal was working as a driver and because of his sudden demise in the aforesaid accident, his dependents (appellants) suffered not only economic loss but also deprived from his love, affection and care.

The respondent No.2-Insurance Company submitted its reply and denied the averments made in the claim petition and took objection that the claimants-appellants have already got compensation from the Workmen Compensation Commissioner. Hence, the claim petition filed by the claimants-appellants is not maintainable.

On the basis of the pleadings of the parties, the Tribunal framed as many as six issues. In support of the claim, the claimants examined AW-1 Prem and AW-2 Asharam. While on behalf of respondents, no witness was produced in defence.

While deciding issue No.5, the Tribunal held that since the claimants-appellants have already got compensation by way of filing a claim petition under Section 22 of the Act of 1923, hence, they are not entitled to file subsequent application for getting compensation under the Motor Vehicles Act in view of Section 167 of the Act of 1988 and the claim petition filed by the claimants-appellants was dismissed.

Feeling aggrieved and dissatisfied with the impugned judgment and award dated 14.07.2009, the claimants-appellants have submitted the instant appeal before this Court.

Learned counsel for the claimants-appellants vehemently submitted that the doctrine of election provided for in Section 167 of the Act of 1988 does not apply where the claimants have right to proceed against the employer under the Act of 1923 and against the tortfeasor; a different person under the provisions of the Act of 1988. Counsel further submitted that the bar under Section 167 of the Act of 1988 is only against the availing of two remedies against the same employer under both the enactments namely Workmen's Compensation Act, 1923 and the Motor Vehicles Act, 1988. Counsel further submitted that the respondents in both the claim petitions were different even though the insurance company was common, the insurance company cannot be absolved from its liability to pay compensation under two separate insurance contracts. Lastly, counsel argued that the compensation awarded by the Commissioner, Workmen's Compensation Act, 1923, can be adjusted in a subsequent claim filed by the claimants-appellants before the Motor Accident Claims Tribunal under the provisions of the Act of 1988.

In support of his contentions, learned counsel for the claimants appellants placed reliance on a judgment of Hon'ble the Supreme Court delivered in the case of ***Oriental Insurance Company Ltd. Vs. Dyamavva and Ors., reported in 2013 ACJ 709,*** where their Lordships of the Hon'ble Supreme Court has held in para 14 as under:-

> *"In the aforesaid view of the matter, we hereby affirm the determination rendered by the Motor Accidents Claims Tribunal, Bagalkot, and the High Court in awarding compensation quantified at Rs. 11,44,440 to the claimant. The Motor Accidents Claims Tribunal, Bagalkot, as also the High Court, ordered a deduction therefrom of a sum of Rs. 3,26,140 (paid to the claimants under Workmen's Compensation Act, 1923). The said deduction gives full effect to Section 167 of the Motor Vehicles Act, 1988, inasmuch as it awards compensation to the respondents- claimants under the enactment based on the option first exercised, and also ensures that the respondents-claimants are not allowed dual benefit under the two enactments."*

Per contra, learned counsel for the Insurance Company submitted that in view of bar under Section 167 of the Act of 1988 and also under Section 3(5) of the Act of 1923, the claimants-legal representatives of the deceased could not claim double benefit under both the enactments. Therefore, the subsequent claim under the Act of 1988 was liable to be dismissed and the same was rightly rejected by the Court below holding that the Insurance Company cannot be held liable to pay compensation.

In support of his contentions, learned counsel for the Insurance Company placed reliance on a judgment of Hon'ble the Supreme Court delivered in the case of ***National Insurance Company Ltd. Vs. Mastan & Another, reported in 2006(2)***

SCC 641 and the subsequent judgment of Hon'ble the Apex Court delivered in the case of ***New India Assurance Company Vs. Bidami and Ors., decided on 17.04.2014 in Special Leave to Appeal (Civil) No(s). 1271/2010*.**

Heard. Considered the arguments of both the sides.

Before proceeding with the matter, it is necessary to quote Section 167 of the Act of 1988, which reads thus:-

> ***"167. Option regarding claims for compensation in certain cases-*** *Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."*

Bare perusal of Section 167 of the Act of 1988 statutorily provides for an option to the claimant stating that where the death of, or bodily injury to any person gives rise to a claim for compensation under the Act of 1988 as also under the Act of 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Section 167 contains a non obstante clause providing for such an option notwithstanding anything contained in the Act of 1923. The "doctrine of election" is a branch of "rule of estoppel", in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief, the

aggrieved party has the option to elect either of them but not both. Although there are certain exceptions to the same rule but the same has no application in the instant case. This is what the Hon'ble Supreme Court has held in the case of New India Assurance Company Ltd. Vs. Bidami (supra).

It is noteworthy to mention here that in the case of ***New India Assurance Company Ltd. Vs. Bidami, reported in 2009 SCC Online Raj. 3440***, the Co-ordinate Bench of this Court while deciding S.B. Civil Misc. Appeal No. 891/2008 on 03.08.2009 held that 'the doctrine of election' under Section 167 of the Act of 1988 did not apply qua the claimants Smt. Bidami and Ors. though having received compensation for death of the deceased under the provisions of the Motor Vehicles Act, they could also be awarded and given compensation under the provisions of Workmen's Compensation Act, 1923 against the employer and his insurer.

Feeling aggrieved by the aforesaid judgment of this Court, the New India Assurance Company submitted Special Leave to Appeal (Civil) No(s). 1271/2010 before the Hon'ble Supreme Court and their Lordships of Hon'ble Supreme Court allowed the special appeal and quashed the judgment passed by the Co-ordinate Bench of this Court by observing thus:-

> *"Learned counsel for the appellant relies on judgment of this court titled as National Insurance Company Limited versus Mastan and another, reported in 2006(2) SCC 641 in support of the submission that if both the remedies under the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1923, are available, the respondents were required to opt for either one of the remedies. The respondents cannot claim compensation under both the acts.*

In the aforesaid judgment, it is held as under:-

"22. Section 167 of the 1988 Act statutorily provides for an option to the claimant stating that where the death of or bodily injury to any person gives rise to a claim for compensation under the 1988 Act as also the 1923 Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Section 167 contains a non obstante clause providing for such an option notwithstanding anything contained in the 1923 Act.

23. The "doctrine of election" is a branch of "rule of estoppel", in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both. Although there are certain exceptions to the same rule but the same has no application in the instant case."

In view of the above, the judgment of the High Court cannot be sustained.

In view of the above, we allow this appeal and set aside the judgment of the High Court."

It is noteworthy to mention here that the aforesaid judgment of the Hon'ble Supreme Court in the case of New India Assurance Company Ltd. Vs. Bidami (supra) was delivered on

17.04.2014 while the judgment relied on by the counsel for the claimants-appellants in the case of Oriental Insurance Co. Ltd. Vs. Dyamavva (supra) was delivered on 05.02.2013. It is the settled position of law that the later view taken by the Hon'ble Supreme Court would prevail over the earlier view.

In the case of ***A. Trehan Vs. Associated Electrical Agencies reported in 1996 Supreme Court on Accident Claims 813***, the Hon'ble Apex Court has held that bar under Section 53 of the Employees State Insurance Act, 1948 takes away the right of the workman who is insured person and an employee under the ESI Act to claim compensation under the Workman's Compensation Act, 1923.

Similarly in the case of **Pawan Kumar Vs. Commissioner, Workmen's Compensation, reported in 1997 ACJ 397**, the Punjab and Haryana High Court has held that in view of Section 167 of the Motor Vehicles Act, the claimant-workman had option of forum and where the claimants filed the claim petition before the Motor Accident Claims Tribunal under the Motor Vehicles Act, the Court held that under both the Acts, the claimant could not claim benefit.

Similarly, Gauhati High Court in the case of ***Abul Khayer Vs. Union of India reported in 2008 (4) TAC 981 (Gau.)*** held that claimants have no right to approach both the forums prescribed under MACT Act as well as Workmen Compensation Act and he can opt for forum and such option must be a conscious option and choice of the claimant must be out of free will and should be made before adjudication of his claim.

In the case of National Insurance Co. Ltd. Vs. Mastan and Another (supra), the Hon'ble Apex Court has held in para Nos. 33, 34 and 35 thus:-

> *"33. On the establishment of a Claims Tribunal in terms of Section 165 of the Motor Vehicles Act, 1988, the victim of a motor accident has a right to apply for compensation in terms of Section 166 of that Act before that Tribunal. On the establishment of the Claims Tribunal, the jurisdiction of the Civil Court to entertain a claim for compensation arising out of a motor accident, stands ousted by Section 175 of that Act. Until the establishment of the Tribunal, the claim had to be enforced through the Civil Court as a claim in tort. The exclusiveness of the jurisdiction of the Motor Accidents Claims Tribunal is taken away by Section 167 of the Motor Vehicles Act in one instance, when the claim could also fall under the Workmen's Compensation Act, 1923. That Section provides that death or bodily injury arising out of a motor accident which may also give rise to a claim for compensation under the Workmen's Compensation Act, can be enforced through the authorities under that Act, the option in that behalf being with the victim or his representative. But Section 167 makes it clear that a claim could not be maintained under both the Acts. In other words, a claimant who becomes entitled to claim compensation under both the Motor Vehicles Act, 1988 and under the Workmen's Compensation Act, because of a motor vehicle accident has the choice of proceeding under either of the Acts before the forum concerned. By confining the claim- to the authority or the Tribunal under either of the Acts, the legislature has incorporated the concept of election of remedies, insofar as the claimant is concerned. In other words, he has to elect whether to make his claim under the Motor Vehicles Act, 1988 or under the Workmen's Compensation Act, 1923. The emphasis in the Section that a claim cannot be made under both the enactments, is a further reiteration of the doctrine of election incorporated in the scheme for claiming compensation. The principle*

"where, either of two alternative Tribunals are open to a litigant, each having jurisdiction over the matters in dispute, and he resorts for his remedy to one of such Tribunals in preference to the other, he is precluded, as against his opponent, from any subsequent recourse to the latter" [see R.V. Evans] is fully incorporated in the scheme of Section 167 of the Motor Vehicles Act, precluding the claimant who has invoked the Workmen's Compensation Act from having resort to the provisions of the Motor Vehicles Act, except to the limited extent permitted therein. The claimant having resorted to the Workmen's Compensation Act, is controlled by the provisions of that Act subject only to the exception recognized in Section 167of the Motor Vehicles Act.

34. On the language of Section 167 of the Motor Vehicles Act, and going by the principle of election of remedies, a claimant opting to proceed under the Workmen's Compensation Act cannot take recourse to or draw inspiration from any of the provisions of the Motor Vehicles Act 1988 other than what is specifically saved by Section 167 of the Act. Section 167 of the Act gives a claimant even under the Workmen's Compensation Act, the right to invoke the provisions of Chapter X of the Motor Vehicles Act ,1988. Chapter X of the Motor Vehicles Act, 1988 deals with what is known as "no fault" liability in case of an accident. Section 140 of the Motor Vehicles Act, 1988 imposes a liability on the owner of the vehicle to pay the compensation fixed therein, even if no fault is established against the driver or owner of the vehicle. Sections 141 and 142 deal with particular claims on the basis of no fault liability and Section 143 re-emphasizes what is emphasized by Section 167 of the Act that the provisions of Chapter X of the Motor Vehicles Act, 1988, would apply even if the claim is made under the Workmen's Compensation Act. Section 144 of the Act gives the provisions of Chapter X of the Motor Vehicles Act 1988 an overriding effect.

35. Coming to the facts of the case, the claimant has not chosen to withdraw his claim under the Workmen's Compensation Act before it reached the point of judgment, with a view to approach the Motor Accidents Claims

Tribunal. What he has done is to pursue his claim under the Workmen's Compensation Act till the award was passed and also to invoke a provision of the Motor Vehicles Act, not made applicable to claims under the Workmen's Compensation Act by Section 167 of the Motor Vehicles Act. The claimant-respondent is not entitled to do so. The High Court was in error in holding that he is entitled to do so."

So far as the contentions raised by the counsel for the claimants- appellants that the claimants can avail both the remedies under these two different enactments and the amount of compensation awarded by one forum can be adjusted in the amount awarded by different forums. Such argument of the counsel for the claimants- appellants has no force because the Courts cannot be treated as a bargaining forum and the claimants cannot be allowed to approach two forums and if they feel that they have not got sufficient amount of compensation then for getting more compensation they can approach the another forum.

In view of the settled position of law, it is clear that the claimants cannot be allowed to take double benefit of two claims filed under two different statutes i.e. under the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1923. The claimant has to choose one forum only and after choosing a forum, he cannot be allowed to choose another forum to get more benefits. The claimants cannot claim double benefit under both the enactments. The appellants-claimants have got compensation by invoking the provisions of the Act of 1923. Therefore, the subsequent claim filed by the claimants under the Act of 1988 was liable to be rejected and the same was rightly rejected by the Tribunal.

In view of the above, the appeal filed by the claimants-appellants stands dismissed and the judgment and award dated 14.07.2009 passed by the Court of Additional District Judge (Fast Track)-cum-Motor Accident Claims Tribunal, Tonk (Raj.) in Motor Accident Claim Case No. 73/2008 is affirmed and confirmed.

Stay application and all pending application(s), if any, also stand dismissed.

Registry is directed to send back record of the case to the concerned Tribunal forthwith.

(ANOOP KUMAR DHAND),J

Sharma NK/4