



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Miscellaneous Appeal No.143/2013

National Insurance Company Ltd. Kota through Its Authorized Officer, Jaipur Regional Office, Ambedkar Circle, Jaipur.

-----Appellant

Versus

1. Manju Bai W/o. Late Jagdish Raiger, R/o Village Taleda, Tehsil And Distt. Bundi Raj.
2. Kumari Kisna D/o. Late Jagdish Raiger, R/o Village Taleda, Tehsil And Distt. Bundi Raj.0
3. Lakki S/o. Late Jagdish Raiger No. 2 And 3 Are Minor Through Natural Guardian Mother Manju Bai W/o, R/o Village Taleda, Tehsil And Distt. Bundi Raj.0
4. Devraj Gaur S/o. Jagannath Gaur, R/o Bypass Road, Bundi Raj.

-----Respondents

Connected With

S.B. Civil Miscellaneous Appeal No.6491/2011

National Insurance Company Ltd. Through Its Authorized Officer, Jaipur Regional Officer, Ambedkar Circle, Jaipur.

-----Appellant

Versus

1. Smt. Kamli Devi W/o. Late Shri Kailash, R/o Ajeetpura Kalan, Tehsil Kotputli District Jaipur At Present Village Shyampura, Tehsil Bassi, District Jaipur Raj.
2. Leelaram S/o. Late Shri Kailash, R/o Ajeetpura Kalan, Tehsil Kotputli District Jaipur At Present Village Shyampura, Tehsil Bassi, District Jaipur Raj.
3. Dholaram S/o. Late Shri Kailash, R/o Ajeetpura Kalan, Tehsil Kotputli District Jaipur At Present Village Shyampura, Tehsil Bassi, District Jaipur Raj.
4. Kumari China D/o. Late Shri Kailash, R/o Ajeetpura Kalan, Tehsil Kotputli District Jaipur At Present Village Shyampura, Tehsil Bassi, District Jaipur Raj.
5. Kumari Krishna D/o. Late Shri Kailash No. 2 To 5 Are Minor Through Natural Guardian Mother Smt. Kam, R/o Ajeetpura Kalan, Tehsil Kotputli District Jaipur At Present Village Shyampura, Tehsil Bassi, District Jaipur Raj.
6. Jaswant Singh S/o. Shri Chhoturam, R/o Ajeetpura Kalan, Tehsil Kotputli District Jaipur At Present Village Shyampura, Tehsil Bassi, District Jaipur Raj. Owner Of Truck No. Rj-14G-4165

-----Respondents





For Appellant(s) : Mr. Praveen Jain
For Respondent(s) : Mr. Sunil Jain
Mr. Vinay Mathur for
Mr. Ashish Mittal



JUSTICE ANOOP KUMAR DHAND

Order

28/01/2026

Reportable

For convenience of exposition, this judgment is divided in the following parts: -

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1. Since common questions of law and facts are involved in both the appeals, with the consent of counsel for the parties, arguments have been heard together and both the appeals are being decided by this common order.

Factual Matrix:-

2. The instant misc. appeals have been preferred against the impugned awards dated 10.12.2012 and 29.08.2011 passed by the Workman Compensation Commissioner, Bundi and Workman Compensation Commissioner, Jaipur-I in WCC Case Nos.10/2011 and 185/2009 respectively.

**Contentions of the Appellant:-**

3. Learned counsel for the appellant submits that an accident occurred on 21.04.2009 wherein one person namely Jagdish died and in another accident occurred on 29.01.2003 several persons sustained injuries. Thereafter, the claimants-respondents submitted two different claim petitions under the provisions of the Motor Vehicles Act, 1988 (for short "the Act of 1988") before the Motor Accident Claims Tribunal, Bundi and Motor Accident Claims Tribunal, Jaipur City, i.e., MACT Case Nos.368/2009 and 689/2003 respectively. Learned counsel submits that the dependents of the deceased-Jagdish filed the claim petition bearing MACT Case No.368/2009 before the MACT, Bundi and the injured persons filed MACT Case No.689/2003 before MACT, Jaipur City seeking compensation. Learned counsel submits that both the aforesaid claim petitions filed by the above persons, i.e., the claimants-respondents, were allowed by two different awards dated 18.03.2011 and 04.11.2004. Learned counsel submits that in MACT Case No.368/2009, an award of Rs.4,44,000/- was passed vide award dated 18.03.2011 whereas, in MACT Case No.689/2003, an award of Rs.4,43,000/- was passed vide award dated 04.11.2004 and the claimants-respondents have received the aforesaid amount under the above awards respectively. But, inspite of receipt of the aforesaid award amounts, the claimants-respondents again submitted two different claim petitions, under the provisions of Workmen Compensation Act, 1923 (for short "the Act of 1923") before the Workman Compensation Commissioner (for short "WCC"); one at Bundi and another at Jaipur City, i.e., WCC Case Nos.10/2011 and 185/2009 respectively. Learned





counsel submits that the claim petition submitted before the WCC at Bundi, i.e., Case No.10/2011 was allowed and the award dated 10.12.2012 came to be passed and a compensation of Rs.4,11,900/- along-with interest @ 12% was granted in favour of the claimants-respondents.

Similarly, Case No.185/2009 submitted before the WCC, Jaipur City was allowed and the award dated 29.08.2011 was passed and a compensation of Rs.2,95,590/- along-with interest @ 12% was granted in favour of the claimant-respondent.

4. Learned counsel submits that it is settled proposition of law, as per Section 167 of the Act of 1988, that the dependents of the deceased/claimants and the injured are entitled to avail only one remedy, i.e., either under the provisions of the Act of 1988 or under the provisions of the Act of 1923. But in any case, such persons cannot be allowed to avail two distinct & parallel remedies for getting two different awards. In spite of the above, two different claim petitions were submitted and the same were awarded in favour of the claimants-respondents in contravention of the aforesaid provisions & principles of law and in contravention of the judgments passed by the Hon'ble Apex Court. Learned counsel submits that after taking into account each and every judgment, on the present issue, passed by the Hon'ble Apex Court and the judgment passed by this Court, the co-ordinate Bench of this Court in the case of **Oriental Insurance Company Vs. Kajod & Ors.** while deciding **S.B. Civil Misc. Appeal No.1125/2016** vide order dated 10.05.2024 has quashed and set-aside the subsequent award passed in favour of the claimants. Hence, interference of this Court is warranted and both the





appeals are liable to be allowed and the impugned awards passed by the WCC respectively are liable to be quashed and set-aside.

Contentions of the respondents:-

5. *Per contra*, learned counsel appearing for the claimants-respondents opposed the arguments raised by learned counsel for the appellants and submitted that the claimants-respondents are entitled to submit two different claim petitions as the parties are different in both the claim petitions. It was further submitted that for seeking compensation, under the provisions of the Act of 1988, the prayer made was against the offending vehicle whereas in the instant case the prayer was made against the employer, under whose employment, the deceased/injured persons were working. Therefore, the WCC has not committed any error in passing the awards in favour of the claimants-respondents. Hence, under these circumstances, interference of this Court is not warranted and the present appeals submitted by the appellant-insurance company are liable to be rejected. Lastly, learned counsel argued that the amount of compensation awarded by the Motor Accidents Claim Tribunals under the Act of 1988 can be adjusted against the amount of award granted by the WCC under the Act of 1923.

Analysis, Reasoning & Findings:-

6. Heard and considered the submissions made at the Bar and perused the material available on the record.

7. Perusal of the record indicates that in S.B. Civil Misc. Appeal No.143/2013, the accident occurred on 21.04.2009, wherein the deceased-Jagdish expired in a road accident, while in S.B. Civil Misc. Appeal No.6491/2011, the accident occurred on 29.01.2003,





wherein several persons have sustained injuries in the road accident.

8. It appears that for the same incidents/accidents, two different claim petitions were submitted by the claimants-respondents; first before the MACT, Bundi; and second before the MACT, Jaipur City respectively and both were allowed and awards dated 18.03.2011 and 04.11.2004 were passed. After receiving the amount under the awards, passed by the concerned MACT, the claimants-respondents again approached the court of WCC for getting compensation under the provisions of the Act of 1923. The successive claim petitions submitted under the provisions of the aforesaid Act were again allowed by the WCC vide awards dated 10.12.2012 and 29.08.2011 respectively, in favour of the claimants-respondents.

9. Now the question remains before this Court is as to whether the respondents-claimants can be allowed to avail two distinct and separate remedies before two different forums of law for getting compensation for the same incident/accident?

10. Before proceeding with the matter and determining the issue involved in these appeals, 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 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."





11. 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 Co. Ltd. Vs. Bidami and Ors.** while deciding **SLP Civil No.1271/2010** on 17.04.2014.

12. It is noteworthy to mention here that the co-ordinate Bench of this Court at Principal Seat at Jodhpur in the case of **The New India Assurance Co. Ltd. Vs. Smt. Bidami & Others** 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.

13. 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, vide order dated 17.04.2014, allowed the special appeal and quashed the judgment passed by the Coordinate 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."

14. 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.

15. 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.

16. In the case of **National Insurance Company Co. Ltd. Vs. Mastan and Anr.** reported in **AIR 2006 SCC 577**, 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 167 of 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."

17. So far as the contentions raised by the counsel for the claimants-respondents 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 against the amount awarded by another forum. Such argument of the counsel for the claimants-respondents has no force because the Courts cannot be treated as a bargaining forums and the claimants cannot be allowed to approach two different forums and if they feel that they have not got sufficient amount of compensation then for getting more compensation they can approach the subsequent forum.

Conclusions and Directions:-

18. 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 Act of 1988 and Act of 1923. The claimant has to choose one forum only and after choosing a forum, he cannot be allowed to choose another forum to avail more benefits. The claimants cannot claim double benefit under both the enactments. The claimants-respondents have received compensation by invoking the provisions of the Act of



1988. Therefore, the subsequent claim filed by the claimants-respondents under the Act of 1923 is liable to be rejected.

19. Considering the overall facts and circumstances of the case, the successive claim petitions, i.e., WCC Case Nos.10/2011 and 185/2009 submitted by the respective claimants-respondents, clearly amount to abuse of the process of law and the same were not maintainable before the WCC, in terms of the Section 167 of the Act of 1988 and hence, the same are not sustainable and are liable to be and are hereby quashed and set-aside.

20. The claimants-respondents are directed to refund the amounts, so received by them, with usual interest to the Insurance Company forthwith, without any delay.

21. With the aforesaid observations and directions, both the civil misc. appeals, stay applications as well as all applications (pending, if any) stand disposed of.

(ANOOP KUMAR DHAND),J

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