

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

+ **FAO No. 319/2013 & CM No.12225/2013**

% **11th March, 2014**

SMT. ELSAMMMA JOHN & ORS. Appellants
Through: Mr. Ramesh Kumar, Adv.

VERSUS

M/S BRINTEX SALES CORPORATION Respondent
Through: Mr. Raj Rishi, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 30 of the Employee's Compensation Act, 1923 (hereinafter 'EC Act') impugning the order dated 6.5.2013 which has dismissed the claim petition under the Act on the ground that the appellants/applicants had already filed a petition and received compensation by means of earlier proceedings under the Motor Vehicles Act, 1988 (in short 'M.V.Act').

2. Before me it is not disputed that appellants/applicants did exercise the option of proceeding under the M.V.Act and taking compensation therein

and only thereafter having filed the subject petition under the EC Act, however, what is argued before me is that would it mean that petition under the EC Act would still be maintainable and the only consequence is that petitioner would be bound to give the adjustment of the compensation received under the M.V.Act for the compensation which has to be awarded under the EC Act. In support of this stand reliance is placed upon the recent judgment of the Supreme Court reported as ***Oriental Insurance Company Ltd. Vs. Dyamavva & Ors. AIR 2013 SC 1853.***

3. I am unable to agree with the arguments urged on behalf of the appellant inasmuch as Section 167 of the M.V.Act is a complete bar for invoking two remedies, ie firstly under either of the two Acts and thereafter to the other Act which is subsequently invoked, the two Acts being M.V.Act and the EC Act. That there cannot be two claims filed for the same cause of action; firstly under one of the two Acts and thereafter for a second time on the same cause of action under the other Act, and which is clear from the judgment of the Supreme Court reported as ***National Insurance Co. Ltd. Vs. Mastan & Anr (2006) 2 SCC 641***, the relevant paras of which read as under:-

“33. On the establishment of a Claims Tribunal in terms of Section 165 of 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 both under 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 concerned forum. By confining the claim- to the authority or 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 die 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 (1854) 3 E & B 363] 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 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 overriding effect.” (underlining added)

4. Reliance placed by the appellants upon the judgment of the Supreme Court in the case of *Dyamavva (supra)* is misconceived because in that case the dependants exercised their option by first approaching the Motor Accidents Claims Tribunal by filing a petition on 30.5.2003. Thereafter, the employer in that case had *suo moto* approached the Commissioner under Section 8 of the EC Act for deposit of compensation. It is this *suo moto* action of the employer of depositing compensation under Section 8 that was treated by the Supreme Court in the case of *Dyamavva (supra)* as not amounting to exercising an option by the dependants under Section 167 of

the M.V.Act. In ***Dyamavva's case (supra)*** Supreme Court has observed that under the Employee's Compensation Act, there are two types of proceedings. One is the proceeding under Section 8 where employer *suo moto* deposits the compensation and the other is proceeding under Section 10 where the dependants or the insured person approaches the Commissioner for grant of compensation. Supreme Court accordingly said that since in the facts in ***Dyamavva's case (supra)***, it was not the dependants who had approached the authority under Employee's Compensation Act, but it was the employer who took *suo moto* action of deposit under Section 8, the same will not result in the barring or continuation of proceedings and passing of the Award under the M.V.Act, and which latter proceedings were initiated prior on 30.5.2003, the *suo moto* deposit was made by the employer under Section 8 of the EC Act subsequently under its letter dated 4.11.2003. Really, therefore, the Supreme Court has held that the issue was of exercising of an option, and since dependents in the case of ***Dyamavva (supra)*** had not exercised the option to come under the Employee's Compensation Act, and taking action under which was a *suo moto* action by the employer under Section 8, and contrarily the dependants in ***Dyamavva's case (supra)*** had exercised the option under the M.V.Act, proceedings under the later Act could not be made infructuous, and at best the amount received

under the Employee's Compensation Act would be adjusted towards the compensation which is held to be payable under the M.V.Act.

5. In view of the above, I do not find any merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

Ordinarily, in my opinion, these are fit cases for imposition of costs because either the dependents are trying to over-stretch themselves and over-reach the judicial proceedings or are unfortunately deliberately not correctly legally advised. Considering however that these are cases where there is a human tragedy, I am not imposing costs while dismissing the appeal.

MARCH 11, 2014
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VALMIKI J. MEHTA, J.