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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR  
AND  
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2477 of 2015  
M.P.No.1 of 2015

Royal Sundaram Alliance Insurance Co. Ltd.,  
Sundaram Towers, 45 & 46, Whites Road,  
Chennai 600 014. .. Appellant/4<sup>th</sup> Respondent

Vs.

1.V.Srinivasan ..Respondent 1/Petitioner

2.G.Ravikumar ... Respondent 2/1<sup>st</sup> Respondent

3.The Branch Manager,  
The New India Assurance Co. Ltd.,  
Branch Office, Salem  
C/o The Divisional Manager,  
The New India Assurance Co. Ltd.,  
K.G.Swamy Complex, Bagalur Road,  
Hosur 635 109. ... Respondent 3/2<sup>nd</sup> Respondent  
4. C.G.Suresh .. Respondent 4/3<sup>rd</sup> Respondent

Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.06.2015, made in M.C.O.P.No.121 of 2013 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Hosur.

For Appellant : Mr.M.Krishnamoorthy  
For Respondent 1 : Mr.Mukund R.Pandian

JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR, J.)

Civil Miscellaneous Appeal is directed against the judgment and decree dated 23.06.2015, made in M.C.O.P.No.121 of 2013 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Hosur.



2. In an accident, which occurred on 09.07.2012, involving two lorries, bearing Registration No.TN 24 V 0747 and TN 28 AJ 3341, the claimant, driver of the lorry, bearing Registration No.TN 24 V 0747, owned by the 4th respondent and insured with M/s.Royal Sundaram Alliance Insurance Company Ltd., appellant herein, sustained crush injury in the right leg and severe injury in the spinal cord. Despite best efforts by the doctors, crush injury in the right leg of the claimant, could not be cured and later, it was amputated. Since the claimant had sustained severe injuries in the spinal cord, he had developed paraplegia, for which, he took conservative treatment with back care, chest physiotherapy and upper limb rehabilitation. Though he claimed compensation of Rs.50,00,000/-, the Claims Tribunal, upon evaluation of evidence, both oral and documentary and having found that both the drivers of the lorries, bearing Registration No.TN 24 V 0747 and TN 28 AJ 3341, are equally responsible for the accident, apportioned liability, in the ratio 50:50, on both the Insurance Companies, awarded compensation of Rs.40,40,000/-, with interest at the rate of 7.5% per annum, from the date of claim, till the date of realization.

3. Being aggrieved by the finding regarding negligence and consequential liability, M/s.New India Assurance Co. Ltd., Salem, 3rd respondent has filed an appeal in C.M.A.No.73 of 2016. This Court, upon considering the oral and documentary evidence, found that claimant, driver of the lorry, bearing Registration No.TN 24 V 0747, was negligent in causing the accident and exonerated the 3rd respondent herein, from its liability. Therefore, this Court does not delve into the aspect of negligence.

4. The question to be decided is whether, the claimant is entitled to compensation, under the Workmen's Compensation Act, 1923 or the Motor Vehicle Act, 1988, when he was found negligent.

5. Section 3 of the Workmen's Compensation Act, lays down that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II of the said Act. Section 167 of the Motor Vehicles Act, 1988 lays down that 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 the Motor Vehicles Act, 1988 and also under the Workmen's Compensation 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. It is evident from the claim petition that the



claimant sustained injuries in the accident, arising out of and in the course of their employment.

6. Reading of the above provisions makes it very clear that there is an option given to the claimant to seek compensation under the Workmen's Compensation Act, 1923 or under the Motor Vehicles Act, 1988. Even if the claimant had opted to file a claim petition before the Motor Accident Claims Tribunal, against the offending vehicle, his claim can be modified and compensation can be granted, under the Workmen's Compensation Act.

7. The Hon'ble Supreme Court in National Insurance Company Ltd., v. Mastan reported in 2006 ACJ 528 (SC), has clearly held that Section 167 contains a non-obstante clause provision providing for such an option notwithstanding anything contained in the 1923 Act. Paragraph 33 of the said judgment reads as under:

"33. .... 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 Accident 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 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. ...."



8. On perusal of the claim petition filed before the Motor Accident Claims Tribunal, it is clear that compensation was sought, for the injuries sustained, during the course and out of employment. It is admitted fact that the claimant is an employee of the 4th respondent. Under Section 147 of the Motor Vehicles Act, 1988, there is no need for a separate insurance policy for the employee, if he sustained injury or died in the accident.

9. In Mastan's case (cited supra), it is held that option can be exercised, for instituting a claim under the provisions of the Motor Vehicles Act or Workmen's Compensation Act, as the case may be, but once option is exercised, the same cannot be recalled. In the instant case, option has been exercised by the claimant to claim compensation under the Motor Vehicles Act. Though the claim under Section 166 of the Motor Vehicles Act, cannot be made against the insurer by the tortfeasor, the employee, who sustained injuries, during the course of or arising out of an employment, but he is entitled to be compensated under the provisions of the Workmen's Compensation Act.

10. At the time of accident, the claimant was aged 30 years and due to the injuries sustained in the accident, his right leg has been amputated, due to which, he has lost his earning capacity upto 100%. Even if the compensation is worked out, under the Workmen's Compensation Act, the quantum now arrived at, under the Motor Vehicles Act, there would not much of variance. Ultimately, the Court or the Tribunal has to consider, as to whether, the claimant is awarded just compensation, which in the case on hand, is just and reasonable.

11. For the reasons stated, we do not want to interfere with the quantum arrived at by the Tribunal and the same is fastened on the appellant-Insurance Company.

12. Hence, the Civil Miscellaneous Appeal is dismissed. This Court, by way of interim order, dated 05.11.2015, directed the appellant-Insurance Company to deposit the entire compensation amount, with accrued interest to the credit of M.C.O.P.No.121 of 2013, on the file of the Motor Accident Claims Tribunal, Hosur, within a period of six weeks, from the date of passing of the order. It was stated that the said order has been



complied with. Therefore, the respondent/claimant shall withdraw the entire compensation amount, by filing appropriate application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

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Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

skm

To

- 1.The (Motor Accident Claims Tribunal)/  
Subordinate Judge, Hosur.
- 2.The Section Officer,  
VR Section, High Court, Madras(2 Copies)

+1cc to Thiru Mukund R.Pandiyan, Advocate Sr.21506  
+1cc to Mr.G.Udaya Kumar, Advocate Sr.21608  
+1cc to Mr.M.Kirhsnamoorthy, Advocate Sr.22025

C.M.A.No.2477 of 2015

mr[co]  
srg 29/01/2019