

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CMA No.250 of 2006

ORDER:

This appeal arises out of the order dated 23.08.2005 in WC.No.4 of 2004 on the file of the Court of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Guntur. The application was filed by one Shaik Mahaboob Bi and 5 others against the opposite parties claiming compensation on account of death of the husband of the first applicant.

The Insurance Company strongly denied the claim and raised an important issue that the applicants had already filed MVOP.No.992 of 2009 on the file of the III Additional District Judge, Guntur and that the said MVOP was dismissed after a full trial. Later, they filed I.A.No. .. of 2005 in WC.No.4 of 2004 requesting the lower Court to try the preliminary issue, whether the claim application WC.No.4 of 2004 is maintainable? The Commissioner for Workmen's Compensation, Guntur, by his order dated 23.08.2005 agreed with the contention of the Insurance Company and held by a cryptic order that the workmen's compensation case itself is not maintainable and allowed the application upholding the preliminary issue and dismissing the claim petition. It is this order that is assailed in this appeal.

Heard Sri N.Subbarao, learned counsel for the appellants and Smt. SAV Ratnam, learned counsel for respondent No.2 and Sri M.Appa Reddy, learned counsel for respondent No.1.

The contention of the learned counsel for the appellants is that the order of the lower Court is cryptic, did not consider the factual and legal submissions made and that the filing of MVOP.No.992 of 1999 does not preclude the appellants from approaching the Workmen's Compensation Court once again. He, therefore, prays for remand of the matter to the lower Court for disposal, on merits.

On the contrary, learned counsel for respondent No.2 Smt. SAV Ratnam vehemently argued that under section 167 of the Motor Vehicles Act, 1988 (for short 'the MV Act') the claimant has an option to agitate his claim either under the Workmen's Compensation Act (for short 'the WC Act') or under the MV Act.

As per the learned counsel for respondent No.2, as once the option was exercised by the claimants, they cannot re-agitate their case under the WC Act. The counsel for respondent No.1 largely supported the submission of Smt. SAV Ratnam counsel for respondent No.2.

The important Section that falls for consideration in this case is Section 167 of the MV Act. This section is to the following effect:

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.

A plain language interpretation of this section clearly shows that a worker is given a right to claim compensation under either of the Acts, but not under both.

In the present case, it is apparent that after the MVOP was dismissed on merits, W.C.4 of 2004 is filed. The order in MVOP.No.992 of 1999 was passed on 07.03.2003. The WC.No.4 of 2004 was filed on 03.09.2003. The judgment and decree in MVOP.No.992 of 1999 were referred in the pleadings and are annexed to the application as document number 5.

A perusal of the said order of III Additional District Judge, Guntur in MVOP.No.992 of 1999, reveals that the applicant Shaik Nagur Vali was examined as a witness, the Doctor was also examined as PW.2 and on behalf of the respondents, one witness was examined. Exs.A.1 to A.5 were marked on behalf of the applicants and Ex.B.1 was marked by the respondent. After examining the matter on merits, three points were framed for consideration and by a reasoned

order, the III Additional District Judge, Guntur-cum-Commissioner for Workmen's Compensation, dismissed the O.P holding that the applicants are not entitled to any compensation under the MV Act.

Learned counsel for the appellants contends that as his clients did not get any compensation, they are entitled to file the present application under the WC Act.

Although this argument appears to sound plausible a closer reading of section 167 of MV Act clearly states that an "option" is given to claimant where the death of or bodily injury is caused to a person, to claim compensation under the MV Act or under the WC Act, but not under both. The claimants have an option to choose one of the two remedies, but not both. It is this election or choosing of an option that is dealt with under Section 167 of MV Act. So, when two remedies are available to an aggrieved party, he has an option to choose one of the two, but not both. This doctrine of election is a part and parcel of rule of *estoppel* by which a party is given a choice to choose between two alternative forums. Once the choice is exercised, the applicant cannot take resort to the provisions of the second or the other enactment. This issue is no longer *res-integra* and the Hon'ble Supreme Court of India in a case reported in ***National Insurance Company v. Mastan and Another***¹ has decided this issue. In that case, the applicant first filed an

¹ AIR 2006 (5) 577

application under the WC Act. He later, chosen to agitate his claim under the MV Act. The Hon'ble Supreme Court of India clearly held in paragraph 26 of the judgment in the following effect:

26. The First Respondent having chosen the forum under the 1923 Act for the purpose of obtaining compensation against his employer cannot now fall back upon the provisions of the 1988 Act therefore, inasmuch as the procedure laid down under both the Acts are different save and except those which are covered by Section 143 thereof.

This judgment of the Hon'ble Supreme Court of India was referred to in a latter judgment reported in ***Oriental Insurance Company Ltd., v. Dyamavva and Others***². In this case also the question was, whether the respondent/claimants who chose to exercise their option to seek compensation under the WC Act, were precluded from agitating their case under the MV Act.

The Hon'ble Supreme Court, on an analysis of the facts and circumstances of the case, held that the applicants did not exercise their option of approaching the Commissioner for Workmen's Compensation and in para 12 of the judgment held that the acceptance of compensation deposited by the Port Trust, in this case, was not the exercise of an option by the applicant. It was a *suo motu* action that was began by the Port Trust before the Commissioner for Workmen's Compensation. Therefore, the Hon'ble Supreme Court held

² AIR 2013 SC 1853

that the employees were not precluded from agitating their claim.

However, what is important to note is that both the judgments of the Hon'ble Supreme Court of India talked of "exercising of an option" by an applicant either under the MV Act or under the WC Act. It is this "exercise of option" that is critical. The exercise of an option precludes the second application.

In the case on hand, the heirs of deceased Shaik Nagur valli approached the Commissioner for Workmen's Compensation under the provisions of the WC Act. The legal heirs of the said Shaik Nagur valli, who derived the right to claim compensation for the accident are also precluded from agitating the claim for compensation before the Commissioner for Workmen's Compensation as Nagur Vali already approached the Tribunal under the MV Act. It is also worthwhile note that the order dated 07.03.2003 passed in MVOP.No.992 of 1999 is a reasoned order passed on the merits of the case. Therefore, by the principles of *res judicata* and analogous principles, the second claim for compensation for the same accident is barred. The same cause cannot be agitated twice. This is a salutary principle of law. This is the essence and spirit of Section 167 of the MV Act also.

Hence, for all these reasons, this Court holds that the second application i.e. WC.No.4 of 2004 is barred by section

167 of the MV Act and the appeal is dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: .11.2017
KLPnb

