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C.M.A.No.2717 of 2014

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 26.09.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2717 of 2014
and M.P.No.1 of 2014

M/s.United India Insurance Company Limited,
Divisional Office, Ranga Buildings,
Peramanur Main Road,
Salem -7.

... Appellant/2nd Respondent

Vs.

1.S.Vasanthi

2.S.Ramesh

3.S. Rajeswari

... Respondents 1 to 3/Petitioners

4.R.Thirunavukkarasu

...4th Respondent/1st respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 16.02.2012 in M.C.O.P.No.346 of 2009 on the file of the learned Additional District Judge and Special Judge for E.C. Act Cases, Motor Accidents Claims Tribunal, Salem.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.R.Marudhachalamurthy
for R1 to R3

R4 – Served – No appearance



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JUDGMENT

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The Insurance Company is the appellant before this Court challenging the Award passed in M.C.O.P.No.346 of 2009 on the file of the learned Additional District Judge and Special Judge for E.C. Act Cases, Motor Accidents Claims Tribunal, Salem.

2.The Insurance Company has challenged the Award on the ground that the petitioner has approached the Commissioner for Workmen's Compensation in W.C.No.309 of 2004 and obtained compensation and once again has filed the second claim before the Tribunal, which is in total violation of the provision of Section 167 of the Motor Vehicles Act. He would rely upon the Judgment of the Hon'ble Supreme Court reported in *(2006) 2 Supreme Court Cases 641 [National Insurance Company Limited vs. Mastan and another]* and the Judgment in **2013 (1) TN MAC 161 [The New India Assurance Company Limited vs. Rina Mech and 4 others]**.



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3.Per contra, Mr.R.Marudhachalamurthy, learned counsel appearing on behalf of the respondents would submit that the Tribunal has taken a note of the same and has only awarded the compensation less the amount already granted by the Commissioner for Workmen's Compensation.

4.Heard the learned counsels appearing on either side and perused the papers.

5.Section 167 of the Motor Vehicles Act is extracted hereinbelow:

“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



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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.”

The said provision clearly provides that where the death or fatal injury arises out of the claim both under the Motor Vehicles Act as well as under the Workmen's Compensation Act then the victim or his representative can select the Forum before which the claim petition would be filed.

6.The petitioner cannot seek to have a double bonanza by filing claim petition in both the Forums. In the Judgment of the Hon'ble Supreme Court reported in **2006 (2) SCC 641 [National Insurance Company Limited vs. Mastan and another]**, the learned Judge has observed as follows:

“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



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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.”



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7.Ultimately, the learned Judge held that the claimant having approached the Forum under the Workmen's Compensation Act cannot once again lay a claim before the Motor Accidents Claims Tribunal. The said Judgment has been followed in a later Judgment of the Hon'ble Supreme Court in **2013 (1) TN MAC 161 [The New India Assurance Company Limited vs. Rina Mech and 4 others]** where this principle was once again reiterated.

In the light of the above, this Civil Miscellaneous Appeal is allowed and the order of the learned Additional District Judge and Special Judge for E.C. Act Cases, Motor Accidents Claims Tribunal, Salem. in M.C.O.P.No.346 of 2009 is set side. No costs. Consequently, connected Miscellaneous Petition is closed.

26.09.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps



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To
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The Additional District Judge and
Special Judge for E.C. Act Cases,
Motor Accidents Claims Tribunal,
Salem.



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P.T. ASHA, J,

mps

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