



C.M.A.No.308 of 2021

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 15.07.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.308 of 2021

ICICI Lombard General Insurance Co. Ltd.,
MRC Nagar,
Santhome,
Chennai – 28.

.. Appellant

Vs

1.Mrs.R.Nallathai

2.Mrs.T.Lalitha

.. Respondents

Prayer: This Appeal is filed under Section 30 of Workmen's Compensation Act, 1923, against the order passed by the Deputy Commissioner of Labour (Workmen's Compensation Commissioner)-I, Chennai, in W.C.No.69 of 2013, dated 05.09.2019.

For Appellant : D.Harikrishnan

For Respondents – Notice sent, none appeared



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JUDGMENT

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This appeal has been filed by the Insurance Company challenging the order passed by the Deputy Commissioner of Labour – I, Chennai, in W.C.No.69 of 2013, dated 05.09.2019, under the Employee's Compensation Act, 1923 (in short “EC Act”).

2. According to appellant/Insurance Company, the first respondent/petitioner having elected to file a motor accident claim before the Motor Accident Claims Tribunal (in short “Tribunal”) seeking compensation for the death of her son-Selvakumar as a result of the accident caused by a vehicle owned by the Transport Corporation, she cannot once again seek compensation under the EC Act, as it is barred by law as per the provisions of Section 167 of the Motor Vehicles Act, 1988 (in short “MV Act”). In the case on hand, for the death of her son Selvakumar, the first respondent had earlier approached the Tribunal and admittedly, an award has also been obtained in her favour and the Transport Corporation was directed to pay compensation to the first respondent/petitioner as determined by the Tribunal. After obtaining an award from the Tribunal for the very same accident based on employer-employee relationship, the first respondent/petitioner has once again



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approached the Commissioner under the EC Act by seeking compensation for the death of her son Selvakumar. The deceased died, while driving the vehicle insured with the appellant Insurance Company, as a result of an accident, which was also the subject matter of the claim made by the first respondent before the Tribunal.

3. Before the Commissioner under the EC Act, the appellant Insurance Company, who is the insurer of the vehicle driven by the deceased, has taken a categorical stand that they are not liable to compensate the first respondent, since the first respondent has already been compensated under an award passed by the Tribunal and they have also contended that the claim made by the first respondent before the Commissioner is barred by law as per the provisions of Section 167 of the MV Act. However, the Commissioner, under the impugned order, has rejected the contention of the appellant by relying upon two decisions of the Madras High Court and by holding that Section 167 of the MV Act does not apply, as, according to the Commissioner, the claim made by the first respondent before the Tribunal is against different parties and the claim made by the first respondent under the EC Act is on account of employer-employee relationship and the Insurance Company is also not a



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party to the claim made before the Tribunal. Aggrieved by the findings of the Commissioner, the appellant Insurance Company has preferred this appeal.

4. The respondents have been duly served in this appeal and their names are also printed in the cause list today. Despite the same, they have chosen not to defend the appeal and therefore, they are set exparte by this Court.

5. The learned counsel for the appellant Insurance Company drew the attention of this Court to Section 167 of the MV Act as well as to the impugned order passed by the Commissioner and would submit that the first respondent having opted to make a claim before the Tribunal and having obtained an award in her favour, the claim before the Commissioner under the EC Act is not maintainable as per the provisions of Section 167 of the MV Act.

6. In support of his submissions, the learned counsel for the appellant also drew the attention of this Court to a judgment of the



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Hon'ble Supreme Court in the case of *National Insurance Company Vs.*

Mastan and another [2006 (2) SCC 641] and would submit that in similar circumstances, the Hon'ble Supreme Court, by applying the doctrine of election, has held that the first respondent having opted to go before the Tribunal cannot once again make a similar claim under the EC Act, as it is hit by the provisions of Section 167 of the MV Act.

7. This Court has perused and examined the impugned order passed by the Commissioner under the EC Act, under which, the appellant Insurance Company has been directed to pay compensation of Rs.4,36,940/- to the first respondent on account of death of her son Selvakumar, who died as a result of an accident. As seen from the impugned order, it is an undisputed fact that the first respondent had earlier made a claim before the Tribunal in respect of the very same accident and had also obtained an award in M.C.O.P.No.4197 of 2008, wherein the Transport Corporation was directed to pay a sum of Rs.10,65,780/- to the first respondent on account of death of her son-Selvakumar.

8. It is also noticed that after obtaining the award from the



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Tribunal, the first respondent once again has filed a separate claim under the EC Act in respect of the very same accident claiming employer-employee relationship and the Commissioner under the impugned order has directed the appellant Insurance Company to pay compensation to the first respondent as referred to supra.

9. Section 167 of the MV Act reads as follows:-

“167. Option regarding claims for compensation in certain cases. - Notwithstanding anything contained in the Workmens 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 Workmens 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.”

10. The Hon'ble Supreme Court in *Mastan's case (cited supra)* had an occasion to deal with Section 167 of the MV Act. The Hon'ble Supreme Court, while considering Section 167 of the MV Act, has



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discussed the doctrine of election, which is postulated in Section 167 of the MV Act. The Hon'ble Supreme Court has observed that the doctrine of election is based on the rule of estoppel, the principle, that one cannot approbate and reprobate, inherent in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel), which is a rule in equity. By that rule, 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 Hon'ble Supreme Court has observed that 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. The Hon'ble Supreme Court has also taken into consideration another decision of the Hon'ble Supreme Court in **Devasahayam (dead) by Lrs Vs. P.Savithramma and others [2005 (7) SCC 653]**, which had also considered a similar issue, wherein the respondent therein had chosen the forum under the EC Act for the purpose of obtaining compensation against his employer and he was not allowed to avail the provisions of MV Act thereafter. A party suffering an injury or the dependents of the deceased who has died in course of an accident arising out of use of a motor vehicle may have claims under different statutes. But, when cause of action arises under different



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statutes and the claimant elects the forum under one Act in preference to the other, he cannot be thereafter permitted to raise a contention which is available to him only in the former.

11. Section 167 of the MV Act makes it clear that when the first respondent had opted to first make a claim under the MV Act before the Tribunal, she cannot seek compensation under the provisions of the EC Act for the very same accident, though the appellant Insurance Company, who is the insurer of the vehicle driven by the deceased, was not a party to the claim before the Tribunal. Section 167 of the MV Act does not stipulate that the parties before the Tribunal and the parties before the claim made under the EC Act should be one and the same. The Hon'ble Supreme Court in *Mastan's case (cited supra)* has elaborately dealt with Section 167 of the MV Act and has applied the doctrine of election for coming to the conclusion that there cannot be two claims before the two different forums and the claimant having opted to file a claim under a particular statute, he is legally barred from making a compensation claim in a different statute for the very same cause of action involving the very same accident.



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12. The learned Commissioner, under the impugned order, has erroneously, by total non-application of mind to Section 167 of the MV Act and the well settled law as laid down by the Hon'ble Supreme Court in *Mastan's case (cited supra)*, has passed the impugned order directing the appellant Insurance Company to pay compensation by relying upon two decisions of this Court, which are irrelevant to the case on hand, as the law is now well settled and Section 167 of the MV Act also makes it clear that entertaining a second claim before the Commissioner, after an award passed by the Tribunal under the MV Act for the very same accident, is legally barred.

13. For the foregoing reasons, the impugned order has to be set aside by this Court and the appeal has to be allowed. Accordingly, the impugned order passed by the Deputy Commissioner of Labour (Workmen's Compensation Commissioner) – I, Chennai, in W.C.No.69 of 2013, dated 05.09.2019, is set aside and the Civil Miscellaneous Appeal is allowed. No Costs. C.M.P.No.2106 of 2021 is closed.

15.07.2024

Index: yes/no

Neutral citation: yes/no



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To

Deputy Commissioner of Labour
(Workmen's Compensate Commissioner)-I,
Chennai.



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ABDUL QUDDHOSE,J.

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