National Insurance Company vs Mastan & Anr on 9 December, 2005

Equivalent citations: AIR 2006 SUPREME COURT 577, 2006 (2) SCC 641, 2005 AIR SCW 6305, 2006 (1) AIR JHAR R 385, 2006 (1) AIR KANT HCR 506, (2005) 10 JT 440 (SC), (2006) 37 ALLINDCAS 7 (SC), 2005 (10) SCALE 124, 2005 (3) BLJR 2442, 2005 (8) SLT 867, 2005 (10) JT 440, 2005 BLJR 3 2442, (2006) 2 ALLMR 118 (SC), (2006) 2 JCR 17 (SC), (2006) ILR (KANT) 592, (2006) 86 DRJ 136, (2006) 1 KER LT 853, (2006) 1 LABLJ 704, (2006) 1 LAB LN 137, (2006) 1 TAC 321, (2006) 1 RECCIVR 1, (2006) 1 WLC(SC)CVL 304, (2006) 1 ACC 1, (2005) 8 SUPREME 573, (2005) 10 SCALE 124, (2006) 1 ACJ 528, (2006) 1 ALL WC 404, (2006) 1 MAD LJ 53, (2006) 3 MAD LW 19, (2006) 1 ORISSA LR 196, (2006) 34 OCR 805, (2006) 1 PUN LR 666, (2006) 2 RAJ LW 1319, (2006) 1 SCJ 40, (2006) 62 ALL LR 328, (2006) 2 CAL LJ 25, (2006) 129 COMCAS 81, (2006) 2 CURLR 739

Author: S.B. Sinha

Bench: S.B. Sinha, P.K. Balasubramanyan

```
           CASE NO.:
Appeal (civil)  7381 of 2005

PETITIONER:
National Insurance Company

RESPONDENT:
Mastan & Anr.

DATE OF JUDGMENT: 09/12/2005

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:
```

J U D G M E N T [Arising out of SLP (Civil) No. 26615 of 2004] WITH CIVIL APPEAL NO. 7383 OF 2005 [Arising out of S.L.P. (Civil) No. 5861 of 2005] S.B. SINHA, J :

Leave granted.

Whether an insurer, while defending an action initiated under the Workmen's Compensation Act, 1923, (for short, '1923 Act') is precluded from raising any defence

> as envisaged in under sub-section (2) of Section 149 of the Motor Vehicles Act, 1988, (for short, 'the 1988 Act') is the question involved in these appeals.

We will notice the fact of the matter from the Civil Appeal arising out of Special Leave Petition (Civil) No.26615 of 2004.

A lorry bearing registration No. KA 34-545 was insured with the Appellant company. The First Respondent herein was a cleaner and the Second Respondent was an owner of the said lorry. The said lorry was involved in an accident resulting in sufferance of injuries by the First Respondent which led to his disability to the extent of 45 to 50%. He initiated a proceeding under the 1923 Act. The Commissioner for Workmen's Compensation, Davangere, by an order dated 30.04.1997 awarded a sum of Rs.2,70,264/- by way of compensation and interest of Rs.33,230/- to the workman payable by the Appellant herein.

Aggrieved by and dissatisfied therewith the Appellant preferred an appeal before the High Court under Section 30(1) of the 1923 Act, which was dismissed by the High Court on the premise that the Appellant was not entitled to urge any ground therein which was not available to it in terms of the 1988 Act. In support of the said finding, reliance was placed upon a Full Bench judgment of the High Court dated 17.12.2003 in MFA Nos. 1910 of 1997 etc. The question referred to the Full Bench of the High Court for its consideration was as under :

> "Whether the restrictions on the defences available to an insurance company in terms of Section 149(2) of the Motor Vehicles Act have any application to the proceedings under the workmen's Compensation Act ?"

Upon consideration of various provisions of the 1988 Act including Sections 143, 167 and 149 thereof, the Full Bench held :

> " Under the circumstances, under the W.C. Act, the Insurance Company can only agitate violation of any condition of the policy to make substantial question of law, and therefore, the question of raising other defences available in terms of Sec. 149(2) of the M.V. Act does not arise."

It was also held :

> "Under the provisions of Workmen's Compensation Act a statutory appeal is provided under Section 30 of the Act to the High Court on the orders enumerated therein. The proviso to that Section makes it very clear that no appeal shall lie against any order unless a substantial question of law is involved in the appeal. As stated earlier negligence or contributory negligence of the offending vehicle is not a ground to be considered at all while awarding compensation under the Workmen's Compensation Act. Therefore, the insurer cannot prefer any appeal either challenging the quantum of compensation or on any other grounds except the ground available to him under Section 149(2) of the 1988 Act."

In arriving at the said findings, the Full Bench inter alia relied upon decisions of this Court in National Insurance Company Ltd. v. Nicolletta Rohtagi and Others [(2002) 7 SCC 456]], United India Insurance Co. Ltd. v. Bhushan Sachdeva & Ors. [(2002) 2 SCC 265] as also Ved Prakash Garg v. Premi Devi and Others [(1997) 8 SCC 1]. The Full Bench apart from the finding that the contributory negligence is not a defence on the part of the owner of the vehicle or the insurance company further opined that the question of proving negligence does not arise under the 1923 Act. It was further observed that the expression 'death' shall carry the same meaning both under the 1923 Act as also the 1988 Act.

Both the 1923 and 1988 Acts are self-contained Codes. Subject to the provisions made in the later Act, Section 3 of the 1923 Act provides 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 terms of the provisions of the said Chapter. Section 4 of the 1923 Act provides for amount of compensation. Section 5 elucidates the method of calculating wages. Section 15B(ii) provides that the 1923 Act shall apply if the persons have been sent for work abroad along with motor vehicles subject to the modifications mentioned therein.

The Commissioner for Workmen's Compensation has been conferred with various powers including the power to record evidence. He has also the power to refer any question of law for the decision of the High Court.

The appeal against an order passed by a Commissioner lies before the High Court on a substantial question of law involved.

Applicability of the 1988 Act in a proceeding under the 1923 Act is contained in Section 143 of the 1988 Act, which reads as under :

> "143. Applicability of Chapter to certain claims under Act 8 of 1923.- The provisions of this Chapter shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Workmen's Compensation Act, 1923 resulting from an accident of the nature referred to in sub-section (1) of Section 140 and for this purpose, the said provisions shall, with necessary modifications, be deemed to form part of that Act."

Section 143 occurs in Chapter X of the 1988 Act. Section 144 contains a non-obstante clause stating that the provisions of the said chapter shall have effect notwithstanding anything contained in any other provisions of the said Act or of any other law for the time being in force. Chapter X deals with liability without fault in certain cases. Chapter X, therefore, will have no application in relation to a claim made in terms of Chapter XI of the 1988 Act.

Applicability of the provisions of the 1988 Act in a proceeding under the 1923 Act is confined to a matter coming within the purview of Chapter X only. It cannot be stretched any further.

The High Court, noticed hereinbefore, was of the view that under the 1923 Act, negligence is not required to be proved for the purpose of determining the quantum of compensation payable. However, under the 1988 Act, in a case where the liability arises without fault no difficulty arises in this behalf in view of the provisions of Section 143 of the 1988 Act. But difficulty in applying the provisions of the 1988 Act arises in relation to a claim made under Chapter XI thereof. Claims under the said chapter are to be proved in terms of Section 166 of the 1988 Act, where negligence on the part of the driver of the vehicle is required to be proved. Indisputably, in relation to such a claim, insurer can raise only a limited defence in view of sub-section (2) of Section 149 which reads as under :

> "149. Duty of insurers to satisfy judgments and award against persons insured in respect of third party risks.
>
> (1) xxx xxx xxx (2) No sum shall be payable by an insurer under sub-

section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular."

Interpretation of this provision fell for consideration before this Court in National Insurance Company Ltd. v. Baljit Kaur [(2004) 2 SCC 1] wherein the principles have been laid down in some details and thus, it is not necessary to reiterate the same herein once over again.

However, despite Section 149(2) of the 1988 Act, the Parliament was of the opinion that if any circumstance arises as enumerated in Section 170 thereof, an insurer may be granted leave to contest the claim on one or any of the grounds available to the person against whom the claim has been made.

It is beyond any doubt or dispute that in a proceeding where the right of the insurer to raise a defence is limited in terms of sub-section (2) of Section 149, an appeal preferred by it against an award of the Motor Accidents Claims Tribunal must only be confined or limited to some extent. But once a leave has been granted to the insurer to contest the claim on any ground as envisaged in Section 170 of the 1988 Act, an appeal shall also be maintainable as a matter of right, wherein the High Court can go into all contentions. The Full Bench of the Karnataka High Court, in our opinion, committed a serious error in relying upon the judgments of this Court, in terms whereof the right of appeal of the insurance company has been held to be limited, inasmuch in those decisions this Court was considering a situation where sub-section (2) of Section 149 was attracted.

Section 143 of the 1988 Act limits its applicability to the 1923 Act in a case where the liability arises despite the fact that the accident might have taken place without any fault on the part of the driver of the vehicle or others in control thereof. Under the 1923 Act also, as noticed hereinbefore, a workman is entitled to compensation even if no negligence is proved against the owner or any other person in charge of the vehicle. It is, thus, not possible to extend the applicability of Section 143 of the 1988 Act to include Chapter XI thereof to a claim under the 1923 Act.

Right of appeal is a creature of statute. The scope and ambit of an appeal in terms of Section 30 of the 1923 Act and Section 173 of the 1988 Act are distinct and different. They arise under different situations. In a case falling under the 1923 Act, negligence on the part of the owner may not be required to be proved. Therein what is required to be proved is that the workman suffered injuries or died in course of employment. The amount of compensation would be determined having regard to the nature of injuries suffered by the worker and other factors as specified in the Act. The findings of fact arrived at by the Commissioner for Workmen's Compensation are final and binding. Subject to the limitations contained in Section 30 of the 1923 Act, an appeal would be maintainable before the High Court; but to put the insurer to further disadvantages would lead to an incongruous situation.

An insurer, subject to the terms and conditions of contract of insurance, is bound to indemnify the insured under the 1923 Act as also the 1988 Act. But as noticed hereinbefore, keeping in view the nature and purport of the two statutes, the defences which can be raised by the insurer being different, the scope and ambit of appeal are also different.

Under the 1988 Act, the driver of the vehicle is liable but he would not be liable in a case arising under the 1923 Act. If the driver of the vehicle has no licence, the insurer would not be liable to indemnify the insured. In a given situation, the Accident Claims Tribunal, having regard to its rights and liabilities vis-`-vis the third person may direct the insurance company to meet the liabilities of the insurer, permitting it to recover the same from the insured. The 1923 Act does not envisage such a situation. Role of Reference by incorporation has limited application. A limited right to defend a claim petition arising under one statute cannot be held to be applicable in a claim petition arising under a different statute unless there exists express provision therefor. Section 143 of the 1988 Act makes the provisions of the 1923 Act applicable only in a case arising out of no fault liability, as contained in Chapter X of the 1988 Act. The provisions of Section 143, therefore, cannot be said to have any application in relation to a claim petition filed under Chapter XI thereof. A fortiori in a claim arising under Chapter XI, the provisions of the 1923 Act will have no application. A party to a lis, having regard to the different provisions of the two Acts cannot enforce liabilities of the insurer under both the Acts. He has to elect for one.

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 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.

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.

In Nagubai Ammal and Others v. B. Shama Rao and Others [AIR 1956 SC 593], it was stated:

> "It is clear from the above observations that the maxim that a person cannot 'approbate and reprobate' is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto."

In C. Beepathuma and others v. Velasari Shankaranarayana Kadambolithaya and others [AIR 1965 SC 241], it was stated:

> "The doctrine of election which has been applied in this case is well-settled and may be stated in the classic words of Maitland "That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it."

(see Maitland's lectures on Equity Lecture 18) The same principle is stated in White and Tudor's Leading Cases in Equity Vol. 18th Edn. at p. 444 as follows:

> "Election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both.... That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument."

[See also Prashant Ramachandra Deshpande v. Maruti Balaram Haibatti, 1995 Supp (2) SCC 539] Thomas, J. in P.R. Deshpande v. Maruti Balaram Haibatti [(1998) 6 SCC 507] stated the law, thus:

> "The doctrine of election is based on the rule of estoppel the principle that one cannot approbate and reprobate inheres 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.
>
> [See also Devasahayam (Dead) By LRs. v. P. Savithramma and Others, (2005) 7 SCC 653] 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 therefor, inasmuch as the procedure laid down under both the Acts are different save and except those which are covered by Section 143 thereof.
>
> We, therefore, with respect do not subscribe to the views of the Full Bench of the Karnataka High Court.
>
> Mr. P.R. Ramasesh is not correct in contending that both the Acts should be read together. 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 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.
>
> The decision of this Court in Ved Prakash Garg (supra) whereupon Mr. Ramasesh placed strong reliance may not have any application in the instant case as the liability of insurer therein arose under the 1923 Act; where having regard to proviso (i)(c) appended to sub-section (1) of Section 147 was considered in the context of clause (i) of sub-section (1) of Section 11 of the insurance policy vis-`-vis Section 4A(3) thereof. Such a question does not arise herein as the claim under the 1923 Act vis-`-vis Chapter XI of the 1988 Act stand absolutely on a different footing.

For the reasons aforementioned, the impugned judgments cannot be sustained which are set aside accordingly. The appeals are allowed and the matters are remitted to the High Court for consideration of these appeals afresh on merit. The appeals, it is needless to say, would be entertained only in the event, the Appellants satisfy the requirements contained in the proviso appended to sub-section (1) of Section 30 of the 1923 Act. In the facts and circumstances of the case, however, there shall be no order as to costs.