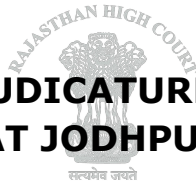




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**



S.B. Civil Miscellaneous Appeal No. 517/2010
CNR: RJHC010250722010 | URN: CMA / 1742U / 2010

The New India Assurance Company Ltd. Through its Senior
Divisional Manager, S.S. Tower, Aakhaliya Chowraya, Jodhpur.

-----Appellant

Versus

1. Smt. Samda widow of late Shri Bhola Ram @ Om Prakash
aged 42 years.
 2. Narain Ram son of Bhola Ram @ Om Prakash, aged 23
years.
 3. Ms. Roshni daughter of Bhola Ram @ Om Prakash, aged 20
years.
 4. Ms. Sunita Daughter of Bhola Ram @ Om Prakash, aged 18
years.
 5. Ms. Rampyari daughter of Bhole Ram @ Om Prakash, aged
15 years.
 6. Ms. Dhapu daughter of Bhola Ram @ Om Prakash, aged 13
years.
 7. Kailash son of Bhola Ram @ Om Prakash, aged 10 years.
 8. Sunil son of Bhola Ram @ Om Prakash, aged 8 years.
- Respondent-Claimant no.4 to 8 minor, through their natural
guardian mother Smt. Samda Respondent-Claimant No.1.
- All residents of Khanwo ki Dhani, Village Indro ki Dhani,
Bhikamkore, Tehsil Osian, District Jodhpur
9. Om Prakash son of Shri Bakhta Ram, Resident of Khanwo ki
Dhani, village Indro ki Dhani, Bhikamkore, Tehsil Osian, District
Jodhpur.

-----Respondents

For Appellant(s) : Mr. D.S. Nimla
For Respondent(s) : Mr. Anil Bhandari

**HON'BLE MR. JUSTICE SANDEEP SHAH****Order****24/09/2026**

1. Learned counsel for the appellant submits that the controversy involved in the present appeal stands covered by the judgment passed by this Court in ***United India Insurance Co. Ltd. v. Chanani @ Saini (Smt.) & Ors., reported in 2020 (1) DNJ [Raj.] 46***. He submits that the issue involved in the present appeal pertains to the doctrine of election, inasmuch as a claimant cannot claim compensation under both the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1923, in respect of the same incident. He further submits that the claimants had already instituted a claim under the Motor Vehicles Act, 1988 and obtained an award of compensation, whereafter the present claim application under the Workmen's Compensation Act, 1923 was filed. Learned counsel submits that in view of the specific bar contained in Section 167 of the Motor Vehicles Act, 1988, the subsequent claim application was not maintainable.

2. Learned counsel for the respondents is not in a position to dispute the fact that the claimants had already obtained an award of compensation under the Motor Vehicles Act, 1988 before instituting the present claim application under the Workmen's Compensation Act, 1923. He is further not in a position to dispute the applicability of the principle laid down by this Court in ***United India Insurance Co. Ltd. (supra)***. Learned counsel also does not dispute that the amount of compensation awarded under the



Motor Vehicles Act, 1988 was substantially higher than the amount awarded under the impugned award.

3. Heard learned counsel for the parties and perused the material available on record.

3.1. The question which arises for consideration in the present appeal is whether the claimants, having already obtained an award of compensation under the Motor Vehicles Act, 1988, can maintain a subsequent claim under the Workmen's Compensation Act, 1923, in respect of the same incident. Section 167 of the Motor Vehicles Act, 1988 provides that where the death of, or bodily injury to, any person gives rise to a claim for compensation under both the enactments, the person entitled to compensation may claim compensation under either of them, but not under both.

4. The Hon'ble Supreme Court, in **National Insurance Co. Ltd. v. Mastan & Anr., (2006) 2 SCC 641**, while considering the scope of Section 167 of the Motor Vehicles Act, 1988 and the applicability of the doctrine of election, held in paragraphs 22 and 23 as under:

"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 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."

5. The aforesaid principle was reiterated by the Hon'ble Supreme Court in **New India Assurance Co. Ltd. v. Bidami & Ors., Civil Appeal No. 4635 of 2014, decided on 17.04.2014**, wherein the Hon'ble Supreme Court, while considering a judgment passed by this Court, referred to the aforesaid paragraphs of **National Insurance Co. Ltd. v. Mastan & Anr. (supra)** and held as under:

"Learned counsel for the appellant relies on judgment of this Court titled as National Insurance Company Limited versus Mastan and another reported in 2006 (2) SCC 641 in support of the submission that if both the remedies under the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1923 are available, the respondents were required to opt for either one of the remedies. The respondents cannot claim compensation under both the acts."

5.1. After reproducing paragraphs 22 and 23 of **National Insurance Co. Ltd. v. Mastan & Anr. (supra)**, the Hon'ble Supreme Court concluded as under:

"In view of the above, the judgment of the High Court cannot be sustained.

In view of the above, we allow this appeal and set aside the judgment of the High Court."



6. This Court further observes that the principle governing the election of remedies under Section 167 of the Motor Vehicles Act, 1988 has also been considered by this Court in **United India Insurance Co. Ltd. v. Chanani @ Saini (Smt.) & Ors. (supra)**, wherein this Court, while relying upon the judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Mastan & Anr. (supra)**, held in paragraph 8 as under:

"8. After hearing counsel for the parties and perusing record, this Court is of the opinion that doctrine of election is always permitted to workman/labour to elect any remedy between WC Act and MV Act but once a remedy is elected, then while proceeding under WC Act the learned Commissioner erred in going upon third party risk concept and grant relief to the workman/ employee in the capacity of third party. Once WC Act is invoked, then the compensation hinges upon the fact of employer- employee relationship as mentioned in Section 3 coupled with the fact that in the accident employer-employee relationship is established. The third party risk component which is available in the policy could have been invoked only in MV Act and that too is subject to conditions of that law."

7. In the present case, this Court finds that the claimants had already exercised their option by pursuing their claim under the Motor Vehicles Act, 1988 and obtaining an award of compensation in respect of the death of the deceased. Having elected and pursued the said remedy, the claimants could not have maintained a subsequent claim under the Workmen's Compensation Act, 1923, seeking compensation in respect of the same incident. Thus, in view of the specific bar contained in Section 167 of the Motor Vehicles Act, 1988 and the law laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Mastan &**



Anr. (supra) and **New India Assurance Co. Ltd. v. Bidami & Ors. (supra)**, as well as the judgment of this Court in **United India Insurance Co. Ltd. v. Chanani @ Saini (Smt.) & Ors. (supra)**, this Court finds that the subsequent claim application under the Workmen's Compensation Act, 1923 was not maintainable. Consequently, the impugned award cannot be sustained and deserves to be quashed and set aside.

8. Accordingly, the present appeal is **allowed**. The impugned award is quashed and set aside.

(SANDEEP SHAH),J

23/Love