CASE NO.:
Appeal (civil) 856 of 2007

PETITIONER:
Gottumukkala Appala Narasimha Raju & Ors

RESPONDENT:
National Insurance Co. Ltd. & Anr

DATE OF JUDGMENT: 20/02/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No. 9771 of 2004)

S.B. Sinha, J.

Leave granted.

Interpretation of Section 167 of the Motor Vehicles Act, 1988 (for short, '1988 Act') falls for consideration in this appeal which arises out of a judgment and order dated 23/7/2003 passed by the High Court of Judicature Andhra Pradesh at Hyderabad in Appeal Against Order No.2720 of 2003, holding that no Award could be passed against the insurer in the proceeding under the provisions of Workmen's Compensation Act, 1923 ('1923 Act', for short).

Before adverting to the question involved in this appeal, we may notice the factual matrix obtaining herein.

A tractor bearing No. AP 37P 3717 belonged to Smt. Gottumukkala Venkata Lakshmi, the wife of deceased Bangaru Raju @ Appala Raju. Respondent No. 1 was the insurer of the said vehicle. An accident took place. Bangaru Raju died in that accident while driving the said tractor. How the accident occurred is not known. Claiming a sum of Rs.3 lakhs by way of compensation, a petition before the Commissioner of Workmen's Compensation in terms of the 1923 Act was filed against Smt. Gottumukkala Venkata Lakshmi, the owner of the tractor, and the insurer herein. According to the claimants, the deceased was earning about Rs.3,000/- per month towards salary and Rs.25/- as Bata per day.

The owner of the tractor, being wife of the deceased, raised a contention that she and her husband had been living separately prior to the date of accident and the tractor in question being insured with the 1st respondent herein, she was not liable to pay any amount to the claimant by way of compensation. She, however, examined herself as P.W.1. Although, no such case was made out in the objection filed by the owner of the tractor, it was alleged that her brother had engaged the deceased on a monthly salary of Rs.3,000/- per month and Bata of Rs.25/- per day.

The contention raised by the 1st respondent before the Commissioner under 1923 Act was that as the deceased and the owner of the tractor were husband and wife, the question of there being a relationship of employer and employee between them did not arise and in that view of the matter, the deceased was not a "workman" within the meaning of the provisions of Section 2(n) of the 1923 Act.

Despite the fact that no contract of employment was brought on records, the Commissioner for Workmen's Compensation proceeded to calculate the amount of compensation payable under the 1923 Act in terms

of a purported Notification dated 27.7.2000 fixing minimum wages for the drivers of light vehicles. The age of the deceased was found to be 41 years at the time of his death. Opining that the salary of the deceased would be Rs.2334/- per month, it was held that the claimants were entitled to Rs.2,11,659/- by way of compensation. It was directed :

"In view of the above facts the quantum of compensation payable to the dependents is = Age factor x 50% of wages = 181.37 x 2334 x 50/100 = 2,11,658.79 Ps rounded to Rs.2,11,659/- (Rupees two lakhs eleven thousand six hundred and fifty nine only).

Therefore the O.P.1 being the employer and owner of the vehicle and the O.P.2 being the insurer of the vehicle are hereby directed to deposit jointly and severally Rs.2,11,659/- (Rupees two lakhs eleven thousand six hundred and fifty nine only) towards compensation payable to the applicants by way of demand draft drawn in favour of the Commissioner for Workmen's Compensation and Deputy commissioner of Labour, Eluru within 30 days from the date of receipt of this orde."

An appeal preferred thereagainst before the High Court has been allowed by reason of the impugned judgment holding that no Award could be passed against the insurer by the Commissioner for Workmen's Compensation.

Mr. Venkateswara Rao Anumolu, learned counsel appearing on behalf of the appellants would submit that having regard to the provisions of Section 167 of the 1988 Act, the claimants had an option to file an application either under the 1988 Act or under the 1923 Act and, thus, an Award could be made also against the insurer.

Mr. Kishore Rawat, learned counsel appearing on behalf of the respondents, on the other hand, would support the judgment under appeal.

The provisions of 1988 Act provide for a complete code. A contract of insurance is a contract between two parties. The 1988 Act mandates compulsory insurance of motor vehicles in terms of Section 147 thereof.

Compulsory insurance, therefore, is provided under the 1988 Act and not under the 1923 Act. Statutory duty to indemnify the insured by the insurer arises only thereunder. Section 143 of the 1988 Act occurring in Chapter X thereof shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the 1923 Act resulting from an accident of the nature referred to in Sub-Section (1) of Section 140 and for the said purpose, the said provisions shall, with necessary modifications, be deemed to form part of that Act. Chapter X deals with certain categories of cases. A claim petition under Section 166 of the 19088 Act, however, comes under Chapter XII thereof. Applicability of the provisions of 1988 Act shall, therefore, be confined to Chapter X thereof for the purpose of a proceeding initiated under the 1923 Act.

Section 2(n) of the 1923 Act defines "workman" in the following terms :

"2. (1)(n) "workman" means any person who is \026

(i) a railway servant as defined in Section 3 of the Indian Railways Act, 1890 (9 of 1890), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ia) (a) *** ***

(b) *** ***
(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
(d) *** ***,
and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or;
(ii) employed in any such capacity as is specified in Schedule II."

A "workman" within the meaning of the provisions of the 1923 Act would, therefore, be entitled to maintain an application for payment of compensation if, for a personal injury caused to him by accident arising out of or in case of his employment in which the employer shall be liable to pay compensation in accordance with the provisions of the Chapter X. Chapter X of the 1988 Act, thus, is made applicable in relation to a claim which could have also been made under Section 3 of the 1923 Act. But, having regard to the fact that Section 143 of Chapter X makes a special provision, the same shall apply only to cases arising under the said Chapter and not under Chapter XI of the 1988 Act.

The 1988 Act provides for mandatory insurance for the matters laid down under Section 147 of the Act and, thus, an Award can be passed against an insurer. An insurer, having regard to Sub-Section (2) of Section 149 of the Act, would, ordinarily, have limited defence as provided for therein. The defence of an insurer in a proceeding under the 1923 Act would be unlimited and all the defences which are available to the employer would be available to it.

Section 143 of the 1988 Act has a limited applicability so far as the provisions of the 1923 Act are concerned. Where a liability arises despite the fact that accident might have taken place without any fault of the driver of the vehicle and others under control thereof, the insurer may have a liability, whereas under 1923 Act a "workman" would be entitled to compensation, even if no negligence is proved against the owner or the person in charge of the vehicle; but the applicability of Section 143 of the 1988 Act, therefore, cannot be extended to one made under Chapter XI thereof. In a case of this nature, provision of Section 167 of the 1988 Act would be of no significance.

The question in regard to the applicability of Section 167 of the 1988 Act fell for consideration in National Insurance Co. Ltd. v. Mastan & Anr. [(2006) 2 SCC 641], wherein it was held :

"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."

Balasubramanyan, J. in his concurring judgment, held :

".....The exclusiveness of the jurisdiction of the Motor Accidents Claims Tribunal is taken away by Section 167 of the Motor Vehicles Act in one instance, when the claim could also fall under the Workmens Compensation Act, 1923. That section provides that death or bodily injury arising out of a motor accident which may also give rise to a claim for compensation under the Workmens Compensation Act, can be enforced through the authorities under that Act, the option in that behalf being with the victim or his representative. But Section 167 makes it clear that a claim could not be maintained under both the Acts. In other words, a claimant who becomes entitled to claim compensation under both the Motor Vehicles Act, 1988 and the Workmens Compensation Act, because of a motor vehicle accident has the choice of proceeding under either of the Acts before the forum concerned. By confining the claim to the authority or the Tribunal under either of the Acts, the legislature has incorporated the concept of election of remedies, insofar as the claimant is concerned. In other words, he has to elect whether to make his claim under the Motor Vehicles Act, 1988 or under the Workmens Compensation Act, 1923. The emphasis in the section that a claim cannot be made under both the enactments, is a further reiteration of the doctrine of election incorporated in the scheme for claiming compensation. The principle "where, either of the two alternative Tribunals are open to a litigant, each having jurisdiction over the matters in dispute, and he resorts for his remedy to one of such Tribunals in preference to the other, he is precluded, as against his opponent, from any subsequent recourse to the latter" (see R. v. Evans, 118 ER 1178) is fully incorporated in the scheme of Section 167 of the Motor Vehicles Act, precluding the claimant who has invoked the Workmens Compensation Act from having resort to the provisions of the Motor Vehicles Act, except to the limited extent permitted therein. The claimant having resorted to the Workmens Compensation Act, is controlled by the provisions of that Act subject only to the exception recognised in Section 167 of the Motor Vehicles Act."

The learned counsel appearing on behalf of the appellants, therefore, in our opinion, was not correct in contending that all the pleas available in a proceeding under the 1988 Act shall proprio vigore be available in a proceeding under the provisions of 1923 Act.

In Ved Prakash Garg v. Premi Devi and Others [(1997) 8 SCC 1], Majmudar, J. speaking for a Division Bench opined that the insurer would be liable to indemnify the owner of the vehicle, stating :

"19. As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmens Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-section (3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmens Commissioner under Section 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.

The correctness of the said decision is not in question before us. We

may, however, notice that the said decision was distinguished in New India Assurance Co. Ltd. v. Harsahadbhai Amrutbhai Modhiya and Anr. [(2006) 5 SCC 192], wherein it was held that whereas under the 1988 Act contracting out is not permissible, it would be so permissible under the 1923 Act, stating:

"As indicated hereinbefore, a contract of insurance is governed by the provisions of the Insurance Act. Unless the said contract is governed by the provisions of a statute, the parties are free to enter into a contract as for their own volition. The Act does not contain a provision like Section 147 of the Motor Vehicles Act. Where a statute does not provide for a compulsory insurance or the extent thereof, it will bear repetition to state that the parties are free to choose their own terms of contract. In that view of the matter, contracting out, so far as reimbursement of amount of interest is concerned, in our opinion, is not prohibited by a statute."

Balasubramanyan, J. in his concurring judgment, opined :

"23. The law relating to contracts of insurance is part of the general law of contract. So said Roskill, L.J. in Cehave v. Bremer. This view was approved by Lord Wilberforce in Reardon Smith v. Hansen-Tangen (1976)3 All ER 570 (HL) (All ER p. 576h) wherein he said:

"It is desirable that the same legal principles should apply to the law of contract as a whole and that different legal principles should not apply to different branches of that law."

A contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense. (See Colinvauxs Law of Insurance, 7th Edn., para 2-01.) A policy of insurance has therefore to be construed like any other contract. On a construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse the compensation the employer was liable to pay among other things under the Workmen's Compensation Act. Unless one is in a position to void the exclusion clause concerning liability for interest and penalty imposed on the insured on account of his failure to comply with the requirements of the Workmen's Compensation Act of 1923, the insurer cannot be made liable to the insured for those amounts."

Thus, if the vehicle is covered by an insurance, the insurer may be made a party and it may be liable to indemnify the owner, but the situation in this case is entirely different, as would appear from the discussions made hereinafter.

In our considered opinion, it is wholly absurd to suggest that the husband would be a "workman" of his wife in absence of any specific contract. We have no doubt in our mind that for the purpose of proceeding under the 1923 Act, only the appellants have concocted the story of husband and wife living separately. If they have been living separately in view of certain disputes, the question of husband being a "workman" under her appears to be a far-fetched one.

Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not bona fide.

No documentary proof to establish the contract of employment was produced. No independent witness was examined. Even as to for what

purpose the tractor was being used had not been disclosed. How the accident had taken place is also known borne out from the records of the case. If the deceased, with all intent and purport, was the owner of the tractor, the claim petition under the 1988 Act might not have been maintainable. A petition under 1923 Act certainly would not lie. Only because Section 143 and 167 of the 1988 Act refer to the provisions of the 1923 Act, the same by itself would not mean that the provisions of the 1988 Act, proprio vigore would apply in regard to a proceeding for payment under the 1923 Act. The limited applicability of the provisions of the 1988 Act, in relation to the proceedings under the 1923 Act has been discussed by this Court in the aforementioned judgments. It is, thus, not possible to extend the scope and ambit of the provisions of 1988 Act to the provisions of 1923 Act save and except to the extent noticed hereinbefore.

The ingredients for maintaining a proceeding under 1988 Act and 1923 Act are different. The purpose for which a contract of insurance is entered into may be different, whereas 1988 Act, it will bear repetition to state, a contract of insurance would be mandatory; for the purpose of applicability of the 1923 Act, it will be optional and as indicated hereinbefore, in Harshadbhai Amrutbhai Modhiya (supra), even contracting out is permissible, as under the 1923 Act, the liability of the insurer is limited to the claim of the workman. The liability under Section 147(2)(b) of the 1988 Act, on the other hand, extends to third party.

Our attention has been drawn to some decisions of the High Courts which have taken different views in regard to the liability of the insurer to be joined as a party in a proceeding under the 1923 Act. It is not necessary for us to into the correctness or otherwise of the said decisions, as in our opinion, there does not exist any bar in the 1923 Act in this behalf. Section 19(1) of the 1923 Act specifically provides that any question in regard to the liability of a person who is required to indemnify the employer must be determined in the proceeding under the said Act and not by way of a separate suit. Thus, a question of this nature should be gone into the proceeding under the 1923 Act.

We, therefore, albeit for different reasons would uphold the judgment of the High Court. This appeal, therefore, being devoid of the merit, is dismissed. No costs.