



Options regarding claim for Compensation  
under the workmen's Compensation Act 1923  
Viz a Viz Motor Vehicle Act 1988

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## Section 3 of Workmen compensation Act

Employer's liability for compensation.—

(1) 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 accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable—

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding [four] days;

(b) in respect of any [injury, not resulting in death, caused by] an accident which is directly attributable to—

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

(2) [If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment], or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in [Part B of] Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

Explanation.— For the purposes of this subsection a period of service shall be deemed to be continuous which has not included a period of service under any other employer employment].

(3) The [Provincial Government], after giving, by notification in the [ in the same kind of [official Gazette], not less than three month's notice of [its] intention so to do, may by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of the employments so added the diseases which [within the Province] shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions of subsection (2) shall thereupon apply [within the Province] as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by subsections (2) and (3), no compensation shall be payable to a workman in respect of any diseases unless the disease is [\* \*] directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and to suit for damages shall be maintainable by a workman in any Court of law in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.



**Option regarding claims for compensation in certain cases.**

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 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.

**New India Assurance Company Vs. Bidami and Ors., decided on 17.04.2014.**

(Hon'ble Rajasthan High Court)

Bare perusal of Section 167 of the Act of 1988 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 Act of 1988 as also under the Act of 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. Section 167 contains a non obstante clause providing for such an option notwithstanding anything contained in the Act of 1923. 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.

**Oriental Insurance Co. Ltd. V Dyamavva and others AIR 2013 SC 1853**

Where the Hon'ble Supreme Court has observed in para 14 as under:-

“In the aforesaid view of the matter, we hereby affirm the determination rendered by the Motor Accidents Claims Tribunal, Bagalkot, and the High Court in awarding compensation quantified at Rs. 11,44,440 to the claimant. The Motor Accidents Claims Tribunal, Bagalkot, as also the High Court, ordered a deduction therefrom of a sum of Rs. 3,26,140 (paid to the claimants under Workmen's Compensation Act, 1923). The said deduction gives full effect to Section 167 of the Motor Vehicles Act, 1988, inasmuch as it awards compensation to the respondents- claimants under the enactment based on the option first exercised, and also ensures that the respondents-claimants are not allowed dual benefit under the two enactments.”

"12. The issue to be determined by us is, whether the acceptance of the aforesaid compensation would amount to the claimants having exercised their option, to seek compensation under the Workmen's Compensation Act, 1923. The procedure under Section 8 aforesaid (as noticed above) is initiated at the behest of the employer "suo motu", and as such, in our view cannot be considered as an exercise of option by the dependants/claimants to seek compensation under the provisions of the Workmen's Compensation Act, 1923. The position would have been otherwise, if the dependants had raised a claim for compensation under Section 10 of the Workmen's Compensation Act, 1923. In the said eventuality, certainly compensation would be paid to the dependants at the instance (and option) of the claimants. In other words, if the claimants had moved an application under Section 10 of the Workmen's Compensation Act, 1923, they would have been deemed to have exercised their option to seek compensation under the provisions of the Workmen's Compensation Act. Suffice it to state that no such application was ever filed by the respondents-claimants herein under Section 10 aforesaid. In the above view of the matter, it can be stated that the respondents-claimants having never exercised their option to seek compensation under Section 10 of the Workmen's Compensation Act, 1923, could not be deemed to be precluded from seeking compensation under Section 166 of the Motor Vehicles Act, 1988.

National Insurance Company Ltd. Vs. Mastan & Another 2006(2) SCC 641

“34. On the language of Section 167 of the Motor Vehicles Act, and going by the principle of election of remedies, a claimant opting to proceed under the Workmen's Compensation Act cannot take recourse to or draw inspiration from any of the provisions of the Motor Vehicles Act 1988 other than what is specifically saved by Section 167 of the Act. Section 167 of the Act gives a claimant even under the Workmen's Compensation Act, the right to invoke the provisions of Chapter X of the Motor Vehicles Act, 1988. Chapter X of the Motor Vehicles Act, 1988 deals with what is known as "no fault" liability in case of an accident. Section 140 of the Motor Vehicles Act, 1988 imposes a liability on the owner of the vehicle to pay the compensation fixed therein, even if no fault is established against the driver or owner of the vehicle. Sections 141 and 142 deal with particular claims on the basis of no fault liability and Section 143 re-emphasizes what is emphasized by Section 167 of the Act that the provisions of Chapter X of the Motor Vehicles Act, 1988, would apply even if the claim is made under the Workmen's Compensation Act. Section 144 of the Act gives the provisions of Chapter X of the Motor Vehicles Act 1988 an overriding effect.”

Narayan v. Sangita, 2022 SCC OnLine Bom 1214 (Hon;ble High Court of Bombay)

**Even though the aforesaid determination, concludes the issue in hand, ambiguity if at all, can also be resolved in the present case, on the basis of the admitted factual position. The first act at the behest of the respondents-claimants for seeking compensation on account of the death of Yalgurdappa B. Goudar, was by way of filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 on 30.5.2003. The aforesaid claim petition was the first claim for compensation raised at the hands of the respondents-claimants. If the question raised by the appellant has to be determined with reference to Section 167 of the Motor Vehicles Act, 1988, the same is liable to be determined on the basis of the aforesaid claim application filed by the respondents-claimants on 30.5.2003. The compensation deposited by the Port Trust with the Workmen's MACA No.1585/2013 Compensation Commissioner for payment to the respondents- claimants was much later, on 4.11.2003. The aforesaid deposit, as already noticed above, was not at the behest of the respondents- claimants, but was based on a unilateral "suo motu" determination of the employer (the Port Trust) under Section 8 of the Workmen's Compensation Act, 1923. The first participation of Dyamavva Yalgurdappa, in the proceedings initiated by the Port Trust under the Workmen's Compensation Act, 1923, was on 20.4.2004. Having been summoned by the Workmen's Commissioner, she got her statement recorded before the Commissioner on 20.4.2004. But well before that date, she (as well as the other claimants) had already filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, on 30.5.2003. Filing of the aforesaid claim application under Section 166 aforesaid, in our view constitutes her (as well as, that of the other dependants of the deceased) option, to seek compensation under the Motor Vehicles Act, 1988. The instant conclusion would yet again answer the question raised by the appellant herein, under Section 167 of the Motor Vehicles Act, 1988, in the same manner, as has already been determined above."**

◇ Narayan v. Sangita, 2022 SCC OnLine Bom 1214 Even though the aforesaid determination, concludes the issue in hand, ambiguity if at all, can also be resolved in the present case, on the basis of the admitted factual position. The first act at the behest of the respondents-claimants for seeking compensation on account of the death of Yalgurdappa B. Goudar, was by way of filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 on 30.5.2003. The aforesaid claim petition was the first claim for compensation raised at the hands of the respondents-claimants. If the question raised by the appellant has to be determined with reference to Section 167 of the Motor Vehicles Act, 1988, the same is liable to be determined on the basis of the aforesaid claim application filed by the respondents-claimants on 30.5.2003. The compensation deposited by the Port Trust with the Workmen's MACA No.1585/2013 Compensation Commissioner for payment to the respondents- claimants was much later, on 4.11.2003. The aforesaid deposit, as already noticed above, was not at the behest of the respondents- claimants, but was based on a unilateral "suo motu" determination of the employer (the Port Trust) under Section 8 of the Workmen's Compensation Act, 1923. The first participation of Dyamavva Yalgurdappa, in the proceedings initiated by the Port Trust under the Workmen's Compensation Act, 1923, was on 20.4.2004. Having been summoned by the Workmen's Commissioner, she got her statement recorded before the Commissioner on 20.4.2004. But well before that date, she (as well as the other claimants) had already filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, on 30.5.2003. Filing of the aforesaid claim application under Section 166 aforesaid, in our view constitutes her (as well as, that of the other dependants of the deceased) option, to seek compensation under the Motor Vehicles Act, 1988. The instant conclusion would yet again answer the question raised by the appellant herein, under Section 167 of the Motor Vehicles Act, 1988, in the same manner, as has already been determined above."

Here Yalgurdappa B. Goudar died in a road accident after he left for his home completing his officework. The accident happened when he was riding on the pillion of a motor cycle and was hit by a tripper. He was compensated by his company an amount of INR 3,26,140/- under workers' compensation Act, 1923. Besides his claim under workers' compensation Act, 1923, Dyamavva Yalgurdappa, also raised a claim under section 166 of Motor vehicles act 1988 in Bagalkot and was awarded a compensation of INR 11,44,440/- But however the Motor Accident Tribunal ordered a deduction of compensation amount paid by his employer from this compensation amount stating that one could not ask for compensation under both the acts.



**National Insurance Company Ltd. Vs. Mastan & Another 2006(2) SCC 641 (Hon'ble Supreme Court)**

“34. On the language of Section 167 of the Motor Vehicles Act, and going by the principle of election of remedies, a claimant opting to proceed under the Workmen's Compensation Act cannot take recourse to or draw inspiration from any of the provisions of the Motor Vehicles Act 1988 other than what is specifically saved by Section 167 of the Act. Section 167 of the Act gives a claimant even under the Workmen's Compensation Act, the right to invoke the provisions of Chapter X of the Motor Vehicles Act, 1988. Chapter X of the Motor Vehicles Act, 1988 deals with what is known as "no fault" liability in case of an accident. Section 140 of the Motor Vehicles Act, 1988 imposes a liability on the owner of the vehicle to pay the compensation fixed therein, even if no fault is established against the driver or owner of the vehicle. Sections 141 and 142 deal with particular claims on the basis of no fault liability and Section 143 re-emphasizes what is emphasized by Section 167 of the Act that the provisions of Chapter X of the Motor Vehicles Act, 1988, would apply even if the claim is made under the Workmen's Compensation Act. Section 144 of the Act gives the provisions of Chapter X of the Motor Vehicles Act 1988 an overriding effect.”

In view of the settled position of law, it is clear that the claimants cannot be allowed to take double benefit of two claims filed under two different statutes i.e. under the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1923. The claimant has to choose one forum only and after choosing a forum, he cannot be allowed to choose another forum to get more benefits. The claimants cannot claim double benefit under both the enactments.

**Thank You !**