

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

FMA/1/2024

Andaman and Nicobar Administration and another

Vs.

Kabita Mondal and others

Mr. Rakesh Kumar	... for the petitioner
Mr. Alokesh Sarkar	... for the respondent no.1
Ms. Preeja Menon	...for the respondent no.2

August 5, 2026
[Manoj]
Item No.12

1. The subject appeal filed by the Administration is directed against the judgment and order dated 12.06.2003 passed by the Motor Accident Claims Tribunal of the Islands at Port Blair in MACT Case No.63/2009.
2. Admittedly the claim by the respondents was made under section 166 of the Motor Vehicles Act, 1988.
3. The victim Gurupada Mondal husband of the respondent No. 1 died on account of motor accident by a Truck AN4349 owned by the Administration –APWD.
4. Upon an application being made by the wife and children of the victim-deceased under the provision of section 123 of the Workmen Compensation Act, 1923, the Administration has paid compensation to the respondent Kabita Mondal wife of the deceased and has also provided a job for one of the sons.
5. The Tribunal however entertained the application and went on to award compensation under section 166 of the Motor Vehicles Act, 1988 notwithstanding compensation received by

the family of the victim under the provision of the Workmen's Compensation Act, 1923.

6. Reliance was placed by the trial Court on the decision of the Supreme Court in the case of ***Helen C. Rebello v. Maharashtra State Road Transport Corporation***, reported in ***(1999)1 SCC 90***.

7. This Court has carefully considered the said decision in the case of ***Helen C. Rebello (supra)***. In the said decision, it was held that a claim under the Life Insurance Policy of the deceased and payment thereof would not stand in the way of an award of compensation under the Motor Vehicles Act, 1988, inter alia, under section 166 thereof.

8. The said decision would have no application in the facts and circumstances of the instant case.

9. Learned counsel for the appellant has relied on the decisions of the Supreme Court in the case of ***National Insurance Company Ltd. v. Mastan and Another***, reported at ***(2006) 2 SCC 641***. Paragraphs 22, 23, 27, 33 and 34 of the said judgment is set out herein below:

"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.

... ..

27. 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.

*33. On the establishment of a Claims Tribunal in terms of Section 165 of the Motor Vehicles Act, 1988, the victim of a motor accident has a right to apply for compensation in terms of Section 166 of that Act before that Tribunal. On the establishment of the Claims Tribunal, the jurisdiction of the civil court to entertain a claim for compensation arising out of a motor accident, stands ousted by Section 175 of that Act. Until the establishment of the Tribunal, the claim had to be enforced through the civil court as a claim in tort. 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 Workmen's 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 Workmen's 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 Workmen's 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 Workmen's 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* [(1854) 3 E & B 363 : 118 ER 1178]) is fully incorporated in the scheme of Section 167 of the Motor Vehicles Act, precluding the claimant who has invoked the Workmen's 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 Workmen's Compensation Act, is controlled by the provisions of that Act subject only to the exception recognised in Section 167 of the Motor Vehicles Act.*

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-emphasises what is emphasised 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."

10. It is clear *explicit* from the decision of the **Mastan (supra)** that the mandate under amended section 166 of the MV Act, 1988 is that a victim having cause of action both under the Act of 1923 and 1988 must claim compensation in either of the Acts not in both.

11. The decision of the **New India Assurance Company Limited v. Dolly Satish Gandhi** reported in **2026 INSC 498** cited by the learned counsel for the appellant is also inapplicable in the facts of the instant case. Following the decision of the Supreme Court in **Helen C. Rebello (supra)**, the Supreme Court went on to held that the claim received under the mediclaim policy by the victim will not debar him from receiving the compensation under the M.V.Act. It was also held that the claim received under the mediclaim policy cannot be deducted from the sums ordered and payable under the MV Act, 1988.

12. The ***Dolly Satish Gandhi*** (supra) case is equally inapplicable in the fact and circumstances of the instant case.

13. Admittedly owner of the vehicle in question was the APWD and was not required to insure the vehicle in question. The object and purpose behind such liberty is that the State is always available for the victim of an accident in which the vehicle of the State is involved.

14. In the instant case, the bar under section 166 would clearly apply to the case of the petitioner. The petitioner having received compensation under the Act of 1923 including a job for the victim's legal heir, the compensation ordered by the Trial Court would clearly amount to a double payment and unjust enrichment. The petitioner having elected to seek compensation from the Administration under the Act of 1923 cannot have therefore maintain a claim under the Act of 1988 against the Administration once again.

15. The dicta of the Supreme Court in the case of ***Mastan (supra)*** in the paragraph set out herein, clearly emphasized on the doctrine of election which factors of doctrine of estoppel.

16. Applying such doctrine in the instant case, the respondents' family of the deceased were clearly estopped from making claim under the MV Act, 1988 afresh after having received compensation under section 123 of the Act of 1923.

17. The Tribunal proceeded erroneously in following the decisions of ***Helen C. Rebello (supra)*** in the instant case.

18. In the light of the discussions made hereinabove, the impugned judgment and order dated 12.06.2023 shall stand set

aside. FMA/1/2024 is hereby allowed. There shall be no order as to costs.

19. Trial Court Records be returned for information and action.

20. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)