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IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE  
HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 2<sup>nd</sup> OF AUGUST, 2022

**MISC. APPEAL No. 3550 of 2022**

**Between:-**

**THE ORIENTAL INSURANCE CO. LTD.  
THROUGH MANAGER INCHARGE T P HUB  
DIVISIONAL OFFICE 11-B INDRAPURI IN FRONT  
OF JUBLEE GATE RAISEN ROAD BHOPAL M.P.**

**.....APPELLANT**

***(BY SHRI PRABHAT SHUKLA, ADVOCATE )***

**AND**

1. **SMT. PREETI AHIRWAR W/O RAJESH AHIRWAR, AGED ABOUT 24 YEARS, OCCUPATION: WIFE OF DECEASED GRAM / POST DOBI TEHSIL BUDNI DISTRICT SEHORE M.P. (MADHYA PRADESH)**
2. **KU. PRIYANKA D/O RAJESH AHIRWAR, AGED ABOUT 3 YEARS, OCCUPATION: (DAUGHTER OF DECEASED) THROUGH NATURAL GUARDIAN MOTHER SMT. PREETI AHIRWAR R/O GRAM/POST DOBI, TEHSIL BUDNI, DISTRICT SEHORE (MADHYA PRADESH)**
3. **SMT. KAMLA BAI AHIRWAR W/O MAHESH KUMAR, AGED ABOUT 47 YEARS, OCCUPATION: (MOTHER OF DECEASED) R/O GRAM/POST DOBI, TEHSIL BUDNI, DISTRICT SEHORE (MADHYA PRADESH)**
4. **SALEEM KHAN S/O SAKOOR KHAN R/O BAMHORI, BAJIRGUNJ, WARD NO. 14, THANA AND TEHSIL BADI DISTRICT RAISEN (MADHYA PRADESH)**
5. **ANIL CHOUHAN S/O MAHENDRA SINGH CHOUHAN R/O GRAM JAIT, THANA SHAHGUNJ, TEHSIL BUDNI, DISTRICT SEHORE (MADHYA PRADESH)**

**.....RESPONDENTS**

*(NONE FOR THE RESPONDENTS)*

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*This appeal coming on for hearing this day, the court passed the following:*

**ORDER**

This appeal is filed by the Insurance Company under Section 173(1) of the Motor Vehicle Act, 1988 being aggrieved of the award dated 30.04.2022 passed by the learned 12th Motor Accident Claims Tribunal, Bhopal in MACC No.2729/2019 awarding certain compensation in favour of the claimant.

This appeal is filed only on the ground that the claimant was a cleaner of the offending vehicle bearing No.MP09-KC-4479. This vehicle was driven by Salim Khan and owned by Anil Chouhan S/o Mahendra Singh Chouhan and the truck was insured with Oriental Insurance Company Limited at Bhopal.

It is submitted that claimant should have preferred a claim petition against the owner under the Workmen Compensation Act, 1923.

Shri Shukla's concern is covered in terms of 'Doctrine of Election' Supreme Court in **C. Beepathumma and Others Vs. Velasari Shankaranarayana Kadambolithaya and Others, AIR 1965 SC 241**, (three Judge Bench) dealt with the elements that go to constitute the pre requisites for applying the doctrine of election. The context however, was different, but the principles it stated, are as under:

"17. The doctrine of election which has been applied in this case is well-settled and may be stated in the classic words of Maitland.Â”

..ÂœThat 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 on 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.

In **National Insurance Company Vs Mastan & Anr.**, 2006(2) SCC 641, the Supreme Court held that the 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 one.

In fact 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 the right, which he otherwise would have had. The 'Doctrine of Election' postulates that when two remedies are available for the same relief, the agreed party has the option to elect either of them but not both.

In **S. Suppiah Chettiar vs V. Chinnathurai and Anr.** reported in AIR 1957 Madras 216 facts were that an employee moved the commissioner under the workmen compensation with an action, withdrew this claim and instituted his suit under the Fatal Accident Act. Extracting from the judgment by Lord Alverstone C.J. in *Rouse Vs. Dixon*, 1904-2 KB 628, the judgement reads;

"13.-----, "that being so, it seems to me that when a claim is made under the Workmen's Compensation Act which cannot be enforced because the case does not come within the Act at all, the right

of the workman to make any other claim is not lost .....There is nothing in the Act to lead to the extraordinary result that, where a claim is made under the Act, but withdrawn before there has been any decision upon it, all other liability on the part of the master is thereby wiped out..... The intention of the Act was only to prevent the master from being liable to pay twice over." (Per Lord Alverstone C.J.)

Supreme Court in the case of **Oriental Ins.Co.Ltd vs Dyamavva & Ors**, reported in (2013) 9 SCC 406 has held that option available is either to file claim petition under the Motor Vehicle Act, 1988 or under Workmen Compensation Act, 1923 but not under both. Therefore, when employer had himself deposited certain amount before the Commissioner under Workmen Compensation Act under Section 8 of the said act, then the Supreme Court directed that amount be adjusted from the amount of compensation awarded under the provisions of the Motor Vehicle Act.

In view of said legal position, there appears to be no justification in the challenge made by the appellant/Insurance company de hors the provisions of law i.e. 'Doctrine of Election' and judgement of the Supreme Court in the case of **Oriental Ins.Co.Ltd vs Dyamavva & Ors**(supra).

At this stage, Shri Shukla prays for withdrawal of this appeal. This request is turned down.

Accordingly, this appeal is dismissed on merits for the reasons stated above.

(VIVEK AGARWAL)  
JUDGE

