

**(1973) 07 CAL CK 0001****Calcutta High Court****Case No:** A.O.O. No. 109 of 1973

Bindubala Karmakar and Others

APPELLANT

Vs

Calcutta State Transport  
Corporation

RESPONDENT

**Date of Decision:** July 3, 1973**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 110E

**Citation:** (1974) ACJ 125**Hon'ble Judges:** Kumar Joyti Sen Gupta, J; Anil Kumar Sinha, J**Bench:** Division Bench**Advocate:** Jaya Bose, for the Appellant;**Final Decision:** Allowed

### **Judgement**

Anil Kumar Sinha, J.

This appeal, which is not opposed, was preferred by the claimants Appellants against an order passed by the Motor Accident Claims Tribunal, 24 Parganas, Calcutta and Howrah, refusing Appellants' application for issuing certificate for realisation of the amount of Rs. 17,000/- by the Collector of Howrah which the Appellants have been entitled to get as compensation under the award firm against the Respondent under the relevant provisions of the Motor Vehicles Act.

2. It appears that before the impugned order was passed the Tribunal passed an order on 21.8.69 on another application made by the present Appellants refusing to issue a certificate to the Collector on the view that u/s 110-E of the Motor Vehicles Act the Tribunal had no jurisdiction to issue such a certificate to the Collector against any person other than the insurer. The Appellants subsequently made another application on 9.2.1971 for issuing a certificate to the Collector for realisation of the amount under the award on the ground that Section 110-E of the Motor Vehicles Act has been amended with effect from 2.3.1970 by including "any person" in place of

"insurer" and, therefore, the Tribunal had jurisdiction to issue a certificate to the Collector for realisation of the amount under the award as arrears of land revenue.

3. The Tribunal, however, though found that there was such an amendment with effect from 2.3.70 by inserting the word "Any person" in place of the word "insurer" held that the Appellants were not entitled to such a certificate for the question as to maintainability of such an application was conclusively decided by the Tribunal earlier by its order dated 21.8.69 and thereafter, the appeal taken against such an order to this Court in its appellate jurisdiction was allowed to be dismissed for default. Accordingly a similar application was held to be barred by the principles of res judicata. We are, however, unable to agree with the view taken by the Tribunal. No question arises as to the Appellants present application being barred by res judicata as clearly apart from other controversial question, namely, as to whether the principles of res judicata at all applies to such a proceeding or not, the decision in the former application was given on applying the law as it then stood. As there was no such amendment on the date of the order there could not arise nor could there by any necessity for determination of such question in the earlier application. Therefore, even if the appeal taken from the earlier order was allowed to be dismissed for default in this Court the second application, in our view, cannot be held to be barred by res judicata. We are satisfied in this case that in view of the present amendment of Section 110E of the Act the Tribunal has jurisdiction to issue a certificate to the Collector in the manner as provided in Section 110E of the Motor Vehicles Act as it now stands. As this is the only point, we do not think that this matter should again be remitted to the Tribunal for fresh decision. In our opinion, the application made by the Appellants ought to be allowed.

4. Accordingly, this appeal is allowed. We set aside the judgment and order passed by the Tribunal below. The application made by the Appellants on 9.2.1971 is allowed and we direct the Tribunal concerned to issue a certificate to the Collector in accordance with the provisions of Section 110E of the Motor Vehicles Act for realisation of the amount under the award passed in favour of the Appellants.

5. The Appellants will get costs, hearing fee assessed at five gold Mohurs.