
Bindubala Karmakar and Others Vs Calcutta State Transport Corporation

A.O.O. No. 109 of 1973

Court: Calcutta High Court

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 be 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.