

(1984) 08 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 11512 of 1984

Karson Kyamaji Patel

APPELLANT

Vs

Motor Accidents Claims Tribunal and Others

RESPONDENT

Date of Decision : 06-08-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1939 — Section 110 E

Citation : (1986) ACJ 110

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : G. Lingappa, for the Appellant;

Final Decision : Dismissed

Judgement

K.A. Swami, J.—In this petition under Articles 226 and 227 of the Constitution, the Petitioner has sought for quashing the order dated 14.6.1984, passed by the first Respondent in Misc. Appeal No. 89 of 1983 (Annexure-A). By the said order, the Motor Accidents Claims Tribunal, Belgaum, 1st Respondent (hereinafter be referred to as "the Tribunal"), has issued a certificate u/s 110-E of the Motor Vehicles Act, 1939 (hereinafter be referred to as "the Act") against the Petitioner to the extent of Rs. 25,000/-.

2. The 2nd Respondent had filed a claim petition in M.V.C. No. 49 of 1977 against Bhavanji Karson Patel, Kantilal Karosa Patel and the New India Assurance Company Ltd., before the Tribunal. In that petition, there was an ex parte award passed in favour of the 2nd Respondent. The Petitioner filed an indemnity bond before the Tribunal for getting the ex parte award set aside. The bond executed by the Petitioner is as follows:

(Omitted as in vernacular)

On the basis of the said bond, the ex parte award was set aside. The case was tried on merits and an award came to be passed against Bhavanji Karson Patel

and Kantilal Karosa Patel. No award was passed against the New India Assurance Co. Ltd., because the policy in respect of the vehicle in question, issued by the New India Assurance Co. Ltd., was not effective on the date of accident. It appears that after the ex parte award was set aside, Bhavanji Karson Patel died and his legal representatives were brought on record as Respondents 3(c) to 3(e). As the second Respondent could not recover the amount from Respondents 3(a) to 3(e) and 4, he had applied for issue of a certificate u/s 110-E of the Act, against the Petitioner having regard to the bond executed by him.

3. The Tribunal, on coming to a conclusion that it is open to it to issue a certificate having regard to the provisions contained in Section 145 of the Code of Civil Procedure, (for short, "the Code"), has issued the certificate. It is the correctness of this order which is challenged by the Petitioner in this petition.

4. It is contended by Mr. Lingappa, learned Counsel for the Petitioners, that Section 145 of the Code, does not apply to a proceeding before the Tribunal, because it is not a court and all the provisions of the Code are not made applicable to the proceedings before the Tribunal; that Section 110-E of the Act, enables the Tribunal to issue a certificate only against those who are parties to the proceeding and not against those who are not parties to the proceeding.

5(1). Having regard to the facts and circumstances of the case, the view I am taking, it is not necessary to consider the first contention.

5(2). Admittedly, there is a bond executed by the Petitioner. As per the terms of that bond, he has given an undertaking to the Tribunal that in case an award is passed and the amount is not recovered from the person against whom the award is passed, he will indemnify the persons in whose favour the award is passed to an extent of Rs. 25,000/-. It is on that basis, the ex parte award was set aside. If that be so, irrespective of the applicability of Section 145 of the Code, there is an inherent power in the Tribunal to enforce the bond that is executed in its favour. The power to obtain the bond also contains in it the power to enforce it. If it is not so, no purpose is served by obtaining the bond. It will be only an empty formality. Therefore, it is not possible to hold that the Tribunal has no power to issue the certificate in terms of the bond.

5(3). The contention that Section 110-E of the Act, is attracted only when the certificate is sought against the person who is a party to the proceeding is not of any assistance to the Petitioner, because by giving an undertaking to the Tribunal, the Petitioner has bound himself that the award that is going to be passed will be satisfied by him to the extent of Rs. 25,000/-, as a result thereof, he becomes a party to the award. Therefore, I am of the view that the certificate issued against the Petitioner on the basis of the bond executed by him cannot be said to suffer from an infirmity much less from want of jurisdiction.

6. No injustice whatsoever is caused to the Petitioner. It was on his undertaking the ex parte award was set aside. As otherwise, the 2nd Respondent would have recovered the amount awarded under the ex parte award, cannot now turn round

and contend that the Tribunal has no jurisdiction to enforce the bond executed by him. To act in aid of such person is nothing but to cause injustice and to deprive the 2nd Respondent of his legitimate right and benefit to recover the amount due under the award from the Petitioner to the extent of Rs. 25,000/-. Certainly, the jurisdiction under Articles 226 and 227 of the Constitution is not intended to be exercised in aid of a person like the Petitioner. Hence, I do not think it is a case in which interference under Articles 226 and 227 of the Constitution, is called for. Hence, even otherwise, I decline to interfere.

7. Accordingly, the petition fails and the same is rejected.