

(1978) 11 AP CK 0010
In the Andhra Pradesh High Court
Case No : A.A.O. No. 263 of 1977

R. Jagadeswara Rao

APPELLANT

Vs

Premier Insurance Co., Kakinada and Another

RESPONDENT

Date of Decision : 17-11-1978

Acts Referred:

Motor Vehicles Act, 1939 — Section 110

Citation : AIR 1979 AP 68 : (1979) 1 APLJ 69

Hon'ble Judges : Chennakesav Reddy, J

Bench : Single Bench

Advocate : C. Poornaiah, for the Appellant; A. Hanmantha Rao and E. Ella Reddy, for the Respondent

Judgement

1. This Civil Miscellaneous Appeal is directed against the order of the District Judge, East Godavari at Rajahmundry, in EP. No. 15 of 1973 in O.S. No. 76 of 1861 dismissing the E.P. as not maintainable. The appellant filed an application for compensation u/s 110-A of the Motor Vehicles Act, 1939, hereinafter referred to as "the Act" before the District Judge cum-Motor Accidents Claims Tribunal East Godavari at Rajahmundry, and obtained an award for Rs. 12,600. He filed E.P. No. 15 of 1973, before the District Judge for the enforcement of the award of compensation against the respondents. The respondents resisted the execution on the ground that the Civil Court has no jurisdiction to entertain the E.P. Upholding their contention the learned first Additional District Judge, dismissed the E.P.

2. The short question and the sole question that arises for consideration is. Whether the E.P, filed before the District Judge for the enforcement of the award of compensation is not maintainable. The relevant provisions concerning the controversy are Section 110-E of the Act and Rule 530-A of the Rules framed by the State Government u/s 111-A of the Act Section 110-E of the Act prior to the amendment in 1969 read as follows:--

"110-E. Recovery of money from insurer as arrear of land revenue:-- Where any

money is due from an insurer under an award. the Claims Tribunal, may, on an application made to it by the person entitled to the money. issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue."

Rule 530-4 of the Rules reads as follows:--

"530-A Enforcement of an award of Claims Tribunal:-- Subject to the provisions of Section 110-E the Claims Tribunal, shall, for the purpose of enforcement of its award, have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908 as if the award were a decree for the payment of money passed by such court in a Civil Suit."

3. The said rule was inserted by means of a Government order in 1965, u/s 110-E, the Award of the Tribunal, could not be executed through the media of the civil Court, as against the persons other than the insurer. But under the Rule the Claims Tribunal was conferred with all the powers of a Civil Court for the purpose of enforcement of its award in the execution of a decree under the Code of Civil Procedure, 1908, for the purposes of enforcement of its award as if the award were a decree for the payment of the money. But in view of the opening words of the rule "subject to the provisions of Section 110-E" it follows that the mode of execution of the award as against an insurer is through the Collector, As against the persons other than the insurer, namely, the owner and driver of the vehicle, the Claims Tribunal itself is empowered under the Rule to enforce the award, as if the award were a decree for money passed under the Code of Civil Procedure. Section 110-E was amended by Act 56 of 1969, and the words "an insurer" were substituted by the words "any person". This amendment came into force with effect from 2-3-1970. By virtue of this amendment, any person entitled to the money under the award can execute the award through the media of the Collector against any persons, it is, therefore, contended that by the amendment of Section 110-E the scope of section is enlarged, that against any person the award for compensation can be executed through the media of the Collector and that, therefore, R. 530-A has become, after the amendment, obsolete.

4. On the other hand, it is the contention of the learned counsel for the appellant that the word used in Section 110-E is only "may" and not "shall", and therefore, it is open to the person concerned to choose either to execute the award through the media of the Collector or the Claims Tribunal itself under Rule 530-A. In the ordinary usage, the word "may" is permissive and "must" is imperative and in accordance with such usage the word "may" in a statute will not generally be held to be mandatory. No doubt in some cases it has been held that the word "may" has been given a mandatory meaning by judicial exposition. Craies' Statutes Law, Seventh Edition at page 229 contains the following passage.

" "May" does not mean must": "may" always means "may". "May" is a permissive or enabling expression but there are cases in which for various reasons

as soon as the person who is within the statute is entrusted with the power, it becomes his duty to exercise it." So "may" sometimes, is equivalent to "shall". A look at the language employed in Section 110-E makes the intention the Legislature quite clear. The section after the amendment of 1969 reads:

"110-E Recovery of money from insurer as arrears of land revenue:-Where any money is due from any person under an award, the Claims Tribunal may on an application made to it by the person entitled to the money, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue."

5. The section merely deals with the procedure to be adopted when an application is filed by the claimant for a certificate. The section does not take away the right, conferred on the claimant to approach the Claims Tribunal itself under Rule 530-A. The word "may" in the Section clearly denotes that the intention was not to exclude. The words "may, on an application made to it by the person entitled to the money issue a certificate", do not preclude person from filing an application under Rule 530-A for execution. Therefore, the claimant has the choice either to seek a certificate u/s 110-E or file an application for execution under Rule 530-A. But if the claimant chooses to file an application under Rule 530-A it is in no way in conflict with Section 110-E and the application is maintainable. The learned District Judge was in error in holding that Rule 530-A is in conflict with Section 110-E and, therefore, is ultra vires.

6. The learned counsel for the respondents however invited my attention to a decision of the Supreme Court in K.R.C.S. Balakrishna Chetty and Sons and Co. Vs. The State of Madras, and submitted that the opening words "subject to the provisions of Section 110-E" in Rule 530-A exclude any choice to the claimant to approach the Claims Tribunal to file an application for execution and he has to seek only the certificate u/s 110-E of the Act. I am unable to accede to this contention in the claimant had already invoked the Provisions of section 110-E and filed an application for the certificate, then, no doubt he would be from filing any application for execution under Rule 530-A. But if the claimant chooses to file an application for execution under Rule 530-A instead of seeking a certificate under maintainable. Section 110-E application cannot be thrown out as not maintainable.

7. The learned counsel for the respondent lastly urged that the District Judge has no jurisdiction to entertain the application for execution and that in any case the application for execution can only be filed before the Claims Tribunal. It is clear from the order itself that the award itself was passed by the District Judge as Claims Tribunal, Therefore, the E.P., for execution was filed before the Claims Tribunal to, the District Judge.

8. In the result, the order of the learned Additional District Judge holding that the E.P. was not maintainable is set aside and he is directed to restore the EP. No. 15/1973 in O.P., No, 76 of 1967, to file and dispose it of according to law.

The C.M.A. is allowed, accordingly with costs.

9. Appeal allowed.