

Vishnu Narayan Shingate Vs. Kumar Sham Shankar Parit and ors.

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SooperKanoon Citation : sooperkanoon.com/364833

Court : Mumbai

Decided On : Aug-28-1992

Reported in : II(1992)ACC684

Judge : P.S. Patankar, J.

Appellant : Vishnu Narayan Shingate

Respondent : Kumar Sham Shankar Parit and ors.

Judgement :

P.S. Patankar, J.

1. This Appeal arises out of the claim petition filed by the respondent No. 1 under Section 110-A of the Motor Vehicles Act, 1939 for the injuries suffered by him claiming compensation of Rs. 50,000/-.

2. The respondent No. 1 was studying in the school in 2nd Standard and on the date of the accident i.e. 26th June, 1982, he was 10 years of age. It is alleged by respondent No. 1 that the appellant was driving motor-cycle bearing No. MXC 604 in a rash and negligent manner and dashed against him. The said motor-cycle was owned by the appellant. In spite of giving dash, the appellant did not stop. He was later on stopped by some other persons and the respondent No. 1, who had suffered serious injuries, was taken to the Civil Hospital. The respondent No. 1 suffered fracture to his right tibia and fibula. An operation was performed upon

him. He was required to be an indoor patient for 1-1/2 months. Even though the final plaster was removed, the leg was not cured. He suffered from permanent disability and the certificates to that effect were issued by the Resident Medical Officer of the General Hospital which are on record at Exhibits 47 and 49. This gave rise to the application.

3. The appellant inter alia contended that he was not rash or negligent in driving the vehicle. He also contended that he was not the owner of the vehicle on the date of the accident and, therefore, no liability can be fastened upon him.

4. The learned Member of the Motor Accidents Claims Tribunal, Sangli, closely scrutinized the evidence on record and came to the conclusion that the appellant was rash and negligent in driving the motor cycle MXC 604 and had caused the accident. He further held that respondent No. 1 was entitled to get compensation of Rs. 10,000/- only. The other contention raised on behalf of the appellant that he was not the owner of the vehicle on the date of the accident came to be negated.

5. The learned Advocate for the appellant very vehemently submitted that on the date of the accident i.e. 26th June, 1982, the appellant was not the owner of the vehicle and on that date the owner was respondent No. 2 and the motor cycle was insured with respondent No. 8 and hence the liability ought to have been cast upon respondents 2 and 3.

6. On behalf of the appellant to prove this case the appellant entered the witness box at Ex. 54. However in para 4 in categorical terms the appellant admitted that he had purchased the motorcycle from respondent No. 2 on 27.8.1981. He has also deposed that the said vehicle came to be transferred in his name in July, 1983. He has also deposed that on 27.8.1981 he had paid Rs. 3,500/- to Dr. Oswal out of the agreed consideration of Rs. 7,500/- and the balance of Rs. 4,000/- was agreed to be paid as per his convenience and had paid Rs. 2,000/- in November 1982 and the remaining amount of Rs. 2,000/- in July 1983. It is his case that thereafter the motor-cycle was transferred in his name. In the cross-examination, he was shown the receipt at Exhibit 55. In terms he had admitted that the receipt was correct. But when he was confronted with the amount mentioned in the said receipt of Rs. 7,500/- as received by the respondent No. 2, he said that the

same was incorrect. He also admitted that he took possession of the said motorcycle on the date of receipt i.e. 27.8.1981. Further in para 10, again he admitted that he purchased the said motor cycle on 27.8.1981. He was also confronted with the letter dated 17-9-1981 written by him to respondent NoJ2 at Exhibit 56. He had admitted that the contents of the said letter were correct. The contents of the said letter clearly go to show that he had purchased the said vehicle and there was no responsibility upon respondent No. 2 even though there was some delay to get the said vehicle transferred in his name in the records maintained by a registering authority under the Motor Vehicles Act. He also admitted that the Res. No. 2 did not demand any money from him after the said letter dated 17.9.1981. All this evidence clearly shows that the sale had taken place on 27.8.1981 itself and on that date the entire consideration was paid by the appellant to respondent No. 2. The only thing that remained to be done was to get the said vehicle transferred in the name of the appellant in the registers maintained under the Motor Vehicles Act and which had taken place in July 1983. The appellant clearly wants to take advantage of this position by saying that he had only paid Rs. 3,500/- on the date when the agreement had taken place on 27.8.1981. It is clearly a lie. When the receipt at Ex.55 is taken into consideration and also his own letter dated 17.9.1981 at Ex.56, and the fact that the appellant himself had admitted that he had purchased the motor-cycle on 27.8.1981 at two places in his deposition and that his admission that the respondent No. 2 did not demand the balance of consideration after the letter dated 17.9.1981. Exhibit 56, shows that the entire consideration of Rs. 7,500/- was paid by him on 27.8.1981 and the sale had taken place. In my opinion, therefore, the Court below was right in coming to the conclusion that the motor-cycle was sold by respondent No. 2 to appellant on 27.8.1981 and on the date of the accident the appellant was the owner thereof.

7. In the result, the Appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.