

(2019) 11 BOM CK 0045

In the Bombay High Court

Case No : First Appeal No. 558 Of 2015, Civil Application No. 432 Of 2014

Hufriz Adi Sonawala And Ors

APPELLANT

Vs

Bharat Punamchand Dave 3/A And Ors

RESPONDENT

Date of Decision : 06-11-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(30), 50, 140, 166
Motor Vehicles Act, 1939 — Section 2(19), 31

Citation : (2019) 11 BOM CK 0045

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Ravi D. Talreja, Krutika Pokale, A.M. Gokhale

Final Decision : Dismissed/Disposed Of

Judgement

1. By this Appeal, the appellant has impugned the Judgment and Order dated 31st October 2012 passed by the Motor Accident Claims Tribunal, Mumbai holding the appellant liable to pay entire amount of compensation of Rs.1,34,000/-with interest @ 7.4% p.a from the date of application till realization. The issue arises for consideration of this Court is whether the appellant though claims to have sold the vehicle No.MH-3 7791 to the respondent No.1, but continued to be registered owner in the records of Regional Transport Ofce on the date of accident, he was liable to pay compensation to the respondent no.2.

2. It is the case of the appellant that the appellant had sold the said vehicle to the respondent No.2 and had handed over possession thereof alongwith delivery note and requisite documents to enable the respondent No.2 to transfer the said vehicle in his name in the records of RTO.

3. On 8th March 2008, the respondent No.1 was knocked down by the respondent No.2. The respondent No.2 was admitted to the hospital and was treated after 15th March 2008 and thereafter between 18th March 2008 and

24th March 2008. The respondent No.1 fled an application before the MACT, Mumbai against the respondent No.2 and the appellant under section 166 of the Motor Vehicles Act,1988 with application under section 140 of the said Act for 'No Fault Liability'. On 11th June 2009, MACT, Mumbai passed Judgment and Order holding the appellant liable to pay compensation to the respondent No.1.

4. Mr.Talreja, learned counsel for the appellant submits that though on the date of accident the vehicle was not transferred to the name of the purchaser inspite of handing over delivery note and all requisite documents, his client cannot be made liable to pay compensation amount on the ground that the vehicle stood in the name of his client on the date of accident. He placed reliance on the Judgment of this Court in the case of Kishan Pandurang Kagde vs. Baldev Singh Gian Singh and another [(1977) Mh.L.J 6569] and in particular paragraph 8 thereof. He also placed reliance on the Judgment of this Court in the case of Virendrakumar J. Handa Vs. Dilawarkhan Alij Khan and others [1991 (3) Bombay Cases Reporter 218] and in particular paragraph 19 thereof in support of his submissions.

5. The learned counsel for respondent No.1 on the other hand invited my attention to the findings recorded by the Tribunal and more particularly in paragraph 5 thereof. His submission is that the registration certificate in respect of the said vehicle was admittedly continued in the name of the appellant. The said vehicle was transferred in the name of respondent No.2 on 29th December 2008 and thus it is clear that on the date of accident the vehicle continued to be in the name of the appellant. She has strongly placed reliance on the definition of "Owner" under section 2(30) of the M.V.Act,1988 and also section 2(19) of the Motor Vehicles Act,1939. She submits that the appellant was under an obligation to transfer the said vehicle under section 50 of the said Act within the time prescribed. In this case the vehicle was transferred in the name of respondent No.2 on 29th December 2008 that is much after the date of accident i.e on 8th March 2008. She strongly placed reliance on the Judgment of Hon'ble Supreme Court in case of Naveen Kumar vs. Vijay Kumar and others delivered on 6th February 2018 in Civil Appeal No.1427 of 2018. She submits that after adverting to various earlier Judgments of the Supreme Court, and after construing section 2 (30) and section 50 of the Motor Vehicles Act, Supreme Court has held that the person in whose name the vehicle stood registered on the date of accident which vehicle was not insured would continue to be the owner of the vehicle within the meaning of section 2 (30) and would be responsible to make payment of compensation.

6. A perusal of the record clearly indicates that though the appellant claims to have sold the vehicle to the respondent No.2 on 6th February 2008, the fact remains that the vehicle was transferred in the name of respondent No.2 only on 29th December 2008 in the records of the Authority under the provisions of M.V.Act,1988. The learned counsel for the appellant does not dispute this factual finding recorded by the Tribunal.

7. The Supreme Court in the case of Naveen Kumar (supra) after adverting to its earlier Judgments in the case of Pushpa @ Leela V. Shakuntala [(2011) 2 SCC 240] and various other Judgment had construed section 2 (30) and has held that the person in whose name the vehicle is registered is the owner of the vehicle for the purpose of Motor Vehicles Act,1988. After construing section 50 of the M.V.Act, Hon'ble Supreme Court held that if the registered owner who was purported to have transferred the vehicle in the records of the Authority is the owner he would not stand discharged of liability, to hold otherwise it would defeat the solitary object and purposes of the Act.

8. In my view, the principles laid down by the Hon'ble Supreme Court would clearly apply to the facts of the present case. I am respectfully bound by the said Judgments. The learned counsel for the appellant could not demonstrate even before this Court that within 14 days from the date of transfer of the registered vehicle, the appellant had reported the effect of transfer in the requisite format with requisite documents and in a manner prescribed by the Central Government in whose jurisdiction the transfer has been effected. Reporting the transfer of vehicle as contemplated under section 50 of the M.V.Act. was mandatory. The appellant not having reported the transfer within the time prescribed by section 50 of the M.V.Act continued to be the owner of the said vehicle on the date of accident and was thus liable to pay compensation in view of the accident having been committed during the period of ownership of the appellant.

9. In so far as the Judgment of this Court in case of Kishan (supra) relied upon by the learned counsel for the appellant is concerned, a perusal of the said Judgment clearly indicates that the said Judgment considered section 31 of the Motor Vehicles Act,1939. The provisions of section 31 of the M.V.Act are not in pari materia with the other provisions of the M.V.Act,1988. The Judgment relied upon by the learned counsel for the appellant would not assist his case. So far as the Judgment in the case of Virendrakumar (supra) relied upon by the learned counsel for the appellant is concerned, perusal of the said Judgment indicates that the said Judgment was arising out of criminal complaint filed against the owner in which process was issued by the learned Metropolitan Magistrate. In my view, the said Judgment would not even apply remotely to the facts of this case. The learned counsel for the appellant did not urge any other submissions before this Court. In my view, the impugned Judgment and Order passed by the Tribunal does not warrant any interference as the same is in conformity with the M.V.Act and having followed the principles of law, I do not find any infirmity with the said Judgment.

10. First Appeal is accordingly dismissed with no order as to cost. In view of dismissal of the Appeal, Civil Application does not survive and the same is also disposed of.