

IN THE COURT OF CHAIRMAN OF MACT, GONDIA.
MOTOR ACCIDENT CLAIM PETITION NO. 72/2016.
(CNR NO.MHGO010006162016)

Muneshwari Pardhi +4 -Vs- Amit Budhe+1

ORDER BELOW EXH. 21.

(Passed on this 13th day of December, 2023)

This is an application filed by respondent No.1 for adding of parties under Order 1 Rule 10(2) of C.P.C.

2] The respondent No.1 is the registered owner of the offending vehicle and hence the petitioners have made him party/respondent in the motor accident claim petition. The respondent No.1 has filed written statement at Exh.12 wherein he has pleaded that he has sold the said motorcycle to one Ramkumat Tekchand Lalwani on 10/07/2006 with requisite papers for transfer. The respondent No.1 by this application further submits that said Ramkumar Lalwani sold the said vehicle to Mahesh Gokulji Babriya and said Babriya also sold the said vehicle to one Munna Warkhade of Junewahi Gangazari and he is the last owner of the said vehicle. He further submits that the provisions of Sales and Good Act applies and the vehicle has been delivered to said Munnalal Charansingh Warkhade who has also deposited NFL amount in the Court. He has therefore, prayed that add (A) Ramkumar Tekchand Lalwani (B) Maheshkumar Gokulji Babriya and (C) Munnalal Charansingh Warkhade being necessary parties.

3] The petitioners have filed reply at Exh.22 and have denied all the contentions of the respondent No.1. They also denied that the provisions of Sales and Goods Act applies for transfer of the motor vehicles. The respondent No.1 has not filed any document to show that the vehicle has been transferred. The application is not maintainable and be rejected with compensatory cost. He has relied upon the case of *Navinkumar -Vs- Vijaykumar, Civil Appeal No.1427/2018, Supreme Court, order dated 06/02/2018.*

4] Subsequently, by list of document Exh.25 the respondent No.1 through his then advocate Shri M. K. Gupta filed affidavit of one Munnalal Charansingh Warkhade at Exh.26. As the respondent No.1 whose entrust was adverse to said Munnalal Warkhade filed the said affidavit Exh.26 wherein it was stated that he had purchased the said motorcycle from Mahesh Gokulji Babriya for a consideration of Rs.4000/-, this court directed the respondent No.1 to keep present the affiant for verification of contents of affidavit Exh.26. Initially the advocate for respondent No.1 orally refused to keep present the affiant but subsequently kept him present. This court recorded the statement of Munnalal Warkhade at Exh.30. Said Munnalal Warkhade stated on oath that affidavit Exh.26 bears his signature but he cannot read or write or understand English. He does not know the contents of affidavit Exh.26 which are written in English as nobody

read over the contents to him in vernacular. He further stated that he does not remember who got this affidavit executed from him. He also stated that he had paid Rs.50,000/-. He only knows that the affidavit was in respect of the vehicle and that it was written in the said affidavit that he had purchased the said vehicle from one Babriya.

5] This court passed order below Exh.1 and ordered that the interest of the advocate for respondent No.1 is adverse to the interest of said Munnalal Warkhade whose affidavit was affirmed by him as a notary and was also produced in this proceeding in which the interest of said Munnalal Warkhade was adverse to the client of advocate of respondent No.1 which amounts to professional miss-conduct within the meaning of Rule 13, 14, 24 & 33 of Bar Council of India (Standards and Professional Conduct and Etiquette) Rules and also ordered that the said affidavit Exh.26 is discarded and would not be read in evidence for any purpose including reliance for deciding application Exh.21 (present application).

6] Heard learned advocate Shri Barapatre for the petitioners (present advocate) submits that being subsequent owner all the three parties sought to be added are necessary parties. He has also placed on record photocopy of note of sale of motorcycle dated 10/07/2006 in respect of transaction

between respondent No.1 and one Ramkumar Tekchand Lalwani and also one pursis whereby the said Munnalal claims to be the last owner of the said vehicle and also the vakalatnama of advocate Gautam and M.K. Gupta. M.K. Gupta was then advocate for respondent No.2 having adverse interest against said Munnalal Warkhade. Said Munnalal Warkhade is an illiterate persons. Despite having adverse interest Shri M. K. Gupta filed vakalatnama in R. D. Proceedings of said Munnalal Warkhade.

7] The transfer of ownership of motor vehicle is not governed by the Sale of Good Act wherein the transfer of ownership passes on delivery of goods. The provision for transfer of a motor vehicle is provided under Sec. 50 of the Motor Vehicle Act. In the case of *Navinkumar -vs- Vijaykumar (Cited Supra)*, the Hon'ble Supreme Court has extensively dealt with issue of transfer of motor vehicle vis a vis liability in case of accident and held that, for the purpose of this act the persons whose name is reflected in the record of the registering authority is the ower and the owner within the meaning of Sec. 2(30) of the M.V. Act is liable to compensate.

8] It is also pertinent to note that only a registered owner can get the vehicle insured and it is the liability of the registered owner to get the vehicle insured. It is also the liability of the registered owner to intimate the transfer of the

vehicle to the registering authority as provided under Sec. 50 of the M. V. Act. Having failed to do so, the respondent No.1 cannot shift his liability by taking undue advantage of the illiteracy of said Munnalal Warkhade by misleading him and making him file an affidavit in the present case and pursis and vakalatnama in the R. D. case in respect of no-fault liability.

9] It is also pertinent to note that the petitioners is the dominous litus and it is for him to add or delete the parties. The petitioner has opposed the said application. Even otherwise as the law is settled by the Supreme Court in the case of *Navinkumar -Vs- Vijaykumar (Cited Supra)*, only the registered owner is the necessary party and liable to pay compensation. The application is devoid of merit and is liable to be rejected with compensatory cost.

ORDER

Application [Exh. 21] is hereby rejected with compensatory cost of Rs.500/- to be paid to the petitioners.

Gondia.
Dated: 13.12.2023.

Sd/-*
(Adil M. Khan)
Member, MACT, **Gondia.**