

Shah v Motor Veh. Acc. Indem. Corp.

2023 NY Slip Op 30079(U)

January 6, 2023

Supreme Court, New York County

Docket Number: Index No. 156426/2022

Judge: James G. Clynnes

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

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MEKAIL SHAH

Petitioner,

- v -

THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION,

Respondent.

-----X

INDEX NO. 156426/2022
MOTION DATE 08/02/2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for LEAVE TO FILE

Upon the foregoing documents, it is ordered that the petition for leave to commence an action against Respondent Motor Vehicle Accident Indemnification Corporation (MVAIC) is denied.

Petitioner seeks leave to sue MVAIC for injuries sustained as a result of a motor vehicle accident that occurred on November 19, 2020 while Petitioner was riding an e-scooter and was struck by a motor vehicle that fled the scene.

MVAIC was created to provide innocent victims of motor vehicle accidents compensation for the injury and financial loss inflicted upon them, through no fault of their own, and by unidentified motor vehicles that leave the scene of the accident pursuant to Insurance Law 5201. Insurance Law 5218 (a) sets forth the procedure for commencing an action against MVAIC in hit and run cases and states:

“Any qualified person having a cause of action for death or personal injury arising out of the ownership, maintenance or use of a motor vehicle in this state, when the identity of the motor vehicle and of the operator and owner cannot be ascertained

or it is established that the motor vehicle was at the time of the accident, in the possession of a person without the owner's consent and that the identity of such person cannot be ascertained may, upon notice to the corporation, apply to a court for an order permitting an action therefor against the corporation in that court.”

(Insurance Law 5218 [a]).

Insurance Law 5202 defines a “qualified person” as one who is a resident of New York State, is not insured, and s/he, nor anyone in his/her household, is not the owner of a motor vehicle.

A petitioner seeking leave of court to commence an action against MVAIC has the initial burden of demonstrating that s/he is a “qualified person” within the meaning of the Insurance law and making an evidentiary showing that s/he has satisfied any other statutory requirements (*Matter of Hernandez v Motor Veh. Acc. Indem. Corp.*, 120 AD 3 d 1347 [2nd Dept 2014]).

The Court may grant a petition to seek leave to file against MVAIC pursuant to Insurance Law 5218, where a person has been injured by an automobile and cannot establish the identity of the owner and operator or the vehicle was used without the owner’s consent by an unknown person (*see Brandon v Motor Vehicle Accident Indemnification Corporation*, 233 AD2d 604 [3d Dept 1996]).

MVAIC opposes the motion contenting that Petitioner is not a “qualified person” pursuant to Article 52 because he was the operator of an e-scooter whose maximum speed exceeds 40 miles per hour and therefore qualifies as a “motor vehicle.”

A motor vehicle is defined as “[e]very vehicle operated or driven upon a public highway which is propelled by any power other than muscular power, except (a) electrically-driven mobility assistance devices operated or driven by a person with a disability, (a-1) electric personal assistive mobility devices operated outside a city with a population of one million or more, (b) vehicles which run only upon rails or tracks, (c) snowmobiles as defined in article forty-seven of this

chapter, (d) all terrain vehicles as defined in article forty-eight-B of this chapter, (e) bicycles with electric assist as defined in section one hundred two-c of this article, and (f) electric scooters as defined in section one hundred fourteen-e of this article (Vehicle and Traffic Law 125 (Consol., Lexis Advance through 2022 released Chapters 1-789)). Electric scooters are defined as “[e]very device weighing less than one hundred pounds that (a) has handlebars, a floorboard or a seat that can be stood or sat upon by the operator, and an electric motor, (b) can be powered by the electric motor and/or human power, and (c) has a maximum speed of no more than twenty miles per hour on a paved level surface when powered solely by the electric motor (Vehicle and Traffic Law 114-e (Consol., Lexis Advance through 2022 released Chapters 1-789)).

The e-scooter here, according to the user manual, weighs “around 43 kg” or approximately 95 pounds, has handlebars and a floorboard that can be stood upon by the operator, is powered by an electric motor, and has a maximum speed of up to 80 km/h, just under 50 mph. Moreover, although not directly outlined in the user manual, in describing the product folding, the manual states that “[w]hen the steering tube is folded...it is easy to move by attaching the handle with the folding lock device (not available when mounting the seat mount)” (NYSCEF DOC NO. 14). This leads the Court to understand that a seat mount may be available to add to the scooter and is therefore not a limiting feature. As such, the subject scooter does not fall within the definition of “electric scooter” and does not fit into the exclusions outlined in VTL 125. Since it is not part of the exclusionary list, it clearly falls into the general definition of “motor vehicle.”

Although not elaborated upon in the submissions, the Court notes that MVAIC confirmed that Petitioner met the criteria for a “covered person” through a letter dated February 8, 2021 (NYSCEF DOC NO. 6). However, this letter was written in response to the Notice of Intention to

Make a Claim filed with MVAIC, in which Petitioner categorized his involvement in the accident as a pedestrian.

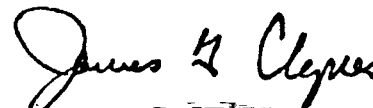
Under the facts and circumstance here, it is Petitioner's burden to establish that his e-scooter was exempt from the liability insurance requirements applicable to motor vehicles. Petitioner failed to prove his vehicle was exempt from insurance requirements. By failing to meet this burden, Petitioner is barred from bringing an action against MVAIC because he was operating an uninsured motor vehicle at the time of the accident contrary to the requirements of the Insurance Law 5218 (b) (3). The petition is therefore denied.

Accordingly, it is

ORDERED that Mekail Shah's petition for leave to commence an action against Respondent MVAIC is denied; and it is further

ORDERED that within 30 days of entry, Respondent shall serve a copy of this Decision and Order upon Petitioner with Notice of Entry.

This constitutes the Decision and Order of the Court.



JAMES G. CLYNES, J.S.C.

1/6/2023

DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
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