

# In Smt. Manjula H.P vs In 1. Shriram General Ins. Co. Ltd on 20 August, 2015

Before the Motor Accident Claims Tribunal at Bangalore  
(SCCH-8)

Present: Shri P.J. Somashekhar B.A., LL.B.,  
XII Additional Small Causes Judge  
and Member, M.A.C.T., Bangalore.

Dated this the 20th day of August 2015

M.V.C. Nos.7393/2012 & 7394/2012

Petitioner in      Smt. Manjula H.P.,  
MVC 7393/2012      W/o Jayaprakash B.V.,  
                        Age 45 years,  
                        R/at No.46/8, SLLR Mansion,  
                        12th Main, 1st Cross,  
                        Rajajinagar,  
                        Bangalore - 10

Previous Address R/at No.15,  
12th 'A' Cross, Vyalikaval,  
Bangalore.  
(Smt. Indumathi S.R., Advocate)

Petitioner in      Sri Jayaprakash B.V.,  
MVC 7394/2012      S/o Venkatachalaiah,  
                        Age 45 years,  
                        R/at No.73, 18th Cross,  
                        19th Main, 1st Block,  
                        Rajajinagar,  
                        Bangalore - 10

Previous Address R/at No.15,  
12th 'A' Cross, Vyalikaval,  
Bangalore.  
(Smt. Indumathi S.R., Advocate)

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V/s.

Respondents in      1. Shriram General Ins. Co. Ltd.,  
both the cases      No.9/1, Ulsoor Road,  
                        Bangalore - 560 042.  
                        Policy issued by its office at  
                        10003-E-8, Riico Industrial Area  
                        Sita APura - Jaipur,  
                        Rajasthan - 302022.

In policy  
No.10003/31/12/169613.  
Date of Validity from 2-7-2011  
to 01-07-2012.  
(Sri Manoj Kumar M.R., Adv.)

2. Sri Ananda Naik,  
S/o Buddha Naik,  
R/at No.404, Unit-52, 1st Floor,  
Poddar Waghwadi Kalbadrie  
Princess Street, Ramwadi S.O.  
Mumbai, Maharashtra - 400 002.  
(Ex parte)

#### COMMON JUDGMENT

These claim petitions filed by the petitioners against the respondents for seeking compensation of Rs.15,00,000/- and Rs.1,50,000/- respectively for the injuries sustained by them in a road traffic accident.

2. The brief facts of the claim petitions are as under:  
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The petitioner in MVC 7393/2012 and the petitioner in MVC 7394/2012 being the wife and husband, in their claim petitions were alleged that on 13-06-2012 at about 5.30 p.m., they were proceeding in a car bearing No.KA-02-MG-4397 as a inmate of the car and driver of the car, slowly and cautiously by observing all traffic rules and regulations, when they were reached on Shiradigatta, Nh-48, Sakaleshpur, the driver of the lorry bearing No.KA-25-B-3525 was came from Mangalore side with high speed in a rash and negligent

manner, without observing the traffic rules and regulations dashed against the car, as a result they were sustained grievous injuries. So, immediately they were shifted to Government Hospital, Sakaleshpura, wherein they took the first aid treatment, later on they were shifted to Vagus Hospital, wherein they took the treatment as an inpatient by spending huge amount.

3. Prior to the accident the petitioner in MVC 7393/2012 was hale and healthy working as a Blood  
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Bank Proprietor at Akshaya Voluntary Blood Bank, Bangalore by getting monthly income of Rs.80,000/-, due to the accidental injuries, she could not do the work as before.

4. Prior to the accident the petitioner in MVC 7394/2012 was hale and healthy working as a Real Estate Agent by getting monthly income of Rs.10,000/-, due to the accidental injuries, he could not do the work as before. The accident in question was taken place on the rash and negligent driving of the lorry driver. Thereby, Sakaleshpura Rural Police have registered the case in their police station crime No.107/2012 for the offences punishable u/s 279, 337 and 304(a) of IPC. The respondent No.1 being the insurer and the respondent No.2 being the owner of the lorry bearing No.KA-25-B-

3525 are jointly and severally liable to pay the compensation and prays for allow the claim petitions.

5. In response of the notice, the respondent No.2 did not appear nor file his written statement, as he was  
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placed ex parte. The respondent No.1 being the insurer has appeared through its counsel and filed the written statement in which has alleged that the claim petitions filed by the petitioners are not maintainable either in law or on facts and he has denied the averments made in column No.3 to 6, 11, 12, 14, 14A, 21 and 22 of the claim petition and he has also denied that the petitioners were proceeding in a car as a inmate and driver of the car slowly and cautiously by observing all traffic rules and regulations, the driver of the lorry has drove the same with high speed in a rash and negligent manner, without observing the traffic rules and regulations dashed against the car, as a result they were sustained grievous injuries and took the treatment by spending huge amount, but he has admitted about the issuance of the policy in respect of the lorry bearing No.KA-25-B-3525 and the policy was valid from 02-07-2011 to 01-07-2012 and its liability subject to terms and conditions of the policy and he has alleged that the accident was

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occurred on account of actionable negligence of two drivers namely, the petitioner being the driver of the car bearing No.KA-04-MG-4397 in which the petitioners were proceeding and the driver of the lorry bearing No.KA-25-B-3525 which were plying on the same road. The accident was occurred on account of use of two vehicles, as such both the vehicles involved in the accident must be held to be guilty of composite negligence and he has denied the age, avocation and income of the petitioner and he has alleged that the driver of the goods vehicle lorry bearing No.KA-25-B-3525 was being driven slowly, carefully and cautiously on the correct side of the road by observing traffic rules and regulations and sounding horn, unfortunately the accident was occurred only on account of the carelessness on the part of the driver of the car in which the petitioners were proceeding as a inmate and driver of the car. As the driver of the car was driving had made a daring attempt in a zig zag manner by violating the traffic rules and regulations as well as

almost in the middle of the road trying to overtake the vehicle ahead of the car in which the petitioners were proceeding were unable to overtake the vehicle in the process dashed against the goods vehicle lorry bearing No.KA-25-B-3525. Thereby, the accident was occurred,

In Smt. Manjula H.P vs In 1. Shriram General Ins. Co. Ltd on 20 August, 2015 so the negligence on the part of the driver of the car for the cause of accident, as the car driver was hurry to reach his destination, tried to overtake the vehicle proceeding ahead of the car and in the process being dashed against the goods vehicle and either the owner of the vehicle nor the jurisdictional police have not complied the mandatory provisions under Section 134(C) and 158(6) of MV Act in furnishing better particulars and prays for reject the claim petitions.

6. On the basis of the pleadings of the parties, my predecessor has framed the following issues in both claim petitions:

MVC No. 7393/2012

1. Whether the petitioner proves that she  
has sustained grievous injuries as  
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mentioned in column No.11, in a road traffic accident, on 13-06-2012 at about 5.30 p.m. on Shiradi Gatta, NH-48, Sakleshpur Taluk, Hassan, due to the rash and negligent driving of the driver of the lorry bearing registration No.KA-25-B-3525?

2.Whether the petitioner is entitled for any compensation? If so to what extent and from whom?

3. What Order or Award?

MVC No. 7394/2012

1. Whether the petitioner proves that he has sustained grievous injuries as mentioned in column No.11, in a road traffic accident, on 13-06-2012 at about 5.30 p.m. on Shiradi Gatta, NH-48,

Sakleshpur Taluk, Hassan, due to the rash  
and negligent driving of the driver of the  
lorry bearing registration No.KA-25-B-  
3525?

2. Whether the petitioner is entitled for any  
compensation? If so, to what extent and  
from whom?

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3. What Order or Award?

7. The learned counsel for the petitioners has filed  
the memo dated 01-04-2015 and prays for clubbing the  
MVC 7394/2012 with MVC 7393/2012 for recording of  
common evidence and for disposal. Accordingly the said  
memo was came to be accepted and MVC 7394/2012  
was clubbed with MVC 7393/2012 for the purpose of  
recording of common evidence and for disposal of the  
cases as these claim petitions are arising out of the same  
accident.

8. The petitioners in order to prove their claim  
petitions, the petitioner in MVC No.7393/2012 has  
examined herself as PW1 and got marked the documents  
as Ex.P1 to Ex.P11 and Ex.P19 and the petitioner in MVC  
7394/2012 has examined himself as PW2 and got  
marked the documents as Ex.P12 to Ex.P14 and they  
have examined two more witnesses on their behalf as  
PW3 and PW4 and got marked the documents as Ex.P15  
to Ex.P18. The respondent No.1 being the insurer has

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examined its Legal Manager as RW1 and got marked the document as Ex.R1.

9. Heard arguments on both side.

10. My findings to the above issues are as under:

Case No.	Issue No.1	Issue No.2	Issue No.3
MVC 7393/2012		Does not survive for court	
MVC 7394/2012	Negative	consideration	As per the final order

#### REASONS

11. Issue No.1 in both the claim petitions.

The petitioners in MVC 7393/2012 and 7394/2012 being said to be the wife and husband and the injured were approached the court on the ground that on 13-06-2012 at about 5.30 p.m., they were proceeding in their car bearing No.KA-02-MG-4397 slowly and cautiously by observing all traffic rules and regulations, when they were reached on Shiradigatta, Nh-48, Sakaleshpur, the

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driver of the lorry bearing No.KA-25-B-3525 was came from Mangalore side with high speed in a rash and negligent manner, without observing the traffic rules and regulations dashed against the car, as a result they were

sustained grievous injuries and took the treatment as an inpatient by spending huge amount. Thereby, they were filed the instant claim petitions against the respondents.

12. The petitioner in MVC 7393/2012 in order to prove her case has filed her affidavit as her chief examination as PW1, in which she has stated that on 13-06-2012 at about 5.30 p.m., herself and her husband were proceeding in a car bearing No.KA-02-MG-4397 as a inmate of the car and driver of the car, slowly and cautiously by observing all traffic rules and regulations, when they were reached on Shiradigatta, Nh-48, Sakaleshpur, the driver of the lorry bearing No.KA-25-B-3525 was came from Mangalore side with high speed in a rash and negligent manner, without observing the traffic rules and regulations dashed against the car, as a result

they were sustained grievous injuries. So, immediately they were shifted to Government Hospital, Sakaleshpura, wherein they took the first aid treatment, later on they were shifted to Vagus Hospital, wherein she took the treatment as an inpatient by spending huge amount. The accident in question was taken place on the rash and negligent driving of the lorry driver. Thereby, Sakaleshpura Rural Police have registered the case in their police station crime No.107/2012 for the offences

punishable u/s 279, 337 and 304(a) of IPC. The PW1 in her cross examination has admitted that after the accident she was conscious and took the treatment at Sakaleshpura Government Hospital, later on she was shifted to Vagus Hospital, Bangalore, in the hospital she has informed about the injuries sustained by her in a road traffic accident. On 19-06-2012 she was discharged from the hospital and the police have conducted the investigation have charge sheeted against her husband on the ground that the accident was occurred due to on  
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his own negligence, but she has further stated that there was no negligence on the part of her husband.

13. The petitioner in MVC 7394/2012 in order to prove his case has filed his affidavit as his chief examination as PW2, in which he has stated that on 13-06-2012 at about 5.30 p.m., himself and his wife were proceeding in a car bearing No.KA-02-MG-4397 as a driver of the car and inmate of the car, slowly and cautiously by observing all traffic rules and regulations, when they were reached on Shiradigatta, Nh-48, Sakaleshpur, the driver of the lorry bearing No.KA-25-B-3525 was came from Mangalore side with high speed in a rash and negligent manner, without observing the traffic rules and regulations dashed against the car, as a result

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they were sustained grievous injuries. So, immediately  
they were shifted to Government Hospital, Sakaleshpura,  
wherein they took the first aid treatment, later on they  
were shifted to Vagus Hospital, wherein he took the  
treatment as an inpatient by spending huge amount. The

accident in question was taken place on the rash and negligent driving of the lorry driver. The PW2 in his cross examination has admitted that on 13-06-2012 himself and others were proceeding towards Dharmasthala and the car was standing in the name of his wife and he was the driver of the said car as on the date of the alleged accident, at about 12.30 p.m., they left the Bangalore, in all 5 persons were travelling in the car and he was holding the driving licence to drive the car and he has denied that the police after conducting the investigation have charge sheeted against him on the ground that the accident in question was taken place on his own negligence.

14. The petitioners in support of their oral evidence have produced the documents marked as Ex.P1 to Ex.P18. Ex.P1 is the information filed by one Anand G.S., who is said to be the driver of the lorry bearing No.KA-25-B-3525 in which he has stated that the said lorry belongs to one Prabhakar resident of Mangalore

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working as a driver and one Chandra who is the cleaner of the said lorry. On 13-06-2012 they were proceeding towards Bangalore from Mangalore by loading the plywood, at about 5.30 p.m., he was the driver of the said lorry proceeding on the left side of the road on Shiradi Gatta, one car was came from Sakaleshpura and car driver has drove the same with high speed in a rash and negligent manner dashed against the lorry. So, both vehicles were damaged and they noticed that the car driver one Jayaprakash and inmates of the car Manjula, Subadhramma and Savithramma were sustained the injuries. So, immediately himself and the cleaner were took them to Sakaleshpura Government Hospital, but Savithramma was succumbed due to the accidental injuries. The accident was occurred on account of rash and negligent driving of the car driver. So based on the information Sakaleshpura Rural Police have registered the case against the car driver in their police station crime No.107/2012 for the offences punishable u/s 279,

337 and 304(a) of IPC. The learned counsel for the respondent has cross examined the PW1 who is said to be the injured and the wife of the PW2 in her evidence has admitted that the police have conducted the

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different. Though, the learned counsel for the petitioners has filed the instant claim petitions under Section 166 of M.V. Act, the burden on the petitioners to prove about the rash and negligent driving of the lorry driver by placing oral and documentary evidence, but Ex.P1 clearly reflects that the accident in question was taken place on account of rash and negligent driving of the car driver. So, one thing is clear that the petitioner in MVC 7394/2012 has examined as PW2 who is the driver of the car on his own negligence, the accident was occurred.

The PW1 being the wife of the PW2 in her cross examination has admitted that the police after conducting the investigation have charge sheeted against her husband on the ground that the accident in question was taken place on the rash and negligent driving of her husband. If at all the accident was not occurred on account of rash and negligent driving of the car driver nothing is prevented to the petitioners to challenge the complaint nor the final report filed against the car driver  
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i.e., PW2, but the reasons best known to them have not challenged the complaint nor the final report filed against the car driver i.e., PW2. In the absence of the materials on record, it is clear that the Ex.P1 and Ex.P2 are remained unchallenged. Ex.P3 is the panchanama and sketch drawn by the I.O., in which it is clear that as on the date of the alleged accident, the driver of the lorry was proceeding on extreme left side of the road, but the car driver being the petitioner in MVC 7394/2012 has drove the car in a rash and negligent manner on his own negligence, the accident was occurred, as the sketch filed in support of the Ex.P3 reflects though there is a sufficient space towards southern side, but the car driver has took the same from southern side to extreme northern side where the lorry was proceeding extreme left

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side of the road and dashed against the lorry that itself  
indicates that the accident was occurred on account of  
rash and negligent driving of the car driver, as the driver  
of the lorry was proceeding in his right path towards

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extreme northern side and there was no chance to avoid  
the accident, but there is a chance to avoid the accident,  
if the car driver taken minimum care. So, the accident  
was occurred on account of rash and negligent driving of  
the car driver, but the reasons best known to the  
petitioners were filed the instant claim petitions claiming  
to be the offending vehicle lorry bearing No.KA-25-B-  
3525 on the ground that the accident was occurred on  
account of rash and negligent driving of the lorry driver,  
but the Ex.P1 to Ex.P3 clearly reflects that the accident  
was occurred on account of rash and negligent driving of  
the car driver. If the petitioners were filed claim petition  
under Section 163A of the M.V. Act, the matter would  
have different, as they need not plead and to prove about  
the rash and negligent driving of the offending vehicle  
driver, but the petitioners were filed the instant claim  
petitions under Section 166 of M.V. Act. So, the burden  
on the claimants to plead and to prove about the rash  
and negligent driving of the offending vehicle driver.

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Though, the petitioners were shown the offending vehicle as lorry, but nothing is placed on record to show that the accident was occurred on account of rash and negligent driving of the lorry driver. Ex.P4 is the motor vehicles accident report clearly reflects that the accident was occurred on account of rash and negligent driving of the car driver. So, the petitioner in MVC 7394/2012 is the tortfeasor and he is the cause for accident, on his own negligence the accident was occurred. Ex.P6 to Ex.P18 are reflects that the petitioners soon after the accident have took the treatment as an inpatient, but the petitioners primarily have not established through oral and documentary evidence that the accident in question was occurred on account of rash and negligent driving of the lorry driver. Therefore, this court drawn its attention on the decision reported in 2007 ACJ 1928 in between Oriental Insurance Co. Ltd., vs. Premlata Shukla and others reads like thus;

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Motor Vehicles Act, 1988, section 166 -  
Claim application - Maintainability of -  
Negligence - Proof of rashness and  
negligence of driver of offending vehicle is  
sine qua non for maintaining claim  
application - Collision between a van and  
truck and a passenger in van sustained fatal  
injuries - Registration number of truck  
could not be noted - On the basis of F.I.R.  
lodged by a passenger in van, criminal case  
against driver of truck was initiated but had  
to be closed as the truck and its driver

could not be traced - Claimants filed claim against driver, owner and insurance company of van - Tribunal on the basis of evidence including F.I.R. held that van driver ws not driving rashly and negligently and dismissed the claim application - High Court relied upon the deposition of two witnesses and observed that as F.I.R. was not legally proved, driver of van should be held guilty of rash and negligent driving - F.I.R. had been relied upon by the parties on both sides and the claimants had made a reference to it in their claim application - F.I.R. was marked as an exhibit as both the

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parties intended to rely upon it - Whether the Tribunal was justified in relying upon the F.I.R. irrespective of the fact that contents of the document have been proved or not - Held: yes; judgment of High Court set aside and claim application dismissed.

15. On careful perusal of the above said decision, in the said decision the deceased Shivanandan Prasad Shukla was traveling in a tempo trax for going to Allahabad from Bhopal. The accident was occurred in between the tempo trax and truck, but the registration number of truck could not be noticed and the truck also could not be traced out. A first information report was lodged by one of the occupants of tempo trax. The investigation was conducted based on the information for the offences punishable under Section 304(A) of the Indian Penal Code, as the case was registered against the truck driver, during the investigation the truck could not be traced out. So, the case was closed. The legal heirs of

Motor Accident Claims Tribunal and the same was dismissed by the Tribunal on the ground the first information report has been filed against the truck driver and the case was registered against the driver of the truck. So, there is no rash and negligent driving on the part of the tempo trax driver, as the claimants were filed the claim petition against the driver, owner and insurer of the tempo trax. So, the claimants were filed the appeal before the Hon'ble High Court and the Hon'ble High Court held that there is a rash and negligent driving of the tempo trax driver. So, the insurance company has challenged the judgment of the Hon'ble High Court before the Hon'ble Supreme Court and the Hon'ble Supreme Court held that the Tribunal on the basis of the evidence including the F.I.R. held that the tempo trax driver was not driving rashly and negligently and dismissed the claim application, but the High Court relied upon the deposition of two witnesses and observed that as F.I.R. was not legally proved, driver of the tempo trax should be

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held guilty of rash and negligent driving, F.I.R. had been relied upon by the parties on both sides and the claimants had made a reference to it in their claim

application, F.I.R. was marked as an exhibit as both the parties intended to rely upon it. The tribunal was justified in relying upon the F.I.R. irrespective of the fact that contents of the document have been proved or not. The judgment of High Court set aside and claim petition was dismissed.

16. In the instant case, the petitioners were relied upon to produce the police documents marked as Ex.P1 to Ex.P5. Ex.P1 is the complaint filed against the car driver i.e., petitioner in MVC 7394/2012. Ex.P2 is the FIR lodged against the petitioner i.e., PW2. Ex.P5 is the charge sheet also filed against the car driver i.e., PW2. Though, the petitioners in their claim petitions were alleged that the accident was occurred on account of rash and negligent driving of the lorry driver, but nothing is established through oral and documentary evidence that the accident was occurred on

account of rash and negligent driving of the lorry driver. The reasons best known to the respondent No.1 in its written statement has alleged that there is a composite negligence, when the petitioners were subsequently alleged that the accident was occurred on account of rash and negligent driving of the lorry driver, the burden on them to prove about the rash and negligent driving of the lorry driver. Even the police papers and the materials

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on record clearly reflects that the lorry driver was proceeding towards extreme left side of the road i.e., northern side, though the car driver was proceeding on the extreme southern side of the road, he took the car towards extreme northern side where the lorry was proceeding and dashed against the lorry and there was no place towards northern side to avoid the accident. So, the accident was occurred on the rash and negligent driving of the car driver nor the lorry driver. So, question of composite negligence as alleged in the written statement does not arise. Inspite of the facts as appeared

in the police papers and the materials on record, the reasons best known to the respondent has alleged in the written statement that there is a composite negligence. If at all any composite negligence, the petitioners would have examined the I.O., to show that there is a composite negligence on the part of the driver of the lorry. It is not the case of the petitioners that both car driver and the lorry driver were held responsible for the cause of accident, if that is so, the matter would have different. Therefore, the decision as stated above is directly applicable to the case on hand.

17. The learned counsel for the respondent has rightly submitted that the petitioners were filed the claim petitions under Section 166 of the M.V. Act. So, the

burden on them to plead and prove about the rash and negligent driving of the lorry driver, but the materials on record reflects that the accident was occurred on account of rash and negligent driving of the car driver and the FIR

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conducting the investigation have charge sheeted against the car driver and the said counsel has drawn the court attention on the decision of the 1982 (1) Kar. L.J. 375 in between Jayamma D. and another vs. S. Govindaswamy and others reads like thus:

If the accident has occurred due to the rash and negligent driving of the lorry by the deceased driver himself, his legal representatives cannot maintain an application for compensation under S.110A Motor Vehicles Act.

Without proving actionable negligence a petition under the Motor Vehicles Act is not maintainable. A person cannot claim advantage of his own wrong.

The application for compensation by the LRS of the driver should be under the Workmen's Compensation Act before the concerned authority, where it is not necessary to establish actionable negligence.

If the negligence was in the maintenance of the lorry by the owner and

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not in the driving of the vehicle, an application can lie under the M.V. Act.

18. On careful perusal of the above said decision, in the said decision the owner of the vehicle and the insurer have questioned the award passed by the Tribunal on the ground one Ramalingam was the driver of the lorry. It was Leyland Tanker belonging to respondent No.1. He was driving the lorry on 24-10-1978 on Bangalore - Mangalore road at about 10.30 p.m., near Alur in Hassan District, he lost control of the lorry while negotiating a curve and the lorry fell in a ditch and the driver sustained fatal injuries and died on the spot. Thereby, his legal heirs were filed the claim petition and sought for compensation of Rs.1,50,000/- from the respondent and the said claim petition was came to be allowed in partly by awarding compensation of Rs.50,000/- to the claimants. Aggrieved by the said judgment and award, the appeal was filed before the Hon'ble High Court and the Hon'ble High Court held that the petitioner has to

plead and prove that the accident was the result of rash and negligent driving of the vehicle in question by its driver resulting in the accident, the claim being for injury or death of a third party. Without proving such actionable negligence, compensation under the Motor Vehicles Act is not maintainable and a person cannot

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claim advantage of his own wrong. Thereby, the said  
appeal was came to be allowed, the judgment and award  
of the Tribunal was came to be set aside and the  
claimants are directed, if they are so advised, to institute  
an application under the Workmen's Compensation Act.

19. In the instant case, it is the specific case of the  
claimants that the lorry driver has drove the same in a  
rash and negligent manner, on account of his rash and  
negligent driving, the accident was occurred and they  
were sustained the injuries, but they did not place any  
materials to show that the accident was occurred on  
account of rash and negligent driving of the lorry driver,  
as the materials on record reflects that the accident was

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occurred on account of rash and negligent driving of the  
car driver. So, the claimants were not proved through  
oral and documentary evidence that the accident was  
occurred on account of rash and negligent driving of the  
lorry driver. Therefore, the decision relied by the learned  
counsel for the respondent is directly applicable to the  
case on hand. The learned counsel for the respondent  
has drawn the court attention on the decision of the  
Hon'ble Chhattisgarh High Court reported in AIR 2007  
CHHATTISGARH 79 in between Saheblal Chandra and  
another vs. Bhudayal Chandra and another reads like

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thus;

Motor Vehicles Act (59 of 1988),

Se.166, 165 - claims for compensation -

Death of driver was negligent act of driver

himself - His LRs. Are not entitled for grant

of compensation through claims Tribunal

established under M.V. Act, 1988 -

Approach to other legal forum, is open -

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Person responsible for accident is not supposed to be person who falls in category of claimant within scope of S. 165.

20. On careful perusal of the above said decision, in the said decision the claimants being the legal heirs have filed the claim petition and sought for compensation on the ground one Gopal Prasad Chandra was the employee of first respondent was driving the truck bearing No.MP-26-E-0042 owned by the first respondent and insured with the second respondent. On 01-01-1993 on the ill fated day, the deceased was the driver, when he was ploughing the wet soil, he was caught up underneath the tractor and died. So, his parents being the legal representatives have filed the claim petition under Section 166 of the M.V. Act. The respondents were appeared through their respective counsel and taken up

the contention that the claim petition filed by the  
claimants is not maintainable and the said claim petition  
was came to be dismissed on the ground that the Gopal  
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Prasad Chandra who is the driver of the vehicle himself  
was negligent for the cause of accident. So, the claimants  
were filed the appeal before the Hon'ble High Court and  
the said appeal was came to be dismissed on the ground  
when the claimants were filed the claim petition under  
Section 166 of the M.V. Act, it is necessary for the  
claimants to establish rash and negligent act of the driver  
and when the death of driver was result of the negligent  
act of the driver himself, his legal representative are not  
entitled for grant of compensation. The person responsible  
for the accident is not supposed to be person who falls in  
category of claimant within scope of S. 165.

21. In the instant case, the claimants being said to  
be wife and husband were proceeding in a car towards  
Dharmasthala, the accident was occurred on account of  
rash and negligent driving of the car driver. Though, the  
claimants were taken up the contention in their claim  
petitions that the accident was occurred on account of  
rash and negligent driving of the lorry driver, but they did  
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not place any materials on record to establish the rash and negligent driving of the lorry driver. Therefore, the decision relied by the learned counsel for the respondent is directly applicable to the case on hand.

22. It is an settled principle of law that the Tribunal has to decide independently based on the materials placed before the Tribunal. In the instant case, though the claimants were alleged in their claim petitions that the accident was occurred on the rash and negligent driving of the lorry driver, but on record nothing is placed to show that the accident was occurred on the rash and negligent driving of the lorry driver, but the materials on record reflects that the accident was occurred on account of rash and negligent driving of the car driver who is the petitioner in MVC 7394/2012. It is an admitted fact, the petitioner have filed the instant claim petition against the owner and insurer of the lorry which was not caused the accident, but the petitioner in MVC 7394/2012 who is said to be the husband of the PW1 has caused the

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accident who is the tortfeasor and the petitioner in MVC 7393/2012 is the owner of the car. Therefore, looking from many angle, the petitioners have not proved the rash and negligent driving of the lorry driver. Therefore, question of finding on the other issues does not arise.

Hence, I am of the opinion that the issue No.1 in both the claim petitions is answered as negative.

23. Issue Nos.2 & 3 in both the claim petitions:

When the issue No.1 is answered as negative, then the question of awarding the compensation nor finding on issue No.2 does not arise. Hence, the issue No.2 in both the claim petitions does not survive for Court consideration. In view of the discussion as stated above, I proceed to pass the following:

ORDER

The claim petitions filed by the petitioners under section 166 of M.V. Act, are hereby dismissed. No order as to costs.

35 SCCH-8 MVC 7393/2012 & 7394/2012 The original judgment shall be kept in MVC Nos.7393/2012 and copy of the same shall be kept in MVC 7394/2012.

Dictated to the Stenographer, transcript by him, corrected by me and then pronounced in the open court this the 20th day of August 2015.

(P.J. Somashekhar) XII Addl. Small Causes Judge, Member-M.A.C.T., Bangalore.

ANNEXURE List of the witnesses examined on behalf of petitioner:

PW1	Smt. Manjula H.P.
PW2	Sri B.V. Hayaprakash
PW3	Dr. S. Ramachandra
PW4	Sri P. Santhan

List of the documents exhibited on behalf of petitioner:

Ex.P1 True copy of Complaint Ex.P2 True copy of FIR Ex.P3 True copy of Panchanama and sketch Ex.P4 True copy of IMV report

36 SCCH-8 MVC 7393/2012 & 7394/2012 Ex.P5 True copy of Charge sheet Ex.P6 Discharge summary Ex.P7 CT Scan report Ex.P8 10 Medical bills amounting to Rs.1,12,913.76 Paisa Ex.P9

X-ray report Ex.P10 Outpatient bill Ex.P11 True copy of Wound certificate Ex.P12 True copy of Wound certificate Ex.P13 Discharge summary Ex.P14 One medical bills of Rs.8,244.15 Paisa Ex.P15 OPD Card Ex.P16 One X-ray film Ex.P17 Inpatient record Ex.P18 4 X-ray films and 5 MRI Scan films Ex.P19 Income tax returns for the year 2012-13 List of the witnesses examined on behalf of respondents:

RW1 Sri Yellappa B.C. List of the documents marked on behalf of respondents:

Ex.R1 True copy of Policy (P.J. Somashekar), XII Addl. Judge-Member, MACT, Bangalore.