# Gopal S. Krishnan vs Raju & Ors on 24 February, 2012

## Author: G. P. Mittal

## Bench: G.P.Mittal

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 6th February, 2012
Pronounced on: 24th February, 2012

\+ FAO. No.733/2002

GOPAL S. KRISHNAN ..... Appellant
Through: Mr. Rajesh Yadav, Ms. Ruchira Arora, Mr. Samit Khosla and Mr. Dhananjay, Advocates

Versus

RAJU & ORS .... Respondents
Through: Mr. Ramesh Kumar, Advocate for Respondent No.4.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

JUDGMENT

G. P. MITTAL, J.

1. The Appellant Gopal S. Krishnan impugns a judgment dated 28.08.2002 arising out of the Claim Petition No.530/2001 whereby a Petition under Section 166 of the Motor Vehicles Act was dismissed by the Motor Accident Claims Tribunal (the Claims Tribunal) on the ground that the Appellant had failed to establish that the accident was caused on account of rash or negligent driving on the part of the First Respondent of Maruti Van No. DL-2C-F-0883. The said vehicle was owned by the Second Respondent, financed by the Third Respondent and insured by the Fourth Respondent.

2. The manner of accident as stated by the Appellant and the defence of the First and the Second Respondent as stated in paras 2 and 6 of the impugned judgment is extracted hereunder:

> "2. It is alleged that on the night intervening 26/27-5-1994 at about 12.30 a.m. petitioner was returning back to his residence on his Maruti Car No.DL-3C-D-3363 via National Highway No.24. On reaching the right turn towards Mayur Vihar, Phase-III, petitioner stopped his car at Patparganj crossing on the left side of the road because he saw two speeding vehicles coming from the side of Ghaziabad. One

> of those vehicle was an ambassador car moving on the left side, a Maruti Van was trying to overtake said Ambassador car at a very fast speed from right side. When those vehicles reached near Patparganj crossing the driver of Maruti Van lost his control as the driver of Ambassador car apparently reduced the gap between his car and central verge. The Maruti Van driver in order to avoid hitting the central verge took a sudden right turn of about 160 degrees. Consequently, he hit the stationary Maruti Car of the petitioner. Due to the impact, Maruti Van over turned and the car of the petitioner was badly damaged. Petitioner sustained serious injuries on his right eye, nose, forehead and face etc. x x x x x x x x x
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> 6. Respondent No.1 and 2 have filed a joint written statement. They have admitted the impugned accident. They have also admitted that respondent No.1 was the driver of the offending Maruti Van and respondent No.2 was its registered owner. According to them the offending van was insured with respondent No.4 insurance company. These respondents have denied the allegations that respondent No.1 was driving the Maruti Van at a fact speed or that Maruti Van was over loaded or the impugned accident was caused due to rash and negligent driving of Maruti Van on the part of respondent No.1. respondent No.1 and 2 have also alleged that the claim of the petitioner is excessive."

3. The Claims Tribunal framed the issues by an order dated 08.05.1998. During inquiry before the Claims Tribunal, it was brought on record that an FIR bearing No.254/94 under Section 279/337 IPC was registered against the Appellant. A charge sheet was filed against him, to which he pleaded guilty and was convicted for the offence punishable under Section 279/337 IPC. In fact, these facts were not disclosed during inquiry before the Claims Tribunal by the Appellant. It was only when an application under Order 18 Rule 17A was moved by the First and the Second Respondent i.e. the driver and the owner of Maruti Van No. DL-2C-F-0883 that it was admitted by the Appellant that the police did register an FIR against him and that he was also convicted for the offence of rash and negligent driving for the accident in question. The Appellant's plea before the Claims Tribunal was that the finding of the criminal court was not binding on the Claims Tribunal and since his evidence had not been repudiated, it will be treated as sufficient proof of negligence on the part of the First Respondent. This plea of the Appellant was rejected by the Claims Tribunal.

4. The judgment in Pankajbhai Chandulal Patel v. Bharat Transport Co. & Anr, 1997 ACJ 993 relied upon by the Appellant was also distinguished as not being applicable to the facts of the present case. The Claims Tribunal held as under:

> "15. I do not find merit in contention of Ld. Counsel for the petitioner. Perusal of the record would indicate that during the proceedings, respondent No.2 moved an application u/o XIII rule 2 and order XVIII rules 17 & 17-A on 17.10.2002 claiming that an FIR pertaining to the impugned accident was registered at PS-Trilokpuri and in the aforesaid case petitioner himself was charge-sheeted as an accused for rash and negligent driving and he was convicted in the said criminal proceedings. Thus, respondent No.2 sought permission to place on record the FIR pertaining to the

aforesaid accident case as well as the criminal trial record and he also sought permission to recall the petitioner for his cross- examination by counsel for respondent No.2. In response to said application, vide his reply dated 3.11.2000 petitioner admitted that he was convicted for rash and negligent driving in the aforesaid case and a fine of ` 100/- was imposed upon him by the court of Ld. Sh.D.S.Pawaria, the then Ld. Metropolitan Magistrate. Petitioner further took the plea that he did not file any appeal against the said order as no moral turpitude was involved.

16. From the above referred admission made by petitioner it is obvious that in respect of the impugned accident petitioner was prosecuted for rash and negligent driving and causing accident and ultimately in the said case he was convicted and sentenced also. It is also apparent from the reply of the petitioner that he did not file any conviction and sentence. Thus, it is obvious that finding of the criminal court to the effect that the petitioner was guilty of causing of accident due to rash and negligent driving has become final.

17. Mere fact that in respect of the impugned accident, the petitioner was convicted for rash and negligent driving belies the version of the petitioner that his maruti case hit by the offending vehicle while it was stationary. Thus, it is obvious that the petitioner in his testimony has not come out with the real truth. Therefore, I am not inclined to believe his version to the effect that the impugned accident was caused due to rash and negligent driving of Maruti Van by its driver. Fact that the petitioner has not filed any appeal against the order accepted the correctness of the finding of circumstances it is obvious that the impugned accident was caused due to rash and negligent driving of his car by the petitioner.

18. Ld. Counsel for the petitioner has submitted that conviction of the petitioner by the court of Magistrate by itself is no reason to dismiss his claim for compensation and it is the duty of the tribunal to appreciate the evidence and conclude whether or not respondent No.1 caused the impugned accident due to rash and negligent driving. In support of his contention he has relied upon 1977 ACJ 993 titled Pankajbhai Chandulal Patel Vs. Bharat Transport Co. and Others.

19. I have gone through the above referred judgment cited by Ld. Counsel for the petitioner. The relevant observation of Hon'ble Judges of Gujrat High Court pointed out to me by learned counsel for the petitioner are contained in para 10 of the judgment which are reproduced as follows:-

"In our view, the judgment of the criminal court is not relevant to prove in a civil court or before the Tribunal, the guilt or innocence of the person driving the vehicle. Evidence before the two courts on the same issue would not be the same as all the witnesses for one or another reason are not examined in both the forums or do not state consistently. At times, somewhere material evidence is suppressed or witnesses

are won over, or driver of the vehicle is made to confess the guilt despite truth being otherwise; so that claimant may not fail before the Tribunal. The law, therefore, does not provide to place sole reliance on the judgment of criminal court making the claim free from claimant's onus to prove the issue of negligence. The claimant has to lead evidence to prove his case. Consequently, negligence or innocence will have to be established independent of the criminal court's finding or judgment. The Tribunal determining the issues arising in petition for compensation has, therefore, to come to its independent finding appreciating the evidence produced before it. The judgment of the criminal court can only show that the concerned driver was convicted or acquitted in the criminal case. At the most, in our view the judgment or the criminal court may provide corroboration to the evidence adduced by the claimant, but can never be the sole decisive factor qua negligent driving, for the negligence is required to be established by leading necessary evidence. If the statement confessing the guilt is made by the driver of the offending vehicle before the criminal court, it will be, at the most, if made voluntarily, corroborative piece of evidence provided of course it relates t the issue(s) in question before the civil court or Tribunal, but can never be the sole decisive factor as the claimant in compensation petition has to establish his case independent of confessional statement made by the driver. Having regard to the materials on record, if there is a reason to question or doubt the voluntary character of the confession for any reason , or owing to fraud, undue influence, allurement, promise, plea, bargain, misrepresentation; or is made or got made pursuant to any device or design or collusion so as to succeed in the claim petition, or there is nothing on record going to show that the statement made relates to the issue in question, or the same wrong under investigation, or the same wrong under investigation, or the fact made a base for a claim before the civil court or Tribunal, the same has to be kept out of consideration unless the driver appears and explains ruling out the possibility of involuntary character or device or design, or makes it clear that it relates to the same wrong, fact or issue."

20. The gist of observation of Hon'ble High Court is that the judgment of a criminal court can only show that the concerned driver was convicted or acquitted in the criminal court but aforesaid judgment cannot be sole decisive factor qua negligent driving because the negligence is required to be established by leading necessary evidence and that question has to be decided by the Tribunal on the basis of evidence before him. In the present case only one witness examined to prove rash and negligent driving on the part of respondent No.1 is the petitioner himself who obviously is an interested witness having a financial interest in the outcome of the claim petition. As per my discussion above, the petitioner was admittedly convicted for rash and negligent driving in the impugned accident case. During his testimony he came up with the evidence that his stationary car was hit by the maruti van, which version is not believable particularly when the petitioner himself was convicted for rash and negligent driving and causing the accident and he accepted said finding of the court by not filing the appeal or revision against the order of his conviction. Thus, it is obvious that the petitioner in his testimony on oath has concealed the important facts and has failed to come out with the true facts and circumstances under which the accident took place. That being the case no reliance can be placed upon his testimony. There is no other evidence on record to indicate rash

and negligent driving on the part of respondent No.1. Therefore, I conclude that he sustained injuries in the accident caused due to rash and negligent driving on the part of respondent No.1".

5. It is urged by the learned counsel for the Appellant that the Claims Tribunal erred in taking into account the judgment of the criminal court in discrediting the Appellant's testimony. It is urged that the Claims Tribunal while holding an inquiry under Section 168 of the Act is not bound by the finding of the criminal court. Reliance is placed on the following judgments:

i) N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal & Ors, AIR 1980 SC 1354;

ii) Pankajbhai Chandulal Patel v. Bharat Transport Co. & Anr, 1997 ACJ 993;

iii) M.D., Thanthai Periyar Transport Corporation Ltd. v. Ammani Ammal & Anr., 1989 ACJ 847;

iv) Tarsem Singh v. Bhago, 1987 ACJ 293;

v) Prem Kanwar & Ors. v. Rajasthan State Road Trans. Corpn. & Anr., 1988 ACJ 65;

vi) Devram vs. Divisional Controller, Maharashtra State Road Trans. Corpn., 1990 ACJ 622;

vii) State of Haryana & Anr. v. Sh. Ajay Kumar & Ors., 2008 I AD (DELHI) 93; and

viii) Prem Shankar & Anr. v. Shri Ram Narain Aggarwal, 2009 I AD(DELHI) 615.

6. There is no dispute about the proposition of law that the standard of proof required to prove negligence in a Claims Petition is different from the standard of proof required in a criminal case. In a claim Petition filed under Section 166 of the Motor Vehicles Act, the negligence is to be proved on the basis of preponderance of probability, whereas in a criminal case the negligence is to be proved beyond shadow of all reasonable doubt. It cannot be disputed that the finding in a criminal case is not binding on the Claims Tribunal. At the same time, it cannot be lost sight that in an action under tort for recovery of compensation if the Claimant himself admits his negligence in the criminal proceedings, he cannot be permitted to later urge that in fact he was not negligent and the accident was caused on account of the negligence of the other person who claimed himself to be the victim. The authorities cited are not applicable to the facts of the present case. In none of the cases cited on behalf of the Appellant, a finding of guilt either on admission of guilt or on merits have been recorded in the criminal case against the person claiming the compensation. The Claims Tribunal rightly held that the Appellant having been convicted by the criminal court for causing the accident, rather, having accepted the responsibility for causing the accident himself, he cannot claim before the Claims Tribunal that that the accident was caused on account of negligence by the First Respondent.

7. In the case of Gautam Sarup v. Leela Jetly, (2008) 7 SCC 85, the Appellant had pleaded guilty for violation of Section 3 and 4 of M.P. Money Lenders Act, 1934 and was convicted for the said offence. The first appellate court refused to consider the effect of such admission and proceeded on the basis that as the judgment of the criminal court was not admissible in evidence, the suit could not have been decreed on the said basis. The Supreme Court held that the High Court cannot be said to have committed any error in interfering with the judgment of the first appellate court. In the said case, the Appellant had even offered an explanation that he was wrongly advised by the counsel to make the admission. The said explanation was not accepted by the Trial Court. It was considered to be an afterthought. In this case, the Appellant has not even tried to explain the admission of his guilt. Rather, he chose to remain silent until an application for additional evidence was moved before the Claims Tribunal and he made an admission that he was convicted for having driven the Car No. DL-2C-F-0883 rashly and negligently and sentenced to pay a fine of `100/-. Once the Appellant accepted himself to be the wrong doer, he cannot be permitted to say that in fact the victim in the instant case was the tortfeasor.

8. In National Insurance Company Limited v. Sinitha & Ors, 2011 (13) SCALE 84, it was held that even a Petition under Section 163-A of the Motor Vehicles Act can be resisted by the owner/insurer on the ground that the accident took place on account of the wrongful act, neglect or default of the Claimant himself. In the circumstances, since the Appellant himself is the tortfeasor, he cannot seek compensation from the person who was the victim of his act.

9. The finding reached by the Claims Tribunal cannot be interfered with.

10. The Appeal is devoid of any merit; the same is accordingly dismissed.

(G.P. MITTAL) JUDGE FEBRUARY 24, 2012 pst