

# **Icici Lombard General Insurance Co. ... vs State Of Karnataka, on 16 July, 2013**

**Author: N.Ananda**

**Bench: N.Ananda**

:1:

IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 16 T H DAY OF JULY, 2013

BEFORE

THE HON'BLE MR.JUSTICE N.ANANDA

WRIT PETITION No.64335 OF 2012 [GM-POLICE]  
C/w.

WRIT PETITION Nos.63206, 65295 OF 2012 [GM-POLICE]

WRIT PETITION Nos.75557, 75558 OF 2013 [GM-POLICE]

WP: 64335/2012:

BETWEEN:

ICICI LOMBARD GENERAL INSURANCE CO. LTD,  
BELLAD BUILDING, GOKUL ROAD,  
HUBLI,  
REPTD. BY ITS LEGAL MANAGER.

... PETITIONER

(By Sri. S K KAYAKAMATH ADV.)

AND:

1. STATE OF KARNATAKA,  
HOME DEPARTMENT,  
VIDHANA SOUDHA,  
DR. AMBEDKAR VEEDHI,  
BANGALORE-560 001.  
BY ITS SECRETARY.

:2:

2. THE DIRECTOR GENERAL OF POLICE  
OFFICE OF DGP, NRUPATUNGA ROAD,  
BANGALORE.
3. THE SUPERINTENDENT OF POLICE  
GADAG, DIST: GADAG.
4. THE CIRCLE POLICE INSPECTOR,  
RURAL POLICE STATION, GADAG  
DIST: GADAG.
5. CENTRAL BUREAU OF INVESTIGATION,  
NEW DELHI.
6. MUMTAJ BEGUM W/O. TIPPU SULTAN  
AGE: 38 YEARS, OCC: HOUSEHOLD WORK,  
R/O. DUNDUR, TQ: GADAG.
7. KUMARI CHANDBEGUM  
D/O. TIPPU SULTAN NADAG  
AGE: 18 YEARS, OCC: STUDENT,  
R/O. DUNDUR, TQ: GADAG.
8. KUMAR FAIROZ KHAN  
S/O. TIPPU SULTAN NADAF  
AGE: 15 YEARS, OCC: STUDENT,  
R/O. DUNDUR, TQ: GADAG.
9. KUMAR RAZOT KHAN  
S/O. TIPPU SULTAN NADAF  
AGE: 10 YEARS, OCC: STUDENT,  
R/O. DUNDUR, TQ: GADAG.

RESPONDENTS 8 & 9 ARE BEING MINORS,  
REPTD. BY NATURAL GUARDIAN AND MOTHER  
RESPONDENT NO.6

:3:

10. BIBIJAN @ NEELAVVA  
W/O. TIPPU SULTAN NADAF,  
AGE: 37 YEARS, OCC: HOUSEHOLD WORK,  
R/O. DUNDUR, TQ: GADAG.  
DIST: GADAG.
11. KUMARI RESHMABEGUM  
D/O. TIPPU SULTAN NADAF  
AGE: 16 YEARS, OCC: STUDENT,  
R/O. DUNDUR, TQ: GADAG.  
DIST: GADAG.

12. KUMARI SHAKEELABEGUM  
D/O. TIPPU SULTAN NADAF  
AGE: 14 YEARS, OCC: STUDENT,  
R/O. DUNDUR, TQ: GADAG.  
DIST: GADAG.
- RESPONDENTS 11 & 12 ARE BEING  
MINORS, REPTD. BY NATURAL GUARDIAN AND  
MOTHER RESPONDENT NO.10
13. PEERSAB S/O. HUSSAINSAB NADAF  
AGE: 62 YEARS,  
R/O. DUNDUR, TQ: GADAG.  
DIST: GADAG.
14. NOORJAN W/O. PEERSAB NADAF  
AGE: 66 YEARS,  
OCC: HOUSEHOLD WORK,  
R/O. DUNDUR, TQ: GADAG.  
DIST: GADAG.
15. THE MANAGING DIRECTOR,  
M/S. VIJAYANAND ROADLINES,  
GIRIRAJ ANNEX, TRAVELERS  
:4:

BUNGALOW ROAD, HUBLI.

16. CHANDRAPPA S/O. KOTRAPPA RAMPUR,  
AGE: MAJOR, OCC: DIRVER,  
R/O. DESAIPET, NAVALGUND,  
DIST: DHARWAD,  
WORKING WITH VRL COMPANY.

... RESPONDENTS

(By Sri.K.S.PATIL, HCGP FOR R1-R4;  
SRI.M.B.KANAVI, CGSC FOR R5;  
SRI.ANANT P.SAVADI FOR R6 TO R9;  
SMT. SHASHIKALA L.DESAI ADV. FOR R10, 13, 14,;  
R11 & R12 ARE MINORS REP. BY R10;  
SRI HANUMANTHAREDDY SAHUKAR ADV. FOR R15;  
R7 & R16 SERVICE HELD SUFFICIENT)

THIS WRIT PETITION IS FILED UNDER ARTICLES  
226 & 227 OF CONSTITUTION OF INDIA PRAYING TO:

A. THE FINAL REPORT/CHARGE SHEET  
DATED:23/03/2011 SUBMITTED BY  
GADAG RURAL P.S. IN THEIR CRIME  
NO.64/2011 DATED:23/03/2011 VIDE

ANNEXURE-D BE QUASHED BY  
INVOKING WRIT OR CERTIORARI.

B. THE WRIT OF MANDAMUS BE ISSUED  
REFERRING THE ENTIRE CASE IN GADAG  
RURAL P.S. CRIME NO.64/2011 TO BE  
INVESTIGATED BY CBI, ETC.

:5:

WP: 63206/2012:  
BETWEEN:

NATIONAL INSURANCE CO. LTD.,  
SUJATHA COMPLEX, P.B. ROAD,  
HUBLI, REPTD. BY  
ITS DEPUTY MANAGER.

... PETITIONER

(By Sri. S K KAYAKAMATH ADV.)

AND:

1. STATE OF KARNATAKA  
HOME DEPARTMENT, VIDHANA SOUDHA,  
DR. AMBEDKAR VEEDHI,  
BANGALORE, BY ITS SECRETARY.
2. THE DIRECTOR GENERAL OF POLICE,  
OFFICE OF DGP, NRUPATUNGA ROAD,  
BANGALORE.
3. THE SUPERINTENDENT OF POLICE,  
GADAG, DIST: GADAG.
4. THE CIRCLE POLICE INSPECTOR,  
GADAG RURAL POLICE STATION,  
DIST: GADAG.
5. CENTRAL BEAURO OF INVESTIGATION,  
NEW DELHI.
6. GAYATRI W/O. ASHOK GADDIGOUDAR  
AGE: 40 YEARS, OCC: HOUSEHOLD WORK,  
R/O. HULKOTI, DIST: GADAG.

:6:

7. SHRIKANT S/O. ASHOK GADDIGOUDAR,

AGE: 20 YEARS, OCC: STUDENT,  
R/O. HULKOTI, DIST: GADAG.

8. PANDURANG H. SANKADAL,  
AGE: 45 YEARS, OCC: BUSINESS,  
R/O. KURUBAR ONI,  
HULKOTI, DIST: GADAG.
9. BUDAPPA BASAPPA KARIKATTI,  
AGE: 42 YEARS, OCC: AGRICULTURE,  
R/O. HULKOTI, DIST: GADAG.
10. DHARAMANGOUDA RAMANAGOUDA  
KARERAYANAGOUD  
R/O. HULKOTI, DIST: GADAG.

... RESPONDENTS

(By Sri.K.S.PATIL, HCGP FOR R1-R4;  
SRI.M.B.KANAVI, CGSC FOR R5;  
SRI.S.B.NAIK ADV. FOR R6 & R7;  
R8-R10 ARE SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES  
226 & 227 OF CONSTITUTION OF INDIA PRAYING TO:

A. THE FINAL REPORT/CHARGE SHEET  
DATED:26/09/2009 SUBMITTED BY  
GADAG RURAL P.S. IN THEIR CRIME  
NO.157/2009 DATED:11/06/2009 VIDE  
ANNEXURE-G BE QUASHED BY  
INVOKING WRIT OF CERTIORARI IN THE  
INTEREST OF JUSTICE AND EQUITY.  
:7:

B. THE WRIT OF MANDAMUS BE ISSUED  
REFERRING THE ENTIRE CASE IN GADAG  
RURAL P.S CRIME NO.157/2009 ALONG  
WITH OTHER CRIMES WHICH ARE MADE  
AS ANNEXURES TO THIS WRIT PETITION  
TO BE INVESTIGATED BY CBI.

WP: 65295/2012:  
BETWEEN:

NATIONAL INSURANCE CO. LTD.,  
SUJATHA COMPLEX, P.B.ROAD, HUBLI,  
REPTD., BY ITS DEPUTY MANAGER.

... PETITIONER

(By Sri. S K KAYAKAMATH ADV.)

AND :

1. STATE OF KARNATAKA,  
HOME DEPARTMENT,  
VIDHANA SOUDHA,  
DR. AMBEDKAR VEEDHI,  
BANGALORE-560001.  
BY ITS SECRETARY.
2. THE DIRECTOR GENERAL OF POLICE,  
OFFICE OF DGP,  
NRUPATUNGA ROAD,  
BANGALORE.
3. THE SUPERINTENDENT OF POLICE,  
GADAG DISTRICT, GADAG.  
:8:
4. THE CIRCLE POLICE INSPECTOR,  
MUNDARAGI DISTRICT, GADAG.
5. CENTRAL BEAURO OF INVESTIGATION,  
NEW DELHI.
6. SUMITRAVVA  
W/O CHANNAYYA KURTAKOTI,  
AGE: 29 YEARS, OCC: HOUSEHOLD WORK,  
R/O: HIREWADDATTI, TQ: MUNDARAGI,  
DIST: GADAG.
7. ARAVINDAYYA S/O CHANNAYYA KURTAKOTI,  
AGE: 11 YEARS, OCC: STUDENT,  
R/O: HIREWADDATTI, TQ: MUNDARAGI,  
DIST: GADAG.
8. KUMARI. CHAITRA D/O CHANNAYYA KURTAKOTI,  
AGE: 09 YEARS, OCC: STUDENT,  
R/O: HIREWADDATTI, TQ: MUNDARAGI,  
DIST: GADAG.  
  
R7 & R8 ARE BEING MINORS REPTD., BY  
NATURAL GUARDIAN AND MOTHER  
RESPONDENT NO. 6
9. FAKKIRAYYA  
S/O CHANNAYYA KURTAKOTI,  
AGE: 71 YEARS, OCC: NIL,  
R/O: HIREWADDATTI,  
TQ: MUNDARAGI, DIST: GADAG.

10. CHANNABASAVVA  
W/O FAKKIRAYYA KURTAKOTI,  
AGE: 66 YEARS, OCC: NIL,  
R/O: HIREWADDATTI,  
:9:

TQ: MUNDARAGI, DIST: GADAG.

11. ABDULSAB S/O KARIMSAB TOTAD,  
AGE: MAJOR, OCC: BUSINESS  
R/O: HIREWADDATTI, TQ: MUNDARAGI,  
DIST: GADAG.

12. HANAMANTAPPA  
S/O GUDADAPPA YALAVATTI,  
AGE: 54 YEARS, OCC: DRIVER,  
R/O: BAGEWADI, TQ: MUNDARAGI,  
DIST: GADAG.

... RESPONDENTS

(By Sri M B KANAVI, CGSC FOR R5;  
SRI.K.S.PATIL, HCGP FOR R1-R4;  
SRI.SURESH P.HUDEDGADDI FOR R6-R10;  
R11 & R12 ARE SERVED;  
R7 & 48 ARE MINORS BEING REPTD. BY R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES  
226 & 227 OF CONSTITUTION OF INDIA PRAYING TO:

- A. THE FINAL REPORT/CHARGE SHEET  
DATED:28/02/2011 SUBMITTED BY  
MUNDARAGI P.S. IN THEIR CRIME  
NO.19/2011 DATED:22/01/2011 VIDE  
ANNEXURE-D BE QUASHED BY  
INVOKING WRIT OF CERTIORARI IN THE  
INTEREST OF JUSTICE AND EQUITY.
- B. WRIT OF MANDAMUS BE ISSUED  
REFERRING THE ENTIRE CASE IN  
MUNDARGI P.S. CRIME NO.19/2011 TO  
BE INVESTIAGED BY CBI, ETC.

: 10 :

WP: 75557/2013:  
BETWEEN:

THE REGIONAL MANAGER,

NATIONAL INSURANCE CO. LTD.,  
ARIHANT PLAZA, 2ND FLOOR, KESHWAPUR  
KUSUGAL ROAD, HUBLI  
REPTD BY ITS ADMINISTRATIVE OFFICER

... PETITIONER

(By Sri. S K KAYAKAMATH ADV.)

AND:

1. STATE OF KARNATAKA  
HOME DEPARTMENT, VIDHANA SOUDHA,  
DR. AMBEDKAR VEEDHI  
BANGALORE-560 001  
BY ITS SECRETARY
2. THE DIRECTOR GENERAL OF POLICE  
OFFICE OF DGP, NRUPATUNGA ROAD  
BANGALORE
3. THE SUPERINTENDENT OF POLICE  
GADAG, DIST: GADAG
4. THE CIRLE POLICE INSPECTOR,  
SHIRAHATTI, TQ: SHIRAHATTI,  
DIST: GADAG
5. CENTRAL BUREAU OF INVESTIGATION  
DEPARTMENT OF CENTRAL VIGILANCE  
REPTD., BY ITS VIGILANCE OFFICER  
RAJ BHAVAN, NEW DELHI  
REPTD. BY ITS VIGILANCE OFFICER.

: 11 :

6. SHANTAVVA W/O. SIDDAPPA BANGARI  
AGE: 48 YEARS, OCC: COOLIE  
R/O. KADAKOL, TQ: SHIRAHATTI  
DIST: GADAG
7. KUMAR DHARMARAJ S/O. BHARMAPPA BANGARI  
AGE: 4 YEARS, OCC: NIL,  
R/O. KADAKOL, TQ: SHIRAHATTI  
DIST: GADAG
8. KUMARI KAVITA D/O. BHARMAPPA BANGARI  
AGE: 2 YEARS, OCC: NIL,  
R/O. KADAKOL, TQ: SHIRAHATTI  
DIST: GADAG

R7 & R8 BEING MINORS, REPTD. BY  
R6: GRAND MOTHER.



9. BHARMAPPA S/O. SIDDAPPA BANGARI  
AGE: 28 YEARS, OCC: AGRICULTURE  
R/O. KADAKOL, TQ: SHIRAHATTI  
DIST: GADAG

... RESPONDENTS

(By Sri.K.S.PATIL, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES  
226 & 227 OF CONSTITUTION OF INDIA PRAYING TO:

A. THE FINAL REPORT/CHARGE SHEET  
DATED:11/02/2012 SUBMITTED BY  
LAXMESHWAR P.S. IN THEIR CRIME  
NO.19/2012 DATED:26/01/2012 VIDE  
ANNEXURE-K BE QUASHED BY  
INVOKING WRIT OF CERTIORARI IN THE  
INTEREST OF JUSTICE AND EQUITY.

: 12 :

B. THE WRIT OF MANDAMUS BE ISSUED  
REFERRING THE ENTIRE CASE IN  
LAXMESHWAR P.S. CRIME NO.19/2012  
TO BE INVESTIGATED BY CBI OR THE  
RESPONDENT NO.2 BE DIRECTED TO  
REINVESTIGATE THE MATTER, ETC.

WP: 75558/2013:  
BETWEEN:

THE REGIONAL MANAGER  
NATIONAL INSURANCE CO. LTD.,  
ARIHANT PLAZA, 2ND FLOOR, KESHWAPUR  
KUSUGAL ROAD, HUBLI  
REPTD. BY ITS ADMINISTRATIVE OFFICER

... PETITIONER

(By Sri. S K KAYAKAMATH ADV.)

AND:

1. STATE OF KARNATAKA  
HOME DEPARTMENT, VIDHANA SOUDHA  
DR. AMBEDKAR VEEDHI, BANGALORE-560 001  
BY ITS SECRETARY
2. THE DIRECTOR GENERAL OF POLICE  
OFFICE OF DGP, NRUPATUNGA ROAD,  
BANGALORE

3. THE SUPERINTENDENT OF POLICE  
GADAG, DIST: GADAG
4. THE CIRCLE POLICE INSPECTOR  
MUNDARAGI, GADAG, DIST: GADAG  
: 13 :
5. CENTRAL BUREAU OF INVESTIGATION  
NEW DELHI  
DEPT. OF VIGILANCE RAJ BHAWAN  
NEW DELHI BY ITS VIGILANCE OFFICER
6. DANNAWWA @ NANNAWWA W/O. NARAYAN @  
NANNAPPA CHAVAN @ LAMANI,  
AGE: 37 YEARS, OCC:HOUSEHOLD WORK  
R/O. NAGAVI TANDA, TQ & DIST: GADAG
7. MOTILAL S/O. NARAYAN @ NANNAPPA CHAVAN  
@ LAMANI,  
AGE: 21 YEARS, OCC: STUDENT  
R/O. NAGAVI TANDA, TQ & DIST: GADAG
8. BHOJAPPA S/O. NARAYAN @ NANNAPPA CHAVAN  
@ LAMANI,  
AGE: 20 YEARS, OCC: COOLIE  
R/O. NAGAVI TANDA, TQ & DIST: GADAG
9. SANTOSH S/O. NARAYAN @ NANNAPPA CHAVAN  
@ LAMANI,  
AGE: 19 YEARS, OCC: COOLIE  
R/O. NAGAVI TANDA, TQ & DIST: GADAG
10. SOMANATH S/O. NARAYAN @ NANNAPPA CHAVAN  
@ LAMANI,  
AGE: 18 YEARS, OCC: COOLIE  
R/O. NAGAVI TANDA, TQ & DIST: GADAG
11. KRISHNA S/O. CHANNAPPA CHAVAN  
AGE:MAJOR, OCC: BUSINESS  
R/O. H.NO. 180-E, NACHINOLA, BARDEZ GOA  
DIST: GOA, NORTH GOA-403 503  
: 14 :
12. SHIVAPPA S/O. BHEEMAPPA CHAVAN @ LAMANI  
AGE:38 YEARS, OCC: COOLIE  
R/O. NAGAVI TANDA, DIST: GADAG

... RESPONDENTS

(By Sri.K.S.PATIL, HC GP)

THIS WRIT PETITION IS FILED UNDER ARTICLES  
226 & 227 OF CONSTITUTION OF INDIA PRAYING TO:

A. THE FINAL REPORT/CHARGE SHEET  
DATED:02/06/2012 SUBMITTED BY  
MUNDARAGI P.S. IN THEIR CRIME  
NO.69/2012 DATED:19/05/2012 VIDE  
ANNEXURE-K BE QUASHED BY  
INVOKING WRIT OF CERTIORARI IN  
THE INTEREST OF JUSTICE AND  
EQUITY.

B. THE WRIT OF MANDAMUS BE ISSUED  
REFERRING THE ENTIRE CASE IN  
MUNDARAGI P.S. CRIME NO.69/2012  
TO BE INVESTIGATED BY CBI OR THE  
RESPONDENT NO.2 BE DIRECTED TO  
REINVESTIGATE THE MATTER.

These writ petitions coming on for  
Preliminary Hearing this day, the Court made the  
following:

: 15 :

#### O R D E R

These petitions are filed by M/s. National Insurance Company Limited and M/s. ICICI Lombard General Insurance Company Limited.

2. The relief sought for in these writ petitions is for issuance of writ of mandamus directing the CBI or the Director General Police (DGP) for further investigation of these matters by the aforesaid agencies, inter alia contending that the jurisdictional police have manipulated investigation records to fix insured vehicles to saddle liability on insurance company.

3. Heard Sri.S.K.Kayakamath, learned counsel for petitioners, Sri.Anant P.Savadi, Sri.Suresh P.Hudedgaddi and Smt.Shashikala L.Desai, learned counsel for private respondents and learned Government Advocate for respondents 1 to 4.

4. The short point for determination in these matters is whether the investigation records and criminal court judgments are decisive and binding on the Motor Accidents Claims Tribunal (for short 'the Tribunal') for deciding claim petitions filed under the relevant provisions of the Motor Vehicles Act.

5. The learned counsel for petitioners referring to a decision of the Division Bench of this Court in MFA No.7493/2007 (BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD Vs. SMT.LAKSHMAMMA) dated 25.09.2007 and also Division Bench decision of this Court reported in 2012 (2) MACR 664 (Kar)(DB) (SMT. S.SHARADA AND OTHERS vs. K.VISHWANAT AND OTHERS) would submit that the insurance company has to challenge the investigation records either by filing petition under Section 482 of Cr.P.C. or under Article 226 of Constitution of India. Unless the insurance company challenges the investigation records or the final report under Section 482 of Cr.P.C. or under Article 226 of Constitution of India, the insurance company would be bound by the investigation records in proceedings initiated for adjudication of claim petitions filed under the relevant provisions of the Motor Vehicles Act.

6. The learned Government Advocate and also learned counsel for other respondents would submit that the judgments of criminal courts determining the guilt or innocence of the driver of motor vehicle involved in accident are not decisive and binding on the Tribunal dealing with claim petition under the relevant provisions of the Act. It could be used only to the extent provided under Section 43 of the Evidence Act.

7. In a decision reported in 1970 P H 137 (MUNICIPAL COMMITTEE, JULLUNDUR Vs. SHRI ROMESH SAGGI AND OTHERS), a Division Bench of Panjab and Haryana High Court has considered the referred question reading as hereunder:-

"Whether the judgment of a criminal Court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is conclusive and binding upon the Motor Accidents Claims Tribunal dealing with a claim petition under Section 110-C of the Motor Vehicles Act, and if not, for what purposes and to what extent can such a judgment be availed of by the parties concerned."

The Division Bench has answered the referred question as hereunder:

"The Judgment of a Criminal Court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is neither conclusive nor binding on the Motor Accidents Claims Tribunals, dealing with a claim petition under Section 110-C of the Motor Vehicles Act, and its findings as to the guilt or otherwise of the driver are wholly irrelevant for the purpose of the trial on merits of the claim petition before the Motor Accidents Claims Tribunal. Such judgment can however, be relevant only for the purpose and to the extent specified in Section 43 of the Evidence Act"

8. In a decision reported in Criminal Appeal No.1500/2010 dated 12.08.2010 in the case of KISHAN SINGH (D) THROUGH L.R.s Vs. GURPAL SINGH & OTHERS, Supreme Court has held:

"19. Thus, in view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by the Civil Court do not have any bearing so far as

the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872, dealing with the relevance of previous Judgments in subsequent cases may be taken into consideration."

9. In a decision reported in 1997 ACJ 993 (PANKAJBHAI CHANDULAL PATIL vs. BHARAT TRANSPORT CO. AND ANOTHER), a Division Bench of Gujarat High Court has held:

"10. 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 of 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 to 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 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."

10. In a decision reported in 1993 ACJ 447 (in the case of RAJ RAM GARG Vs. CHHANGA SINGH AND OTHERS), a Division Bench of the High Court of Judicature at Allahabad has held:

"5. In law, there is no bar for both the proceedings going on simultaneously. While the criminal prosecution has been launched and is being conducted by the State, the claim petition is instituted by the legal heirs and representatives of the deceased. The judgment in the Criminal Court would not be relevant in the claim petition under the Motor Vehicles Act and certainly not for establishing the fact in issue, by virtue of Sections 40 and 43 of the Evidence Act. Similarly, the judgment in the claim petition would be equally not relevant in the criminal case/sessions case, and certainly not for establishing the guilt of the accused therein."

11. In view of what has been held in the afore-cited judgments, the apprehension of petitioners that investigation records in the afore-stated cases, judgments of the criminal cases thereof and the result of criminal cases would be decisive on the issues for consideration before the Tribunal is not well-founded. The Tribunal has to decide the issues framed by it on the basis of evidence adduced before it. The judgment of criminal court and investigation records can be used to corroborate primary evidence adduced before the Tribunal.

12. Above all, this Court cannot mechanically issue directions for re-investigation or further investigation to CBI or COD, more particularly, when the investigation records of criminal cases and result of criminal cases thereof, have no direct bearing on the issues for determination by the Tribunal.

13. As already stated, these issues will have to be decided by the Tribunal on the basis of evidence adduced before it. The investigation records or the judgment of criminal courts will not preclude the contesting parties from substantiating their defence by adducing necessary and relevant evidence before the Tribunal. The petitions are dismissed with these observations.

Sd/-

JUDGE RK/-