APPELLATE CIVIL

Before R. S. Narula and Ranjit Singh Sarkaria, JJ.

THE MUNICIPAL COMMITTEE, JULLUNDUR CITY,—*Appellant.*

versus

ROMESH SAGGI AND OTHERS,—*Respondents*

F.A.O. No 125 of 1963

December 11, 1968.

Motor Vehicles Act (IV of 1939)—S. 110-C—Evidence Act (I of 1872)—Ss. 3 and 43—Prosecution of a driver of a motor vehicle arising out of motor accident—Judgment of a Criminal Court determining the guilt or innocence of the driver—Accident Claims Tribunal dealing with a claim petition relating to the accident—Judgment of the Criminal Court—Whether conclusive and binding on the Tribunal—Such judgment—Whether relevant under section 43 Evidence Act—Accidents Claims Tribunal—Whether a "Court"—Expression "principles of natural justice"—Whether exhaustive.

Held, that 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 Tribunal, 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.

(Para 17)

Held, that the statutory provisions contained in sub-section (2) of section 110-C, of the Act expressly authorises the Tribunal constituted under section 110 of the Act to take evidence on oath. Inasmuch as the Presiding Officer of the Tribunal has to be a person, it appears to be clear that the Motor Accidents Claims Tribunal squarely falls within the definition of "Court" contained in section 3 of the Evidence Act. (Para 4)

Held (per Sarkaria, J.), that in civil actions and criminal prosecutions arising out of the same motor accident involving bodily injury or death, the parties may be different, the issues may not be identical, the nature of the onus may vary and the effect of evidence may not be the same. It will, therefore, be contrary to all fundamental concepts of natural justice to treat the findings of the Criminal Court as binding on the Motor Accidents Claims Tribunal, assuming—but not holding—that such a Tribunal is not a Court as defined in Section 3 of the Evidence Act but partakes the character of an Arbitrator, with most of the trappings of a Court.

(Para 33)

Held, that the expression "principles of natural justice" cannot be reduced into any precise, exhaustive and inflexible definition. The question whether or not the principles of natural justice have been observed in a particular case, has to be determined in the light of the constitution of the Tribunal, the nature and scope of its duties and the rules laid down by the Legislature to regulate its functioning and procedure. In this sense, such principles must vary. (Para 24)

Case referred by the Hon'ble Mr. Justice Gurdev Singh on 31st July, 1968 to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice R. S. Narula and the Hon'ble Mr. Justice Ranjit Singh Sarkaria after deciding the important question of law refesred to returned the case to the Single Judge for deciding the case on merits according to law.

First appeal from the order of Shri G. S. Gyani, Chairman, Motor Accidents Claims Tribunal, Punjab, Chandigarh, dated 19th March, 1963, awarding Rs. 6,750.46 Paise including medical expenses in favour of Shri Romesh Saggi against the Municipal Committee, Jullundur City.

K. C. NAYYAR, ADVOCATE, for the Appellant.

H. L. SARIN, SENIOR ADVOCATE WITH A. L. BAHL AND H. S. AWASTHY, ADVOCATES, for Respondent No. 1, DES RAJ NANDA, ADVOCATE, for Respondent No. 3.

JUDGMENT

NARULA, J.—In this appeal under section 110-D of the Motor Vehicles Act (4 of 1939), as subsequently amended by Act 100 of 1956, against an award, dated March 19, 1963, for Rs. 6, 750.46 P. and costs, it was argued on behalf of the judgment-debtor appellant before Gurdev Singh, J., that the Motor Accidents Claims Tribunal had no jurisdiction to hold that Raghbir Singh, the driver of the alleged offending vehicle was guilty of any rash or negligent act as Raghbir Singh had already been acquitted by this Court on August 14, 1961 (in Criminal Revision No. 312 of 1961) of the charge of rashness or negligence in respect of the same accident which gave rise to the claim under section 110-A of the Act. In view of the conflict of authority on the abovesaid point, and the *prima facie* inclination of the learned Judge not to agree with the law laid down by Mahajan, J. in *Sadhu Singh* v. *The Punjab Roadways and another* (1) and in view of the further fact that this question is likely to arise in a large number of cases, the learned Single Judge has referred the following question for decision by a Division Bench:—

> "Whether the judgment of a criminal Court in a prosecution arising out of a motor accident, determining the guilt or

(1) I.L.R. (1968) 1 Pb. & Hry. 495=1968 P.L.R. 39.

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."

(2) Sections 110 to 110-F and section 111-A were added to the principal Act of 1939 by the various provisions contained in the amending Act 100 of 1956. Section 110 authorises the State Government to constitute one or more Motor Accidents Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles. Section 110-A states that an application for compensation arising out of an accident of the nature specified above may be made by the person who has sustained the injury or by the legal representatives of the deceased where death has resulted from the accident. Section 110-B provides that the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may make on award determining the amount of compensation which appears to it to be just. Section 110-C then provides:—

"(1) In holding any inquiry under section 110-B, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry."

Section 110-D gives a statutory right of appeal to a person aggrieved by an award of a Claims Tribunal. Such an appeal lies in cases where the amount in dispute in appeal is not less than Rs. 2,000, and is preferable to the High Court. Section 110-E relates to recovery of money from insurers and section 110-F bars the jurisdiction of Civil Courts to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal, and also bars the issue of an injunction in respect of any action taken or to be taken before the Claims Tribunal. Section 111-A authorises the State Government to make rules for the purpose of carrying into effect the provisions of sections 110 to 110-E, and in particular such rules may provide for, *inter alia*, the procedure to be followed by a Claims Tribunal in holding an inquiry under Chapter VIII, and the powers vested in a Civil Court which may be exercised by a Claims Tribunal.

(3) In exercise of the powers conferred by section 111-A, the Punjab Government has framed the Punjab Motor Accidents Claims Tribunal Rules, 1964, which were published in the Home Transport Department of the Punjab Government,—*vide* notification No. GSR-4/CA-4/39/S. III-A/65, dated January 5, 1965. Rule 3 provides that every application for payment of compensation made under section 110-A shall be in the form appended to those rules. There are as many as 24 columns in the prescribed form. But no information regarding any criminal prosecution or a judgment of any criminal Court or the result of a criminal prosecution is required to be given in the prescribed form. Column 22 headed; "any other information that may be necessary or helpful in the disposal of the claim" but this does not by itself indicate that the State Government while prescribing a form envisaged the furnishing of information regarding the result of any criminal prosecution to the Tribunal. Rule 19 states that the Claims Tribunal, in passing orders shall record concisely in a judgment the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the insurer and also the person or persons to whom compensation shall be paid. Rule 20 states that the provisions of Order 5, Rules 9 to 13 and 15 to 30, Order 9, Order 13, Rules 3 to 10, Order 16, Rules 2 to 21, Order 17 and Order 23, Rules 1 to 3, of the Code of Civil Procedure shall, so far as may be apply to proceedings before the Claims Tribunal. No other rule is relevant for answering the question which has been referred to us. From a

survey of the relevant provisions of the Act and the Rules, it is clear that the Act as well as the Rules are absolutely silent on the question of the applicability of any particular rules of evidence.

(4) So far as the Evidence Act is concerned, section 1 provides that the provisions of that Act shall extend to the whole of India (except the State of Jammu and Kashmir), and the Act applies to "all judicial proceedings in or before any Court", but the Act does not apply to the proceedings before an arbitrator. Expression "Court" for the purposes of the Evidence Act is defined in section 3 to include "all persons, except arbitrators, legally authorized to take evidence." "Legally authorised to take evidence" would mean the statutory authority to take the statement of a witness on oath or on solemn affirmation, Sub-section (2) of section 110-C of the Motor Vehicles Act specifically states that "the Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath, ...". The statutory provision contained in sub-section (2) of section 110-C of the Motor Vehicles Act, therefore, expressly authorises the Tribunal constituted under section 110 of the Act to take evidence on oath. Inasmuch as the Presiding Officer of the Tribunal has to be a person, it appears to be clear that the Motor Accidents Claims Tribunal squarely falls within the definition of "Court" contained in section 3 of the Evidence Act. Once it is held that the Tribunal constituted under section 110 of the Motor Vehicles Act is a "Court", the major part of the question referred to us is answered as section 43 of the Evidence Act states that judgments, orders or decrees other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of the Evidence Act. It is nobody's case that the judgment of the Criminal Court is or could be relevant under section 40, 41 or 42 of the Evidence Act in proceedings under section 110-A of the Motor Vehicles Act. Nor is the existence of the judgment or orders of the Criminal Court in issue, in the claim petition presented under section 110-A. It is also not claimed that the disputed judgment of the Criminal Court is in any manner relevant under any other provision of the Evidence Act in the claim proceedings.

(5) Mr. K. C. Nayyar, the learned counsel for the appellant, conceded that if it is held that the Motor Accidents Claims Tribunal is a "Court" for the purposes of the Evidence Act, the judgment of the Criminal Court will not be relevant and the findings contained in

the said judgment cannot be looked at or considered while deciding the claim preferred under section 110-A of the Motor Vehicles Act. He, however, vehemently argued that the Tribunal in question is not a "Court" within the meaning of section 3 of the Evidence Act. Two arguments were advanced in support of this contention. It is firstly submitted by Mr. Nayyar, that section 110-C leaves the summary procedure to be followed by the Tribunal to its own discretion by stating that the Tribunal may follow such summary procedure as it thinks fit. He then submits that it is only certain specified chapters or provisions of the Code of Civil Procedure which have been made applicable to the Tribunal and no part of section 110-C applies the Evidence Act to the proceedings before the Tribunal. The appellant does not appear to be appreciating the difference between the civil procedure by which the claim has to be tried as distinguished from the rules of evidence which may be applied by a Tribunal in disposing of a claim petition. Except to the extent to which the provisions of the Civil Procedure Code have been made applicable, the matter of procedure has been left to the discretion of the Claims Tribunal subject to the rules that might be framed in that behalf by the State Government under section 111-A. But the question of applicability of the Evidence Act depends on the Tribunal being a "Court" or not. The reasons for which Mr. Nayyar says that the Motor Accidents Claims Tribunal is not a "Court", are (i) that in referring to the decisions of the Tribunal, the word "Award" as distinguished from the expression "judgment or decree" has been used and (ii) that it has been held by this Court that the Tribunal in question is not a regular Civil Court. Learned counsel submits that inasmuch as the Evidence Act has specifically excluded the applicability of its provisions to arbitration proceedings, and inasmuch as the decision of the Motor Accidents Claims Tribunal has been specifically labelled as "Award" which expression has been specifically used in respect of the decisions of arbitrators, it is clear that the Tribunal is not a Court. In *Fazilka Dabwali Transport Co. (Private) Ltd.* v. *Madan Lal* (2), it was held by a Division Bench of this Court (S. B. Capoor and Shamsher Bahadur, JJ.), that neither the Motor Accidents Claims Tribunal nor, consequently the High Court (exercising its appellate jurisdiction under the said Act) is strictly speaking a Court and that the phraseology employed in section 110-C is itself indicative of that intendment. It was held that the Claims Tribunal in holding an inquiry has been given certain powers of Civil Court for certain specified purposes, but that the Tribunal cannot be regarded as a "Court" strictly speaking and the use of the word

(2) 1968 P.L.R. 9.

"award" gives a complexion of arbitration to its proceedings. What the Division Bench of this Court was considering in the case of *Fazilka Dabwali Transport Co.* (supra) (2) was whether a person aggrieved by the appellate order of this Court under section 110-D of the Motor Vehicles Act has or has not a right of appeal under clause 10 of the Letters Patent. The contention was negatived by the Bench on the ground that an appeal under clause 10 of the Letters Patent lies against a judgment, and that expression is defined in section 2(9) of the Code of Civil Procedure to mean "the statement given by the Judge of the grounds of a decree or order." The "Judge" is defined in sub-section (8) of section 2 to mean a presiding officer of a Civil Court. It was in this context that the learned Judges held that the "Tribunal" is not a Civil Court. The question whether the Motor Accidents Claims Tribunal is or is not a Court as defined in section 3 of the Evidence Act did not arise before the Bench and could not possibly have been answered in the *case of Fazilka Dabwali Transport Co.* (2). The statutory definition of Court contained in section 3 of the Evidence Act is of a comparatively much wider amplitude than the restricted scope of the expression "Civil Court". Same applies to the decision of the Judicial Commission of Goa Daman and Diu in *British India Genl. Ins. Co. Ltd., Margao* v. *Chambi Shaikh Abdul Kadar* (3). The learned Judicial Commissioner held in that case that the Claims Tribunal under the Act cannot be regarded as a Civil Court for the purpose of interference in revision under section 115(c) of the Code of Civil Procedure and section 8(2)(b)(i) of the Gao Daman and Diu (Judicial Commissioner's Court) Regulation, 1963, though the Claims Tribunal could be regarded as a Tribunal for the purposes of supervisory jurisdiction vested in the High Court under Article 227 of the Constitution. As already pointed out, the question of the Tribunal being or not being a "Court" for the purpose of Evidence Act did not arise before the Judicial Commisisoner. Mr. Harbans Lal Sarin, the learned senior counsel for respondent No. 1 referred in this connection to certain observations of Dua, J. in *Shri Ram Partap* v. *General Manager, The Punjab Roadways, Ambala* (4). The learned Judge held in that case that it should be borne in mind that the bunch of sections 110 to 110-F of the Motor Vehicles Act merely deals with the subject of the substitution of the Motor Accidents Claims Tribunal in place of a Civil Court for purposes

(3) 1968 A.C.J. 322.

(4) I.L.R. (1962) 2 Pb. 894=1962 P.L.R. 448.

of adjudicating claims for compensation in respect of an accident involving the death or bodily injuries to persons arising out of the use of a Motor Vehicle. These observations of a general nature cannot, I think, assist us in coming to a definite finding on the precise question which we are called upon to answer. The mere use of the word 'award" in respect of the decisions of the Tribunal does not in our opinion take the case out of the definition of "Court". There is no doubt that the word "award" is usually used in respect of decisions of arbitrators, but even the decision of a District Court in proceedings under section 18 of the Land Acquisition Act is called an award, and it cannot be argued that a District Court while deciding a reference under the Land Acquisition Act is not a Court, or that such a decision partakes of the nature of the award of an arbitrator. What is sought to be excluded from the purview of the Evidence Act by referring to "proceedings before an arbitrator" are proceedings to which the provisions of Arbitration Act 10 of 1940 apply. The object is that the arbitrators cannot be tied down to the strict rules of evidence. If such exclusion had not been specifically provided for, an arbitration Tribunal would also have been covered by the definition of "Court" as an arbitrator is a person who is legally authorised to take evidence. When the learned Judges of the Division Bench of this Court in *Fazilka Dabwali Transport Company's case* (2) referred to the use of the expression "award" in relation to the decision of the Tribunal, the object was to distinguish it from a judgment within the meaning of clause 10 of the Letters Patent. Otherwise the word "judgment" itself has been used under rule 19 of the Punjab Motor Accidents Claims Tribunal Rules, 1964, where it is stated that the Claims Tribunal in passing orders shall record concisely "in a judgment" the findings on each of the issues framed and the reasons for such findings. This clearly shows that the mere use of the word "judgment" or the word "award" both of which expressions have been used in connection with the Motor Accidents Claims Tribunal in the abovesaid statutory provisions would not indicate conclusively as to whether a Tribunal is or is not a "Court" within the meaning of section 3 of the Evidence Act. Mr. Nayyar points out that the 1964 Rules cannot be called into aid in deciding this particular case as the judgment under appeal was given by the Tribunal on March 19, 1963, and the rules in question were framed in 1964. I have referred to the Rules merely as an aid to construction and not for the purpose of finding any fault with the judgment of the Tribunal for non-compliance with any of those Rules.

(6) Coming to the decided cases to which reference has been made by the learned counsel for the parties, I may first mention the judgment of a Division Bench of the Chief Court of Punjab, prepared by Rattigan, J., in *Bishen Das* v. *Ram Labhaya and another* (5). The judgment of the Sessions Court at Faridkot convicting the defendant was ruled out of consideration by the District Judge in a claim for compensation. When the correctness of that decision was assailed before the Chief Court, Rattigan, J., observed as follows :—

> "We find it unnecessary to deal with the question whether the copy of the judgment was or was not duly certified, as in our opinion the judgment in question should not have been received in evidence for the purpose of proving that defendants caused the death of Ladha Mal, there being ample authority for holding that the judgment of a Criminal Court is inadmissible as a piece of evidence in civil proceedings (see 10 W.R. 56, 14 W.R. 339, 6 Cal. 247, and 23 Cal. 610), and that the facts alleged by the plaintiffs in the Civil case must be proved—independently of that judgment (see I.L.R. 4 All. 97 and 5 W.R. 26 and 27).
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> The learned Additional Divisional Judge was of opinion that the judgment was relevant under section 42 as relating to a matter of a public nature inasmuch as a trial for murder is a matter in which the public at large is interested. We cannot agree with this construction of section 42 or hold that the morbid interest of a section of a public in the details of a murder trial constitutes such trial, 'a matter of a public nature' within the meaning of section 42."

(7) Mr. Sarin then referred to the Division Bench judgment of the Madras High Court in *Pedda Venkatapathi* v. *Ganagunta Balappa and others* (6), wherein it was held that under section 43 of the Evidence Act, the judgment of the Criminal Court can be used only to establish the fact that an acquittal has taken place as a fact in issue in the civil suit. The civil Court cannot take into

(5) 106 P.R. 1915.

(6) A.I.R. 1933 Madras 429.

consideration the grounds upon which that acquittal was based. It was further held that it lies upon the civil Court itself to undertake an entirely independent inquiry before satisfying itself of the absence of reasonable and probable cause, for the alleged malicious prosecution, in a suit for damages on that ground. In *re Chakka Jagga Rao* (7), it was held that in a civil action for assault which is an action in tort, the fact that the defendant has been convicted or acquitted in a criminal Court is relevant only as to the fact of the conviction or acquittal and it is totally irrelevant on the question whether the conviction or acquittal was right, that is to say, whether the assault was or was not in fact committed. The learned Judge held that the judgment of a Criminal Court is a record of the proceeding in that Court, and nothing more, and that a Civil Court should embark upon an inquiry before it on the same facts without being influenced in any way whatever by the conclusion at which the Criminal Court has arrived. A Division Bench of the Patna High Court held in *Harjhar Prasad Singh and others* v. *Mt. Janak Dulari Kuer and others* (8), that in a civil suit the decisions in criminal cases relating to the subject-matter of the suit cannot be relied upon. A Full Bench of the Lahore High Court while dealing with a converse case where a prayer for stay of the criminal proceedings on account of the subject-matter of the dispute being *pendente lite* in a civil action was being pressed, held in *B. N. Kashyap* v. *Emperor* (9), as follows :—

> "The fact is that the issues in the two cases although based on the same facts (and strictly speaking even parties in the two proceedings) are not identical and there appears to be no sufficient reason for delaying the proceedings in the criminal Court, which, unhampered by the civil Court, is fully competent to decide the questions that arise before it for its decision and where in the nature of things there must be a speedy disposal."

The question that had been referred to the Full Bench was couched in the following language :—

> "When there are concurrent proceedings covering the same ground before a criminal Court and a civil Court, the

(7) A.I.R. 1935 Mad. 563.
(8) A.I.R. 1941 Patna 118.
(9) A.I.R. 1945 Lahore 23.

parties being substantially the same, would the judgment of the civil Court, if obtained first, be admissible in evidence before the criminal Court in proof or disproof of the fact on which the prosecution is based ?"

The above question was answered by the Full Bench in the negative with the observations which have already been quoted.

(8) In *Ramadhar Chaudhary and others* v. *Janki Chaudhary* (10), a Division Bench of that Court held that a judgment of a Criminal Court is admissible to prove only as to who were the parties to the dispute and what order had been passed in the criminal proceedings, but that the facts stated therein or statements of the evidence of the witnesses examined in the criminal case, or the findings given by the criminal Court are not admissible in the civil proceedings. The learned Judges held that technically the judgments of Criminal Courts are inadmissible as not being between the same parties, the parties in the criminal proceedings being the State on the one hand, and the prisoner on the other, and in the civil suit the prisoner and some third party; and substantially, because the issues in a civil and criminal proceedings are not the same, and the burden of proof rests in each on different shoulders. Modi, J., held in *Onkarmal and another* v. *Banwarilal and others* (11) that a judgment of acquittal in a Criminal Court is irrelevant in a civil suit based on the same cause of action, just as a judgment of conviction cannot, in a subsequent civil suit, be treated as evidence of facts on which the conviction is based. The learned Judge, held that the Civil Court must independently of the decision of the Criminal Court investigate facts and come to its own finding on the relevant point.

(9) Mr. Sarin then referred to the judgment of the Court of Appeal in *Hollington* v. *F. Hewthorn & Company, Limited* (12). In that case the plaintiff's car which was being driven by the son of the plaintiff was involved in an accident with the car owned by the defendant. The plaintiff's claim for damages to his car and for personal injuries sustained by his son was allowed. At the trial stage a certificate to the effect that the defendant's driver had been convicted for driving without due care and attention on the same

(10) A.I.R. 1956 Patna 49.
(11) A.I.R. 1962 Raj. 127.
(12) 1943 (2) All England Law Reports 35.

day on which the accident occurred was ruled out of consideration. In the Appeal Court it was contended that the said exclusion of the evidence consisting of the certificate was contrary to law. It was held by the Court below that the certificate of conviction could not be tendered in evidence in civil proceedings, and that the certificate had been rightly rejected by the trial Court. It was held that on a subsequent civil trial, the Court should come to a decision on the facts before it without regard to the proceedings before a criminal Tribunal. The Court of Appeal held :—

> "The contention that a conviction or other judgment ought to be admitted as *prima facie* evidence is usually supported on the ground that the facts have been investigated, and the result of the previous investigation is, therefore, at least some evidence of the facts that have been established thereby. To take the present case, it could be said that the conviction shows that the Magistrates were satisfied, on the facts before them, that the defendant was guilty of negligent driving. If that be so, it ought to be open to a defendant who had been acquitted to prove it, as showing that the Criminal Court was not satisfied of his guilt; though the discussion by text-book writers and in the cases all turn on the admissibility of convictions, not of acquittals. If a conviction can be admitted, not as an estoppel, but as *prima facie* evidence, so ought an acquittal : and this only goes to show that the Court trying the civil action can get no real guidance from the former proceedings without retrying the criminal case. Without dealing with every case and text-book that was cited in the argument, we are of opinion that, both on principle and authoritiy, the conviction was rightly rejected."

(10) In the authoritative pronouncement of their Lordships of the Supreme Court in *Anil Behari Ghosh* v. *Smt. Latika Bala Dassi and others* (13) it was clearly held in the following passage that the High Court could not have assumed on the basis of the judgment of conviction in the sessions trial that Charu was the murderer, and that the question whether Charu was or was not a murderer had to be decided on the evidence produced in the civil case :—

> "The learned counsel for the contesting respondent suggested that it had not been found by the lower Appellate Court

(13) A.I.R. 1955 S.C. 566.

as a fact upon the evidence adduced in this case, that Girish was the nearest agnate of the testator or that Charu had murdered his adoptive father, though these matters had been assumed as facts. The Courts below have referred to good and reliable evidence in support of the finding that Girish was the nearest reversioner to the estate of the testator. If the will is a valid and genuine will, there is intestacy in respect of the interest created in favour of Charu, if he was the murderer of the testator. On this question the Courts below, have assumed on the basis of the judgment of conviction and sentence passed by the High Court in the sessions trial that Charu was the murderer. Though that judgment is relevant only to show that there was such a trial resulting in the conviction and sentence of Charu to transportation for life, it is not evidence of the fact that Charu was the murderer. That question has to be decided on evidence."

(11) The precise question relating to the jurisdiction of a Motor Accidents Claims Tribunal to take into consideration the finding of a Criminal Court recorded in its judgment against the accused driver, came up for consideration before a Division Bench of the Madras High Court in the *Indian Mutual General Insurance Society Ltd., Madras* v. *M. Kothandian Naidu and another* (14). The Bench held that though the driver who had been acquitted of the charge under section 304-A of the Indian Penal Code on having been given the benefit of doubt, the fact of his acquittal by the Criminal Court was not relevant and the judgment of acquittal had no direct bearing on the merits of the civil action which ought to be decided exclusively on the facts brought on the record of the Motor Accidents Claims Tribunal.

(12) Mr. K. C. Nayyar relied on the judgment of a Division Bench of the Mysore High Court in *P. Channappa* v. *Mysore Revenue Appellate Tribunal, Bangalore and others* (15), for the proposition that the Tribunal was bound by the findings of the Criminal Court. In *P. Channappa's case* the question for decision in the writ petition in which the judgment was given was whether after the decision of the City Magistrate in the prosecution case to the effect

(14) 1966 A.C.J. 62.
(15) A.I.R. 1966 Mysore 68.

that Channappa's stage carriage was not overloaded on the relevant day, the Regional Transport Authority could or could not suspend the stage carriage permit of the writ petitioner on the ground that in fact his stage carriage was overloaded on the relevant day. In other words the question was whether it was open to the State Transport Authority constituted under the Motor Vehicles Act to go into the question of the truth or otherwise of the charge of overloading for a second time in order to reach an independent conclusion on the same question of fact contrary to the one reached by the Criminal Court. While allowing the writ petition, the Division Bench of the Mysore High Court held that when a particular charge had been enquired into and found against by a competent criminal Court, the Regional Transport Authority, a Tribunal constituted under the Motor Vehicles Act, could not again enquire into the same charge so long as the acquittal before the Criminal Court was not based on any technical ground, but on merits. The situation with which the Mysore High Court was dealing in *Channappa's case* (15) was entirely different from the one with which we are faced. It was the jurisdiction of the Regional Transport Authority and not of the Motor Accidents Claims Tribunal which was under consideration. Moreover, even as a matter of public policy, it appears to be consistent with the rule of law to hold that once a competent Municipal Court, be it a Civil Court or a Criminal Court, has come to a definite finding of fact on a question on which penalty can be imposed by a statutory Tribunal, it should not be open to the latter to come to an independent finding on the same point, which may be inconsistent with the finding of the competent Court. That principal does not, however, hold good in case of a civil action for compensation or damages on account of a fatal or bodily injury. As pointed out by the Patna High Court in *Ramadhar Chaudhry and others* v. *Janki Chaudhary* (10), the parties in a criminal action as distinguished from the third party claim in a running down action, are different, and the burden of proof may lie on the different parties, and the standard of proof on the central question of negligence or rashness may itself differ. Whereas in a Criminal Court the burden of proof never shifts from the prosecution, the application of the doctrine of *res ipsa loquitor* in a running down action is well-known. In fact when the question of the jurisdiction of the Motor Accidents Claims Tribunal to take into consideration the judgment of a Criminal Court came up before a Division Bench of the Mysore High Court itself after the decision in *Channappa's*

case (15) in *Seethamma and others* v. *Benedict D'Sa & others* (16), it was unequivocally held by the Division Bench of the Mysore High Court as follows :—

> "At one stage of the argument Mr. Sundaraswamy asked us to stay that since respondent 1 was acquitted by the Magistrate in the prosecution launched against him for rash and negligent driving, that acquittal to some extent negatives the negligence imputed to him. It is obvious that the order of acquittal upon which Mr. Sundaraswamy depends cannot be used in that way. We have to found our conclusion as to negligence upon the material before us and the purpose for which the order of acquittal can be used is only to prove that there was an order of acquittal and nothing more."

In the face of the subsequent judgment of the Mysore High Court in *Seethamma's case* (supra), (16), reliance can in our opinion be placed on the earlier judgment of that very Court in *P. Channappa's case* (15), or the proposition which is now being canvassed before us by Mr. K. C. Nayyar. Even otherwise, the distinction between the two cases is apparent as has already been pointed out.

(13) Mr. Nayyar then referred to a Division Bench judgment of the Madras High Court in *Jerome D'Silva* v. *The Regional Transport Authority, South Kanaha and another* (17). That again was a case where the allegation against the writ petitioner was that his motor vehicle was being used for smuggling rice, and on the driver of the vehicle having been charged by the police under section 186 of the Indian Penal Code, had been discharged on the finding that the accusation against him was groundless and in spite of the discharge of the driver by the order of the Criminal Court, dated January 6, 1951, the Regional Transport Officer suspended the permit of the petitioner by order, dated March 3, 1951, on ignoring the finding of the Criminal Court and coming to an independent finding that the smuggled rice was being transported in the vehicle. The writ petition was filed to have quashed the abovesaid order of the Regional Transport Officer as well as the order of the Regional Transport Authority upholding the same order in appeal on March

(16) 1966 A.C.J. 178.

(17) A.I.R. 1952 Madras 853.

31, 1951. Subba Rao, J. (as he then was), before whom the case came up for hearing in the first instance, referred it to a larger Bench. It was in the above circumstances that the Division Bench of the Madras High Court held that if there is a conviction by a competent Criminal Court, that would furnish conclusive ground for any penal action by the Transport Authorities, and similarly if the criminal prosecution ends in a discharge or acquittal of the accused and such order of the Criminal Court is passed before the order of any Road Transport Tribunal decides the matter, then the Tribunal has no power to go behind the order of the competent Criminal Court. The considerations which weighed with the Madras High Court in *Jerome D'Silva's case* (17), with the Mysore High Court in *P. Channappa's case* (15), do not appear to be relevant for deciding the question which has been referred to us.

(14) The solitary judgment of a learned Single Judge of this Court in *Sadhu Singh* v. *The Punjab Roadways and another* (1), which no doubt supports the contention which is being advanced by Mr. K. C. Nayyar is based on the judgment of the Madras High Court in *Jerome D'Silva's case* (17), and that of the Mysore High Court in *P. Channappa's case* (15). The learned Judge has not given any additional reason for holding that the Motor Accidents Claims Tribunal is bound by the decision of the Criminal Court on merits as to the question of rashness or negligence of the driver of the offending vehicle. The judgment of the learned Single Judge in *Sadhu Singh's case* (1), does not appear to be consistent with the trend of judicial authority on the subject to which detailed reference has already been made, and does not appear to lay down good law in the face of the pronouncement of their Lordships of the Supreme Court in *Anil Behari Ghosh* v. *Smt. Latika Bala Dassi and others* (13).

(15) Mr. Nayyar's further argument was that it would not be consistent with the general juridical principles to allow a Tribunal like the Motor Accidents Claims Tribunal to sit in judgment over the decision on merits of a competent Criminal Court. This line of argument is obviously based on the assumption that the Claims Tribunal is not a "Court" within the meaning of section 3 of the Evidence Act. Even if we were to assume for the sake of argument, though we have held to the contrary, that the Claims Tribunal established under section 110 of the Motor Vehicles Act

is not a "Court" within the meaning of section 3 of the Evidence Act, we would be inclined to hold that nevertheless the Tribunal is not bound by the findings of fact recorded by a competent Criminal Court on the merits of the controversy relating to the rashness or negligence of the driver in a running down action.

(16) Strength was sought to be derived by Mr. Nayyar from the observations of the Members of the Judicial Committee in *Sambasivam* v. *Public Prosecutor, Federation of Malaya* (18), to the following effect :—

> "The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim *'Res judicata pro veritate accipitur'* is no less applicable to criminal than to civil proceedings."

It is noteworthy that their Lordships of the Privy Council emphasised in the abovequoted passage that the verdict of the Criminal Court is binding in all subsequent proceedings "between the parties to the adjudication", and never stated that it is binding on those who were not parties to the first adjudication. It is nobody's case that Romesh Saggi was a party to the criminal case in which Raghbir Singh is stated to have been acquitted. The parties to the case of criminal prosecution of Raghbir Singh were the State on the one hand and Raghbir Singh on the other. For the same reason, the observations of their Lordships of the Supreme Court in *Pritam Singh and another* v. *The State of Punjab* (19), approving of the abovesaid ratio of the judgment of the Privy Council in a similar case, can be of little assistance to Mr. Nayyar's client.

(17) From whatever angle the matter is viewed, we are, therefore, of the opinion that the law laid down *in Sadhu Singh's case*, (1) is not correct, and that the view (on the question referred to us) expressed by the Division Bench of the Mysore High Court in *Seethamma and others* v. *Benedict D'Sa & others* (16), and by the

(18) (1950) A.C. 458.

(19) A.I.R. 1956 S.C. 415.

Division Bench of the Madras High Court in the *Indian Matual General Insurance Society Ltd., Madras* v. *M. Kothandian Naidu and another* (15), is the correct one. We would, therefore, return the following answer to the question:—

> "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 Tribunal, 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."

(18) With the above said answer, we send back this case to the learned Single Judge for disposal on merits in accordance with law. The costs of this reference shall be costs in the appeal.

SARKARIA, J.—(19) I entirely agree with my learned brother that the answer to the question referred to us should be in the negative, as proposed. I, however, wish to emphasise and elaborate a little, the alternative aspect of the matter founded on the *assumption—though not our finding*—that the Motor Accidents Claims Tribunal is not a 'Court' within the meaning of section 3 of the Evidence Act, but is something akin to an Arbitrator or a domestic Tribunal.

In this connection, it may be noted that even an arbitrator must not disregard the crucial rules of evidence founded on the fundamental concepts of natural justice and public policy. One of such concepts is, that an Arbitrator—indeed for that matter any Judicial Tribunal—has to determine the facts in controversy before him by applying his own mind after an independent enquiry and investigation. This is the basic function of any Judicial Tribunal. No Arbitrator or Tribunal, therefore, can be permitted to abdicate this fundamental judicial function and accept a ready-made opinion of a criminal Court. If he fails to make an independent enquiry and

contents himself with the role of a rubber-stamp functionary, merely accepting the *ipse dixit* of the criminal Court, such self-effacement on his part, in my opinion, will amount to legal misconduct.

(20) There is authority for the proposition that where the Arbitrator improperly admits evidence, which is the crucial evidence in the case, his award must be set aside as vitiated. In *Kelantan Government* v. *Duff Development Company* (20), it was held that where it appears that the Arbitrator has decided on evidence which in law was not admissible and which is incorporated in the award, there is an error of law on the face of the award. This principle was adopted in *Messrs Dutton Massey and Co.* v. *Messrs Jamnadas Harprsad* (21). Another Sind case which is cited in *Dutton Massey and Company's case* (21) is *Gunnies* v. *Tulsidas* (Misc. No. 563 of 1921), wherein the award was attacked on the ground of misconduct on the part of the Arbitrators in admitting improper evidence and acting on such evidence in arriving at their conclusion.

(21) In that case, it was urged that only one question as to the construction of a particular clause in the contract between the parties had been referred to the Arbitrators for their decision, and though the Arbitrators were of the opinion that the objector was entitled to a decision in his favour the Arbitrators had, notwithstanding the protest of the objector, admitted evidence of an alleged custom to vary the express terms of the contract and had acted on such custom. The award was set aside, *inter alia,* on the ground that there was an error apparent on the face of the record. Again, in *Messrs G. P. Gunnies & Co., Ltd.* v. *Messrs Amanlal Tulsidas* (22), a Full Bench of that Court laid down that where the Arbitrators had admitted improper evidence and were misled by it, they had committed an error of law patent on the face of the award and this could amount to legal misconduct.

(22) To the same effect is the *ratio of Savarala Venkatasubbiah* v. *Kumara Ramiah* (23), and *Walford, Baker & Co.* v. *Macfic and Sons* (24).

(23) In *Aboobaker Latif* v. *Reception Committee of the 48th Indian National Congress and another* (25), Walia, J., of the Bombay

(20) (1923) A. C.395.
(21) A.I.R. 1924 Sind 51.
(22) A.I.R. 1924 Sind 75.
(23) A.I.R. 1935 Mad. 184.
(24) (1915) 113 L.T. 180.
(25) A.I.R. 1937 Bom. 410.

High Court held that though the Evidence Act does not apply to arbitration, yet the Arbitrator must not disregard the rules of evidence which are founded on fundamental principles of justice and public policy.

(24) The law is well settled that all Judicial Tribunals—whether they are or are not Courts within the definition of section 3 of the Evidence Act,—must observe those crucial rules of evidence which are founded on the principles of natural justice. Well then, what are the "principles of natural justice" which a domestic Tribunal is bound to observe? In particular, is the principle underlying section 43 of the Evidence Act one of "natural justice"? The expression "principles of natural justice" cannot be reduced into any precise, exhaustive and inflexible definition. The question whether or not the principles of natural justice have been observed in a particular case, has to be determined in the light of the constitution of the Tribunal, the nature and scope of its duties and the rules laid down by the Legislature to regulate its functioning and procedure. In this sense, such principles must vary. (In this connection, see the observations of the Supreme Court in *The New Parkash Transport Co. Ltd.* v. *The New Suwarna Transport Co. Ltd.* (26).

(25) In the instant case, section 110-C (2) of the Motor Vehicles Act expressly clothes the Motor Accidents Tribunal with all the powers of a civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses, etc., and Rule 20 enjoins on it to follow many of the material provisions of the Code of Civil Procedure. Though the statute is silent on the point, it cannot be disputed that the Tribunal has to determine the claims filed before it in accordance with the general law of torts. Keeping in view the statutory provisions relating to the constitution, scope of powers and duties, and procedure to be followed by the Tribunal, it can safely be said that the fundamental principle underlying section 43. Evidence Act, is to be deemed a principle of natural justice, which the Tribunal is bound to observe.

(26) In the view I take, I am fortified by a decision of the House of Lords in *General Medical Council* v. *Spackman* (27). In that case, a registered medical practitioner, who was co-respondent

(26) A.I.R. 1957 S.C. 232=1957 S.C.R. 98.

(27) 1943 (2) All. E.R. 337.

in a divorce suit, was found by the Divorce Court to have committed adultery with the respondent therein to whom he stood in professional relationship, and a decree *nisi* was pronounced, which was afterwards made absolute. The General Medical Council gave him notice that a meeting of the Council would be held to decide whether his name should be removed from the medical register for "infamous conduct in a professional respect". At the hearing he desired to call fresh evidence on the issue of adultery. The Council declined to hear the fresh evidence, but accepted the decree *nisi* as *prima facie* proof of adultery, and directed that the practitioner's name should be erased from the register. The Court of first instance, by a majority, consisting of Viscount Caldecote, C.J., and Humphreys, J.; held that the Council had made 'due inquiry' and in consequence, dismissed the application of the medical practitioner for a writ of *certiorari*. Singleton, J., was of a different opinion, and considered that even when a doctor was adjudged to have been guilty of adultery under a decree of the Divorce Court, the Council, if that finding were disputed, ought to hear evidence tendered by or on behalf of the doctor in an endeavour to establish the contrary. In the Court of Appeal, Mackinnon, Goddard and Clauson, L. JJ., were unanimous in adopting the view which had been expressed by Singleton, J. Mackinnon, L.J., held that 'due enquiry' involved 'a full and fair consideration of any evidence that the accused desires to offer; and, if he tenders them, hearing his witnesses'. With this, the other two lord justices agreed, and the writ of *certiorari* was granted accordingly.

(27) The General Medical Council appealed to the House of Lords, which dismissed the appeal and affirmed the judgment of the Appeal Court. On behalf of the Council, it was urged before the House of Lords that no injustice had been done, and that a lay body like the Council could not take a better test of truth or falsity on an issue of adultery than the decision of a Judge specially delegated by the legislature to try that kind of question. It was emphasised that the finding of adultery was recorded by a civil Court and it was not the decision of a party sessional magistrate in a criminal matter. It was added that the Council did not accept without question the verdict of the Court in a civil case, but looked at the reasons behind the Judge's order, and that it was entitled to accept the conclusion of the Court as final. It was, therefore, well justified in applying the principle that no opportunity ought to be given to produce evidence which was reasonably available at the time of

the trial in the civil Court. In short, the Council's case was that it was entitled to treat the conclusion of the Court as to adultery as final, unless the new evidence was not so available or unless there was fraud. It was further argued that the Court should not usurp the functions of the domestic Tribunal or dictate its procedure. Repelling these arguments, Viscount Simon, L.C., made this illuminating speech:—

> "Parliament has conferred on the General Medical Council responsibility for the register, and has constituted the council a domestic forum to determine whether a case is made out for striking off the list a particular name. The gravity to the doctor concerned of an adverse decision by the council needs no emphasis, but the responsibilities of the General Medical Council cannot be measured only by the effect of its decision on an individual.....(After referring to the terms of section 29 of the Medical Act, 1958, which gave the Council power to erase the name of a medical practitioner after "due inquiry" if he had been found guilty of infamous conduct in any professional respect, his Lordship proceeded):—
>
> ".....It is not disputed that the General Medical Council, in exercising this jurisdiction, is *not a judicial body in the ordinary sense.* It is master of its own procedure and is not bound by strict rules of evidence. It is not subject to correction by the courts as long as it complies with section 29 of the Act of 1858. That section draws a significant distinction between a case in which the impeached practitioner has been convicted of felony or misdemeanour and a case in which the allegation of infamous conduct is not connected with a criminal conviction. In the former case, the decision of the council is properly based on the fact of the conviction.....In the latter case, the decision of the council, if adverse to the practitioner, must be arrived at "after due inquiry", and this of course means *after due inquiry by the council.* The question, therefore, is whether the council in this case can be regarded as having reached its adverse decision 'after due inquiry' when it has refused to hear evidence

tendered by the practitioner with a view to showing that he has not been guilty of the infamous conduct alleged and that the finding of Divorce Court against him as co-respondent is wrong.

"It is worth observing that this problem does not arise only in connection with conclusions reached in the Divorce Court. .....The previous decision is not between same parties. There is no question of estoppel or of *res judicata*. In such cases the decision of the courts may provide the council with adequate material for its own conclusion if the facts are not challenged before it, but, if they are, the Council should hear the challenge and give such weight to it as the Council thinks fit. The same view must, I think, be taken if the practitioner challenges the correctness of a finding of adultery by the Divorce Court.....So much follows from the structure of S. 29 and from the necessity, if there is to be "due inquiry", of giving the accused party a fair opportunity of meeting the accusation. Unless Parliament otherwise enacts, the duty of considering the defence of a party accused, before pronouncing the accused to be rightly adjudged guilty, rests on any tribunal, whether strictly judicial or not, which is given the duty of investigating his behaviour and taking disciplinary action against him. The form in which this duty is discharged, e.g., whether by hearing evidence *viva voce* or otherwise—is for the rules of the tribunal to decide. What matters is that the accused should not be condemned without being first given a fair chance of exculpation....."

In that case, Lord Atkin observed as under:—

".....It is not disputed that where there has been a trial, at least before a High Court Judge, the notes of the evidence at such trial and the judgment of the judge may afford *prima facie* evidence in support of the charge, for the council are not obliged to hear evidence on oath. But the very conception of *prima facie* evidence involves the opportunity of controverting it, and I entertain no doubt that the council are bound, if requested, to hear all the evidence that the practitioner charged brings before them

to refute the *prima facie* case made from the previous trial. If this is inconvenient it cannot be helped. It is much more inconvenient that a medical practitioner should be judged guilty of an infamous offence by any other than the statutory body. Convenience and justice are often not on speaking terms. Nor do I accept the view put forward on behalf of the council that they are ill-qualified to form an opinion on such a charge as the present compared with a High Court judge. I can imagine no tribunal better qualified to draw deductions from the proved conduct between a doctor and his female patient than the very experienced body of men for instance who sat on the present inquiry.

Some analogy exists, no doubt, between the various procedures of this and other not strictly judicial bodies, but I cannot think that the procedure which may be very just in deciding whether to close a school or an insanitary house is necessarily right in deciding a charge of infamous conduct against a professional man. I would, therefore, demur to any suggestion that the words of Lord Loreburn, L.C. In *Board of Education* v. *Rice* (28), afford a complete guide to the General Medical Council in the exercise of their duties. As I have said, it is not correct that 'they need not examine witnesses'. They must examine witnesses if tendered, and their own rules rightly provide for this. Further it appears to me very doubtful whether it is true that "they have no power to administer an oath".....

.....The question, however, does not turn on the judge's obsence of doubt; but, on whether the members of the council are themselves convinced of their fellow-practitioner's guilt. I agree with the judgment of Singleton, J., and those of the lord justices, and am of opinion that the appeal should be dismissed."

Lord Wright, who agreed with Viscount Simon, L.C., observed:—

".....The question of a failure of 'natural justice' is what is to be considered in this appeal, but, before considering the meaning of these words, I must first observe that they

(28) (1911) A.C. 179.

can in this case be properly taken as a description of what the council has to do, namely, to make "due inquiry", which under the statute is the governing criterion, that is *an independent inquiry by the council as the body responsible for its own decision.*

'Natural justice' seems to be used in contrast with any formal or technical rule of law of procedure .....
(Quoting with approval the words of Selborne, L.C., in *Spackman* v. *Plustead District Board of Works* (29), that in the proceedings of the authority, 'there must be no malversation of any kind, and there would be no decision within the meaning of the statute if there were anything of that sort done contrary to the *essence of justice,* 'Lord Wright continued:—)

I have italicized the two phrases which the Earl of Selborne seems to me to use as meaning what is generally meant by 'natural justice'. He adds, that 'this is a matter not of a kind requiring form, not of a kind requiring litigation at all, but requiring only that the parties should have an opportunity of submitting to the person by whose decision they are to be bound such considerations as in their judgment ought to be brought before him.

(In *Board of Education* v. *Rice* (28), Lord Loreburn, L.C., had just expressly observed that the board "can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their 'view'. The words *fair* and *relevant* are to be noted. If this statement is applicable to an 'administrative tribunal', it must, in my opinion, be applicable to the proceedings of the council which may not inaptly be described as a professional tribunal like so many other similar professional bodies which are invested by statute for grave reasons of public policy with disciplinary

(29) 10 A.C. 229.

powers over members of the profession. (After discussing some other cases, the speech proceeded):—

In *Rex* v. *Local Government Board, Ex parte Arlidge* (30), Hamilto, L.J., described the phrase 'contrary to natural justice' as an expression 'sadly lacking in precision'. So it may be, and, perhaps it is not desirable to attempt to force it into any procrustean bed, but the statements which I have quoted may, at least, be taken to emphasise the essential requirements that the tribunal should be impartial and that the medical practitioner who is impugned should be given a full and fair opportunity of being heard. These are conditions of the validity of any decision enunciated by the council..... If the principles of natural justice are violated in respect of any decision, it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision. must be declared to be no decision.

The *legislature has not made a decree of the Divorce Court conclusive on the question of adulterous conduct* in the same way as it has made a conviction of felony or misdemeanour conclusive so that in such a case all that the council has to decide on proof of the decree and the identity of the party is whether the adultery amounts to infamous conduct in a professional respect. Parliament, when it thinks fit, can clearly and effectively put on the same footing for the purpose of disqualifying the offender as a conviction of treason and felony a decree of adultery of the Divorce Court..... *The proceedings in the Divorce Court were an entirely separate proceeding.* The proceedings before the Council are fresh proceedings, before a *different* body who *are bound to hold a due inquiry on their own responsibility and make their own decision on the evidence before them.*"

(28) It is to be noted that notwithstanding the fact that the medical practitioner in that case had been guilty of adultery by the

(30) (1914) I.K.B. 160.

Divorce Court, i.e., the High Court exercising matrimonial jurisdiction, and not merely by a criminal Court, it was held that failure by the Medical Council to make a due inquiry and arrive at a decision *on their own responsibility,* independently of the decision of the Divorce Court, was vitiated on the ground that it amounted to a breach of the principles of natural justice. If I may say so with respect, the observations quoted above from *General Medical Council's case* (27), apply with greater force to the case of a Motor Accidents Claims Tribunal. Whereas the Medical Council was required under Section 29 of the Medical Act, 1858, only to make a 'due inquiry' and thus proceed in a quasi-judicial manner, the provisions of Sections 110 to 110-F of the Motor Vehicles Act and the statutory rules framed under Section 111-A of that Act contemplate that the proceedings of the Tribunal shall be wholly judicial in character. While making an inquiry, it shall, *inter alia,* have the powers of a civil Court for the purpose of taking evidence on oath and of enforcing the attendence of witnesses, and it is also enjoined (Rule 20) not only to follow many of the provisions of the Code of Civil Procedure, but also to record concisely in a judgment a finding on each of the issues framed and the reasons for such finding (Rule 19).

(29) It is important to note in this connection that the principles of liability governing civil actions and criminal prosecutions based on negligence differ in two material aspects. Firstly, in a criminal case, such as one under Section 304-A or 337, Indian Penal Code, the negligence which would justify a conviction must be culpable or of gross degree and not the negligence founded on a mere error of judgment or defect of intelligence.

(30) "The principle to be observed", said Lord Atkin in *Andrews* v. *Director of Public Prosecution* (31) "is that cases of manslaughter in driving motor cars are but instances of a general rule applicable to all charges of homicide by negligence. Simple lack of care such as will constitute civil liability is not enough. For purposes of the criminal law there are degrees of negligence, and a very high degree of negligence is required to be proved before the felony is established. Probably, of all the epithets that can be applied 'reckless' most nearly covers the case." The degree of negligence which would justify a conviction must be something to the danger of which, if

(31) **(1937)** 2 All. E.R. 552.

one drew the accused's attention the latter might exclaim I don't care'. It must be something more than a mere omission or neglect of duty, as for instance, the failure of a Municipal Corporation or a Trust to repair a road in consequence of which a person using the road got accidentally killed. Thus, a law distinguishes between negligence which originates a civil liability and the one on which a criminal prosecution can be founded. In some cases, the bounds which separate a culpable negligence from a 'civil' negligence are blurred or may even disappear altogether, but in most cases this distinction is clearly discernible. In short, in criminal cases there must be *mens rea* or guilty mind, i. e. rashness or guilty mind of a degree which can be described as criminal negligence; mere carelessness is not enough.

(31) Secondly, the principle of avoidance of liability when there is contributory negligence by the injured person is no defence in criminal law. (See *Tika Ram's case* (32). But in the absence of a statute analogous to the English statute, namely, the Law Reform (Contributory Negligence) Act, 1945, in India, contributory negligence may be a good defence to a civil action.

(32) Furthermore, the nature of the onus, the approach to and affect of the evidence in a criminal case is materially different from that in a civil action. In criminal cases, the prosecution must pursue the guilt of the accused beyond the utmost bounds of doubt, to a point of moral certainty. But in civil cases, mere preponderance of probability may be sufficient to fasten the defendant with liability. The reason is not that the Evidence Act prescribes different standards of proof in civil and criminal cases, but because under that Act the burden of providing the guilt of the accused beyond all manner of doubt always rests on the prosecution and never shifts on to the accused. This is not so in civil cases.

(33) To sum up, in civil actions and criminal prosecutions arising out of the same motor accident involving bodily injury or death, the parties may be different, the issues may not be identical, the nuture of the onus may vary and the effect of evidence may not be the same. It will therefore, be contrary to all fundamental concepts of natural, justice to treat the findings of the Criminal Court as binding on the Motor Accidents Claims Tribunal, assuming but not holding that

(32) A.I.R. 1950 All. 300.

such a Tribunal is not a Court as defined in Section 3 of Evidence Act, but partakes the character of an Arbitrator, with most of the trappings of a Court.

(34) It will, therefore, be opposed to fundamental canons of justice and public policy to treat the judgments of the criminal Court binding on a Motor Accidents Claims Tribunal, trying a claim arising out of a motor accident involving injury or death. The judgment of the criminal Court, can at the most, be used only for the purpose and to the extent indicated in Section 43 of the Evidence Act.

(35) For the reasons recorded in our separate judgments, we answer, the question referred to us in the following manner, and direct that this appeal will now go back to the learned Single Judge for disposal on merits in accordance with law:—

> "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 driver are wholly irrelevant for the purpose of the trial on merits of the claims petition before the Motor Accidents Claims Tribunal. Such judgment can, however, be relevant only for the purpose and and to the exent specified in section 43 of the Evidence Act."

Costs of this reference shall be costs in the appeal.

K.S.K.

CIVIL MISCELLANEOUS

Before Ranjit Singh Sarkaria, J.

KISHAN CHAND,—*Petitioner*

versus

THE JULLUNDUR IMPROVEMENT TRUST AND OTHERS,—*Respondent*

Civil Writ No. 1533 of 1963

December 16, 1968

Punjab Development of Damaged Areas Act (X of 1951)—*S.* 12(2)—*Provisions of—Whether mandatory—Non-observance thereof—Whether makes the scheme inexecutable.*