In the High Court of Punjab and Haryana, at Chandigarh

1. **F.A.O. No. 5521 of 2017 (O&M)**

Raj Kumar alias Raju

... Appellant(s)

Versus

Hardev Kaur and Others

... Respondent(s)

2. **F.A.O. No. 5522 of 2017 (O&M)**

Raj Kumar alias Raju

... Appellant(s)

Versus

Hardev Kaur and Others

... Respondent(s)

3. **F.A.O. No. 5523 of 2017 (O&M)**

Raj Kumar alias Raju

... Appellant(s)

Versus

Maya Kaur and Others

... Respondent(s)

4. **F.A.O. No. 5524 of 2017 (O&M)**

Raj Kumar alias Raju

... Appellant(s)

Versus

Balkar Singh and Others

... Respondent(s)

5. **F.A.O. No. 5571 of 2017 (O&M)**

Raj Kumar alias Raju

... Appellant(s)

Versus

Bhajan Singh and Others

... Respondent(s)

AND

6. **F.A.O. No. 5572 of 2017 (O&M)**

Raj Kumar alias Raju

... Appellant(s)

Versus

Bhajan Singh and Others

... Respondent(s)

Reserved on: 21.11.2022
Pronounced On: 12.04.2023

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Kewal Krishan, Advocate
for Mr. Deepak Chaudhary, Advocate
for the appellant.

Mr. Ashok K. Sharma (Bhana), Advocate
for the claimants.

Mr. Sachin Ohri, Advocate
for the Insurance Company.

<u>Anil Kshetarpal, J.</u>

1. A bunch of six connected appeals has come up for final disposal. After having heard the learned counsel representing the parties at length, this Court is of the considered view that the following question arises for adjudication:-

> "If the insurance company claims exoneration from liability to reimburse the insured on the ground of interpolation or fabrication of the insurance cover note depicting the engine and

chassis number of the insured vehicle, then, whether the reliance placed by the Motor Accidents Claims Tribunal (hereinafter referred to as the Tribunal upon the police report under Section 173 Cr.P.C. without any evidence corroborating the same is sufficient?"

2. Keeping in view the issue involved, the detailed facts are not required to be noticed, however, to complete the narration of facts, some relevant facts are being noticed. On 10.02.2014, a vehicle named Qualis bearing registration number plate No. PB-10-9669 rammed into a stationery vehicle parked on the road bearing registration plate No. HR-39-4748 resulting in death as well as injuries to the occupants of the Qualis vehicle. The learned Motor Accidents Claims Tribunal, on the appreciation of evidence, has found that though the owner Raj Kumar had got the vehicle insured, however, he is liable to reimburse the insurance company with the amount of compensation on account of the fact that he tampered with the document depicting engine and chassis number of the offending vehicle. The correctness of the findings arrived at by the Tribunal with regard to negligence of Inderjeet Singh, the driver of the commercial vehicle bearing registration number plate No. HR-39-4748, while parking the same on the road without any signal or indicator or reflector etc. has not been questioned.

3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the impugned award along with the requisitioned record.

4. The report submitted by the police under Section 173 Cr.P.C. in the criminal case has been exhibited as Ex.P2 on being tendered in evidence

by the learned counsel representing the claimants. The Tribunal has relied upon the report to conclude that Raj Kumar alias Raju is guilty of changing the engine and chassis number of the vehicle in the insurance cover note containing the same. Hence, the insurance company is entitled to recover the amount.

5. As per Section 173 Cr.P.C., the police, after concluding the investigation, is required to file a report in the Court. Such report is expected to contain the name of the victim, informant and accused, nature and manner of offence, names and statements of the witnesses and the persons who appear to be acquainted with the circumstances of the case, any other evidence found, whether any offence appears to be committed in the opinion of the Investigating Officer, if so, by whom, whether the accused has been arrested, whether he has been released on bond, if so, whether with or without sureties, whether he has been forwarded in custody under Section 170 Cr.P.C. Along with the aforesaid report, the police officer shall attach and forward to the Magistrate all the documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation, the statements recorded under Section 161 Cr.P.C. of all the persons whom the prosecution proposes to examine as its witnesses and if the police officer is of the opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude or redact that part from the copies to be granted to the accused while stating the reasons for making such request. Such report is

only in the nature of an opinion formed by the police officer who has investigated the case. Hence, the contents of such report cannot be said to be proved on being merely produced in a civil case. Neither the police officer who prepared the report has been examined nor this report was put to Raj Kumar when he appeared in the evidence. Such report is not conclusive in nature and should not be considered final by the Court, to return findings against the appellant. The judgment passed in a criminal case has not been produced in evidence. When Raj Kumar stepped into the witness box as RW.5, there was neither any suggestion to the effect that he interpolated the insurance cover note containing the engine and chassis number of the insured vehicle nor the report was put to him in order to give him an opportunity to explain. On a careful reading of the deposition of RW.5 Raj Kumar, it is evident that no suggestion was put to him in this regard.

6. Moreover, neither the claimants nor the insurance company has proved that it was the appellant who informed the agent of insurance company about the incorrect engine and chassis number. Neither the form submitted by the appellant for purchase of the insurance policy has been produced nor it has been put to him. Only a cover note issued by the Bharti AIA General Insurance Company has been produced wherein it is alleged that the engine and chassis number has been incorrectly recited. Such cover note is issued by the agent or the official of the insurance company. The insurance company has not examined the official or the agent. In other words, no witness has stated that the appellant has supplied incorrect information.

7. Moreover, the registration certificate (RC) of the vehicle i.e.

HR-39-4748 has not been produced to enable the Court to compare the correct engine and chassis number of the vehicle. The Tribunal has concluded solely on the basis of the report under Section 173 Cr.P.C. submitted by the police official. On a careful reading of the report under Section 173 Cr.P.C. it is evident that the police has not concluded that the appellant (Raj Kumar) had forged/tampered with the engine and chassis number of the vehicle in question or had supplied incorrect information. The error in the cover note might have crept on account of the mistake committed by the official of the insurance company. Once the registration number of the vehicle has been correctly recorded in the cover note and there is evidence to prove that the vehicle involved in the accident was insured, the Tribunal has erred in exonerating the insurance company from its liability. The report under Section 173 Cr.P.C. was tendered by the learned counsel representing the claimant. Thus, the issue framed in para 1 of the judgment is answered in the negative.

8. Consequently, all the six appeals are allowed and the findings arrived at by the Tribunal whereby the insurance company is allowed to recover the amount from the appellant is set aside.

9. The miscellaneous application(s) pending, if any, in all the appeals shall stand disposed of.

(Anil Kshetarpal)
Judge

April 12, 2023
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No