IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

***

1. **FAO-1762-2023(O&M)**

Oriental Insurance Company Ltd. ... Appellant

Versus

Deep Chand Singla and others ... Respondents

2. **FAO-901-2023 (O&M)**

Deep Chand Singla ... Appellant

Versus

Sunil and others ... Respondents

Date of decision : 23.08.2024

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Aseem Aggarwal, Advocate
for the appellant in FAO-1762-2023 and
for the respondent no.3-insurance company in FAO-901-2023.

Mr.Birender Singh Rana, Senior Advocate with
Mr.Maninder Arora, Advocate and
Mr.Rahul Dahiya, Advocate
for the appellant in FAO-901-2023 and
for respondent no.1 in FAO-1762-2023.

Mr.Vikas Kumar Gupta, Advocate
for respondents no.2 and 3 in FAO-1762-2023 and
for respondents no.1 and 2 in FAO-901-2023.

VIKAS BAHL, J.(ORAL)

1. Table of contents:-

Arguments on behalf of owner and driver of the offending vehicle	13	11
Rebuttal arguments on behalf of the Insurance Company	14	11-12
Findings of this Court in FAO No.1762 of 2023	15-25	12-23
Finding with respect to FAO No.901 of 2023	26-32	23-25

CHALLENGE IN THE PRESENT TWO FAO's:-

2. The present order will dispose of two first appeals i.e. FAO-1762-2023 which has been filed by the Oriental Insurance Company Limited in which the challenge has been laid to the Award passed by the Motor Accident Claims Tribunal dated 10.10.2022 and FAO-901-2023 which has been filed by the claimant Deep Chand Singla through his wife and next friend Kavita Singla seeking enhancement of the compensation awarded.

3. With the consent of learned counsel appearing for the Insurance Company as well as learned senior counsel appearing for the claimant and the learned counsel appearing for the driver and the owner, the facts have been noticed from FAO-1762-2023. In the said FAO-1762-2023, respondent no.1 is the claimant and respondent no.2 Sunil son of Mahinder is the driver of the offending vehicle (hereinafter referred to as "the driver of the offending vehicle") and respondent no.3 Sunil Kumar son of Om Parkash is the owner of the offending vehicle (hereinafter referred to as "the owner of the offending vehicle").

BRIEF FACTS OF THE CASE:-

4. Brief facts of the present case are that the claimant had filed a claim petition through his wife and next friend as it was the case of the claimant that he had become completely and permanently disabled owing to the several head injuries suffered in an accident dated 24.10.2019 and was

thus, not mentally fit to file the present petition. In the claim petition, it was stated that on 24.10.2019 at about 7:00 PM, the claimant along with his son Harshit Singla was at Buria Chowk, Jagadhri and was purchasing fruits and was standing on the temporary (*kuchcha*) berm of the road when the driver of the offending vehicle, i.e., Santro car bearing registration no.HR02Q-2984, driving the same in a rash and negligent manner, came at a very high speed and hit the claimant directly with the car and on account of the impact of the accident, the claimant fell on the road and received multiple grievous injuries on the head and other parts of the body. The son of the claimant Harshit Singla took the claimant to S.P. Hospital, Jagadhri and after first aid, he was shifted to Jindal Hospital and from there, the claimant was shifted to Akash Health Care Hospital, Dwarka, Delhi, where the claimant was medico legally examined and two major operations of the brain were conducted. It was further pleaded that the injured remained in Akash Health Care Hospital, Dwarka, Delhi from 25.10.2019 to 07.11.2019 and even thereafter had to undergo treatment and was stated to be under treatment even on the date of filing of the claim petition on 17.03.2020. It was pleaded that the claimant had become permanently disabled and had lost his senses and memory due to the injuries sustained in the said accident and a sum of Rs.15 lacs had already been spent on his treatment. It was specifically averred that the accident had taken place on account of the rash and negligent driving of the driver of the offending vehicle, which was owned by respondent no.3 and was insured with the appellant-insurance company. An amount of Rs.90 lacs was sought as compensation. The necessary particulars were given in a tabular form in the claim petition wherein it was mentioned that the age of the injured / claimant was 51 years and that FIR no.1344 dated 16.11.2019 under Sections 279, 337 and 338 IPC was registered against the driver of the offending vehicle.

5. A written statement was filed on behalf of the driver and the owner of the offending vehicle, in which it was averred that no accident had taken place with their car and a false FIR had been registered by the claimant against them. A separate written statement was also filed by the insurance company in which it was pleaded that there was an unexplained delay of 24 days in the registration of the FIR and it was further stated in paragraph 5 of the preliminary objections that the car in question was not insured with the answering respondent at the time of alleged accident. In paragraph 15 of the reply on merits, it was also stated by the insurance company that the alleged car was not involved in the accident.

6. The Motor Accident Claims Tribunal vide order dated 13.07.2021 was pleased to frame the following issues:-

> *1. Whether Deep Chand Singla sustained injuries in an accident caused by car bearing registration No. HR-02Q-2984 due to rash and negligent driving by respondent No.1 as alleged?OPP*
>
> *2. Whether the petitioner is entitled to compensation. If so, to what extent and from whom?OPP*
>
> *3. Whether the insured violated the terms and conditions of the insurance policy as alleged. If so, its effect?OPR3.*
>
> *4. Relief."*

7. The claimant had got examined 10 witnesses including the eye witness Harshit Singla, who had appeared as PW-5. Several documents were produced by the claimants including the disability certificate which was exhibited as Ex.P51, certified copy of FIR no.1344 dated 16.11.2019 (Ex.P45), certified copy of report under Section 173 Cr.P.C. (Ex.P52),

certified copy of charge sheet dated 15.04.2021 (Ex.P53), copy of recovery memo of car in question along with original RC and DL and copy of the insurance policy (Ex.P68). No oral evidence was led by the insurance company or by the driver and owner and only documents including the copy of driving licence Ex.R1 and copy of insurance policy of the car in question Ex.R2 were tendered by the driver and owner of the vehicle and Ex.R3 to Ex.R16 were produced by the Insurance Company. The Motor Accident Claims Tribunal after considering the entire evidence and documents on record, decided issue no.1 in favour of the claimant and against the insurance company and the owner and driver of the vehicle. While deciding the said issue, the evidence of the eye witness PW-5 Harshit Singla as well the medical record Ex.P33, challan Ex.P52, charge sheet Ex.P53, MLR Ex.P54 as well as other documents were taken into consideration and it was observed that the claimant had suffered injuries in the accident that had taken place on 24.10.2019 and the accident had occurred on account of rash and negligent driving of the driver of the offending vehicle. The argument raised on behalf of the insurance company to the effect that there was a delay of 24 days in the registration of the FIR was rejected by observing that it had been proved on record that on the date of the accident itself, the claimant was taken to S.P. Hospital, Jagadhari and thereafter was shifted to Jindal Hospital, Sector 17, HUDA, Jagadhri on the same date i.e. 24.10.2019 and was thereafter taken to Akash Health Care Hospital, Dwarka, Delhi where surgeries were performed on the claimant and he was admitted to the hospital till 07.11.2019 and even thereafter the claimant was not well and the son of the claimant, who had been taking care of his father, had thereafter got the FIR registered on 16.11.2019. It was observed that Harshit

Singla, who was the complainant in the FIR, had remained with his father during the treatment and the same was a valid reason for having registered the FIR on 16.11.2019. The judgments of the Hon'ble Supreme Court as well as of this Court had been considered on the said aspect. With respect to issue no.2, the Motor Accident Claims Tribunal had carried out the calculation of compensation for permanent disability of the claimant in paragraph 46 and in paragraph 50 it had been stated that the claimant was entitled to an amount of Rs.76,43,490/-. Paragraphs 46, 50 and 51 of the judgment of the Motor Accident Claims Tribunal are reproduced hereinbelow:-

"46. Calculation of compensation for permanent disability thus works out as under :-

Annual income before the accident	*₹504,147/-*
Add 15% towards future prospects	*₹75,622/-*
Loss of future earning capacity 100% of actual income.	*₹5,79,769/- (5,04,147+75,622)*
Multiplier with reference to age (which was 51 years on the date of accident).	*11*
Loss of future earning	*₹63,77,459/-*

Xxxx xxx

50. Thus, claimant Deep Chand Singla is entitled to compensation as follows:-

i) Medical Treatment = Rs.10,81,031/-
(ii) Special diet = Rs.20,000/-
(iii) Transportation Charges = Rs.15,000/-
(iv) Loss of earning capacity / permanent disability = Rs.63,77,459/-
(v) Pain & suffering & loss of amenities of life = Rs.1,50,000/-
Total = Rs.76,43,490/-

51. In all, claimant is awarded 76,43,490/- as just compensation."

8. The said amount was ordered to be payable to the claimant along with interest @ 7.5% per annum from the date of filing of the claim petition till the time the amount was actually realised. It is against the said award that both the aforementioned appeals have been filed.

ARGUMENTS ON BEHALF OF THE APPELLANT IN FAO NO.1762 OF 2023 AND RESPONDENT NO.3 IN FAO NO.901 OF 2023:-

9. Learned counsel for the appellant in FAO-1762-2023 has submitted that in the present case the incident had taken place on 24.10.2019, whereas, the FIR had been registered on 16.11.2019. It is further submitted that the claimant was even as per the case of the claimant relieved from the hospital on 07.11.2019 and even thereafter, there is a delay of nine days in registration of the FIR. It is stated that although the incident had occurred in a crowded place, there is no independent eye witness examined by the claimant and the only eye witness who has been examined is the son of the claimant i.e. Harshit Singla, who is an interested witness. It is further stated that in para 23 of the award, it had been noticed that PW-5 Harshit Singla had stated that he had nabbed the driver of the offending vehicle at the spot and asked his name and address, but however, in spite of the same, he did not report the matter to the police and only got the FIR registered on 16.11.2019. It is argued that it had been recorded in para 24 of the award that the Investigating Officer Rajeev Kumar SI had stated in his cross-examination that he never visited Akash Hospital for recording statement of the injured, whereas, PW-5 has stated that the police had met him in Akash Hospital and thus, there is a contradiction. It is argued that the present case is a case of collusion between the claimant on the one hand and the owner and driver on the other hand and it is for the said reason that the

owner and the driver did not appear before the Tribunal. Learned counsel for the appellant has further submitted that a perusal of report dated 24.10.2019 Ex.P54 which has been placed on record by way of an application bearing No.CM-13999-CII-2024, would show that the person who had accompanied the claimant was his wife-Kavita and there is no reference to the son of the claimant i.e. Harshit Singla who is stated to be an eye-witness in the present case. It is submitted that the said fact also shows that in fact, Harshit Singla was not an eye-witness to the occurrence.

10. On the basis of the above arguments, learned counsel for the appellant has submitted that the finding on issue no.1 of the Motor Accident Claims Tribunal is illegal and the same deserves to be set aside and the present appellant, who is the insurer of the offending vehicle, deserves to be exonerated.

ARGUMENTS ON BEHALF OF THE RESPONDENT NO.1 IN FAO NO.1762 OF 2023 AND APPELLANT IN FAO NO.901 OF 2023:-

11. Learned senior counsel for respondent No.1-claimant in FAO-1762-2023 has submitted that the award dated 10.10.2022 as far as the same holds that the present appellant as well as respondents No.2 and 3 are liable to compensate the claimant is in accordance with law. It is further submitted that in the present case, the Tribunal had taken into consideration the evidence of the eye witness PW-5 Harshit Singla, who had withstood cross-examination and had given the details of the accident and had further stated that till 07.11.2019, he along with his ill father was in Akash Healthcare Super Specialty Hospital, Dwarka, Delhi for getting the treatment of the claimant and thus, the Tribunal had come to the conclusion that he had duly explained the reasons for getting the FIR registered on 16.11.2019. It is

submitted that the Tribunal had dealt in detail the aspect of delay in lodging of the FIR and the finding on the said issue had been rightly returned and the same does not call for any interference. In support of his arguments, learned senior counsel for the claimant has relied upon the judgment of the Hon'ble Supreme Court in case titled as "***Ravi Vs*. *Badrinarayan and others'***, ***reported as 2011(4) SCC 693***. It is further submitted that the factum of Sunil, son of Mahinder, being the driver of the offending vehicle and also being the person who had rashly driven the offending vehicle is apparent from the evidence on record including that of the eye witness PW-5 and also from the fact that the FIR had been registered against him and in the said criminal proceedings, the challan (Ex.P52) has been filed against the said Sunil and even the charges have been framed on 15.04.2021 (Ex.P53). It is stated that the filing of the charge-sheet against the driver Sunil in effect shows that the said Sunil is prima facie responsible for the negligent and rash driving of the offending vehicle. In support of his argument, learned senior counsel for the claimant has relied upon the judgment of the Hon'ble Supreme Court in case titled as ***"Mangla Ram Vs. Oriental Insurance Co. Ltd. and others, reported as 2018(5) SCC 656***. It is further submitted that in the present case, there is no evidence led to rebut the evidence of the witnesses produced by the claimant including, the eye witness (PW-5) and that neither the owner nor the driver of the offending vehicle had stepped into the witness box nor they had been summoned as witnesses by the insurance company to rebut the evidence led by the claimant. It is stated that the minor discrepancies which have been highlighted by the learned counsel for the Insurance Company are also not proved from the record, inasmuch as, with respect to PW-5 Harshit Singla having nabbed the driver of the offending vehicle at the spot, it is argued that a further perusal of the cross-examination of PW-5 Harshit Singla would show that after he had caught the driver of the offending vehicle and had thereafter turned towards his father, in the meantime, the said driver had fled away and the said witness was busy in taking his father to S.P. Hospital, Jagadhri in his car as his father had suffered major injuries on the head. Even with respect to the contradiction in the evidence of PW-10 Rajeev Kumar SI and PW-5 Harshit Singla, it has been submitted that PW-5 in his cross-examination had stated that "police" had visited the Aakash Hospital and it was not specifically stated that it was 'Rajeev Kumar SI', who had come to the said hospital whereas, in the evidence of Rajeev Kumar SI, it had been stated that he did not visit the Aakash Hospital and had not said that "police" had not gone to the hospital. It is further submitted that at any rate, such minor discrepancies would not call for setting aside the well reasoned findings of the Tribunal.

12. Learned senior counsel appearing for the appellant/claimant in FAO-901-2023 has submitted that the present appeal has been filed for enhancement of the amount which has already been awarded by the Tribunal. It is further submitted that the amount awarded on account of pain and suffering and loss of amenities of life is only to the tune of Rs.1,50,000/-, whereas, an amount of Rs.15,00,000/- should have been awarded on the said count as a perusal of the evidence of PW-7 i.e. Dr. Varun R. Garg shows that he had opined that there was a very less likelihood of recovery of the claimant and there was severe speech and walking disability due to which there was no possibility for the claimant to carry on with the profession of Advocacy. Learned senior counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court dated

05.02.2020 titled "***Kajal Vs. Jagdish Chand and others***", reported as ***2020(4) SCC 413,*** in support of his arguments. Learned senior counsel has further referred to para 49 of the order passed by the Motor Accident Claims Tribunal in support of his arguments. It is stated that the claimant is also entitled to future medical expenses to the tune of Rs.6,60,000/- as no amount has been awarded with respect to the same and the amount which has been awarded is only with respect to the expenses which have already been incurred.

ARGUMENTS ON BEHALF OF OWNER AND DRIVER OF THE OFFENDING VEHICLE:-

13. Learned counsel appearing for respondents No.2 and 3, i.e., driver and owner of the vehicle in FAO-1762-2023, has submitted that respondents No.2 and 3 have been falsely implicated in the present case and in the FIR and has submitted that the trial in the criminal case is still pending.

REBUTTAL ARGUMENTS ON BEHALF OF THE INSURANCE COMPANY:-

14. Learned counsel appearing for the insurance company, in rebuttal to the claim for enhancement sought by the claimant, has submitted that the amount which has been awarded to the claimant to the tune of Rs.76,43,490/- is adequate and the same does not deserve to be enhanced. It is submitted that the Motor Accident Claims Tribunal had already taken care of the loss of earning capacity/permanent disability and had awarded an amount of Rs.63,77,459/- on the said count. It is further argued that the judgment of the Hon'ble Supreme Court, which has been cited on behalf of the appellant/claimant in the case of ***Kajal (supra)*** would show that in the

said case the girl was 12 years of age, whereas, the claimant, even as per the case of the claimant, is 51 years of age and the girl in the said case had suffered 100% disability, whereas, even as per the case of the claimant, he had suffered 61% to 80% disability and thus, the facts of the said case are totally distinguishable. It is argued that with respect to future medical expenses, the Motor Accident Claims Tribunal has in para 37 clearly observed that there was no evidence to suggest that the claimant needed future medical treatment and even the doctors examined had not stated so, therefore, no amount should be awarded on the said count.

FINDINGS OF THIS COURT IN FAO NO.1762 OF 2023:-

15. This Court has heard the learned counsel/senior counsel for the parties and has perused the paper book and also the record of the Tribunal.

16. The insurance company in its appeal i.e. FAO-1762-2023 has laid challenge to issue no.1 on primarily two counts. The first argument raised is that there is a delay of 24 days in registration of the FIR. The second ground is that there is a collusion between the driver and owner of the offending vehicle with the claimant and the car in question was not involved in the accident and PW-5, who is the son of the complainant, is a set up witness.

17. This Court would first deal with the ground with respect to the delay of 24 days in registration of the FIR, inasmuch as, the accident had taken place on 24.10.2019 whereas the FIR was registered on 16.11.2019 by the son of the claimant.

18. Before considering the facts of the present case, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of

Ravi (supra). In the said case, it was observed by the Hon'ble Supreme

Court that the Tribunal had dismissed the case of the claimant primarily on the ground that the formal FIR of the incident was lodged belatedly and the appellant therein had failed to establish that on the fateful day, the said truck was involved in the motor road accident causing injuries to him and thus, the primary question, which arose for consideration was as to whether the delay in lodging the FIR with respect to the accident could prove fatal so as to result into dismissal of the claim petition filed by the claimant. In the said case, there was a delay of more than 3 months in registration of the FIR inasmuch as the accident had taken place on 07.10.2001 whereas the FIR was registered on 26.01.2002. The Hon'ble Supreme Court in the above said case had observed that it was well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case knowing the Indian conditions, as a common man cannot be expected to rush to the police station immediately after the accident and that the most important aspect is to get the victim treated rather than to get the FIR registered and thus, the delay in lodging FIR cannot be a ground to deny justice. It was further observed that even if there was some delay in registration of the FIR, the same deserves to be condoned, as until and unless the kith and kin of the victim are able to regain a certain level of tranquility of mind, they would not be in a position to lodge the FIR. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"2.........To add to his miseries, his claim petition filed under Section 140 and 166 of the Motor Vehicles Act, 1988 (hereinafter shall be referred to as 'M.V. Act') before Motor Accident Claims Tribunal, Jaipur (for short, `MACT'), registered as Claim Petition No. 865 of 2004,* ***came to be dismissed on 19.9.2007 by learned Presiding Judge of the said***

Tribunal, mainly on the ground that formal FIR of the incident was lodged belatedly and *Appellant failed to establish that on the fateful day, the said truck was involved in a motor road accident causing injuries to him.*

xxx xxx xxx

4. The question which arises for our consideration in this Appeal is as to whether delay in lodging the FIR of the accident could prove fatal so as to result into dismissal of the Claim Petition filed by the claimant?

xxx xxx xxx

7. Father of the victim, Suresh Kumar, lodged formal FIR under Section 154 of the CrPC ***on 26.1.2002, almost after 3 months from the date of the accident, giving details of the said accident.***

xxx xxx xxx

20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.....

xxx xxx xxx

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. ***Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident***

claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. *There could be variety of reasons in genuine cases for delayed lodgment of FIR.* ***Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. ...***

xxx xxx xxx

22. In the case in hand, the Claims Tribunal as well as the High Court, committed grave error in not appeciating the mental agony through which Suresh was passing, whose son was severely injured.

23. ***In the light of the aforesaid discussion, we are of the considered opinion that the MACT as well as High Court committed error in coming to the conclusion that lodging the FIR belatedly would result in dismissal of the claim petition."***

19. In the present case, it has been established on the basis of evidence and documents on record that on the date of the accident dated 24.10.2019, the son of the claimant, Harshit Singla had taken his father to S.P. Hospital, Jagadhri and thereafter the claimant was shifted to Jindal Hospital, Sector 17 HUDA, Jagadhri on the same day and that CT scan was conducted in Jindal Hospital and since the condition of the claimant-injured was very serious, he was shifted to Akash Health Care Hospital, Dwarka, Delhi on 25.10.2019, where the claimant had undergone two major operations of the brain and had remained in the said hospital upto 07.11.2019. It has also come on record that even thereafter the claimant was under the treatment of the doctors and had not fully recovered and had suffered permanent disability to the extent of 61-80%, which fact is apparent from the certificate issued by the Civil Surgeon, Yamuna Nagar which has

been exhibited as Ex.P51 and has been duly proved on record by PW-8 Dr. Sanjeev, Medical Officer, Civil Hospital, Yamuna Nagar.

20. Ex.P32 & Ex.P33 are the medical documents issued by Jindal Hospital, Jagadhri showing that the claimant was admitted to the said hospital on 24.10.2019 and in Ex.P33, it has been stated that the claimant had suffered injuries in a road side accident (R.S.A.) and that the first aid had been taken from S.P. Hospital, Jagadhri. Dr. Yogesh Jindal (PW-3) had appeared from Jindal Hospital and had specifically stated that the claimant was admitted to the hospital on 24.10.2019 and that he had conducted CT Scan on the patient, the report of which had been exhibited as Ex.P32 and the bills regarding the same had also been produced as Ex.P34 to Ex.P36. It had been stated that the claimant was again admitted to the hospital on 26.03.2020 and the bills regarding the same had been exhibited as Ex.P37 to Ex.P40. In the cross-examination, the said PW3 had stated that even rukka was sent to the police when the claimant was admitted to the hospital. Further, even Dr. Nagesh (PW4) from Akash Healthcare Super Specialty Hospital, Dwarka, Delhi, had been examined by the claimant. He had specifically stated in his evidence that the claimant was admitted to Akash Hospital on 25.10.2019 and was discharged on 07.11.2019 and the discharge summary was duly exhibited as Ex.P43 and that he had also produced the hospital bills as Ex.P44. The eye witness Harshit Singla had been examined as PW5 and apart from giving the details of the accident, he had specifically stated that he had taken his father to S.P. Hospital, Jagadhri where his mother had also come and after that he along with his mother shifted the claimant to Jindal Hospital, Sector 17 HUDA, Jagadhri. He had further stated that after getting the CT Scan done, the claimant had been shifted to

Akash Healthcare Super Specialty Hospital, Dwarka, Delhi where he remained admitted from 25.10.2019 to 07.11.2019 and where two major operations of the brain of the claimant were performed. It was further specifically stated by PW5 that the claimant was still under the treatment of doctors and he had not fully recovered and that there was no possibility of recovery in future and that he had remained with his father throughout his treatment in Delhi and it was only after returning from Delhi that he was able to get the FIR registered on 16.11.2019. From the above-said facts and circumstances, it is established that the complainant in the FIR, i.e. Harshit Singla, was busy taking care of his father and it was only after returning from Delhi, that he got the FIR registered and in the said circumstances, the finding of the Motor Accident Claims Tribunal to the effect that the delay in the registration of the FIR had been duly explained, cannot be stated to be perverse or illegal. Thus, the first argument raised by learned counsel for the Insurance Company has no merit and deserves to be rejected.

21. With respect to the second aspect highlighted by the learned counsel for the Insurance Company pertaining to the collusion and the car in question being not involved in the accident, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***Mangla Ram (supra)***. In the said case, it was observed by the Hon'ble Supreme Court that the filing of the charge-sheet against the driver of an offending vehicle prima facie pointed towards his complicity in driving the offending vehicle negligently and rashly. It was further observed that the plea of negligence on the part of the driver of the offending vehicle was required to be adjudicated upon by the Tribunal on the touchstone of preponderance of probabilities and not by the standard of proof beyond a reasonable doubt. The relevant

portion of the said judgment is reproduced as under: -

> *21. Another reason which weighed with the High Court to interfere in the First Appeal filed by respondent Nos.2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST4701 was driven rashly and negligently by respondent No.2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge sheet filed by the police, naming respondent No.2.* ***This Court in a recent decision in Dulcina Fernandes (supra), noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge sheet against respondent No.2 prima facie points towards his complicity in driving the vehicle negligently and rashly…….. "***

22. In the present case, it has not been disputed that in the FIR (Ex.P45) the name of the accused had been mentioned as Sunil Kumar son of Mahinder, who was the driver of the offending vehicle. Even the vehicle number had been mentioned in the FIR. The police had carried out the investigation and after due investigation, the police had submitted the report under Section 173 Cr.P.C., which had been duly exhibited as Ex.P52. It is not in dispute that it is the said Sunil who had been shown as an accused in the said report. Ex.P53 is the charge sheet dated 15.04.2021 against Sunil in the criminal case. The relevant portion of the charge-sheet (Ex.P53) is reproduced herein below: -

> *CHARGE SHEET*
>
> *1, Madhulika, Addl. Chief Judicial Magistrate, Yamuna Nagar at Jagadhri, do hereby* ***charge you (Sunil Kumar) as under:-***
>
> ***That on 24-10-2019 at about 7:00 PM within the area of***

PS City Jagadhri, you the above named accused drove your vehicle i.e. car bearing registration No.HR02-Q-2984 in a rash and negligent manner, so as to endanger human life and personal safety of others and thereby committed an offence punishable under section 279 of 1.P.C. and within the cognizance of this Court.

Secondly, on the same date, time and place you caused hurt to complainant by driving the abovesaid vehicle in the abovesaid manner, so as to ***endanger human life*** *and personal safety of others and thereby committed an offence punishable under* ***Section 337 I.P.C.*** *and within the cognizance of this Court.*

Lastly, on the same date, time and place you ***caused grievous hurt to complainant by driving your abovesaid vehicle in the abovesaid manner so as to endanger human life*** *or the personal safety of others, and thereby committed an offence punishable under* ***Section 338 IP.C.*** *and within the cognizance of this Court.*

And I hereby direct you to be tried by this court.
(Madhulika)
ACJM/15-4-2021.

Certified that the contents of the charge have been read over and explained to the accused in simple Hindi.
(Madhulika)
ACJM/15-4-2021"

23. It is stated that the trial in the said case is pending. From the above-said facts and circumstances, it is prima facie proved that Sunil, who was the driver of the offending vehicle, had caused the accident, in which, injuries had been suffered by the claimant and the car owned by respondent No.3 (In FAO No.1762 of 2023), which was insured by the appellant-Insurance Company, was involved in the accident. It is not disputed that the injuries suffered by the claimant were in a road side accident and moreover, as has been stated herein above, a perusal of Ex.P32 and Ex.P33 which are

documents issued by Jindal Hospital duly proved on record by PW-3 Dr. Yogesh Jindal, would show that on 24.10.2019 itself, it had been stated that the claimant had suffered injuries on account of a road side accident (R.S.A.). In the present case, there is an eye witness also, who had given the details of the accident. The said eye witness, Harshit Singla, who had been examined as PW5, had specifically stated in his evidence that on 24.10.2019 at about 7:00 p.m., he along with his father were present at Buria Chowk, Jagadhari, and were purchasing fruits on the temporary (*kuchcha*) berm of the road, when the driver of the offending vehicle, while driving the car in a very negligent manner, came at a very high speed and hit his father directly without caring for the traffic rules and on account of the impact, his father/claimant fell on the road and suffered multiple injuries on the head and various other parts of the body. In the cross-examination, the said PW5 had further stated that he had noted the registration number of the offending vehicle at the spot from its rear number plate. The evidence of said PW5 inspires confidence and has been rightly believed by the Tribunal. On the other hand, there is no evidence produced by the insurance company or by the other respondents to even remotely rebut the positive evidence given on behalf of the claimant with respect to the involvement of the car in question in the accident. There is absolutely no evidence of any collusion highlighted by learned counsel for the Insurance Company before this Court so as to prove that there was a collusion between the driver and owner on the one side and the claimant on the other side. The Motor Accident Claims Tribunal had rightly observed that in such a situation, it was necessary for the insurance company to summon the driver and the owner for being examined before the Tribunal in order to vindicate their stand. A finding of collusion in favour of the party alleging the same cannot be given merely on the basis of surmises and conjectures. Moreover, the learned counsel for the appellant has not been able to highlight any evidence to show that there was any link between the two parties, i.e., the claimant on one side and the driver and the owner on the other. Thus, the finding of the Motor Accident Claims Tribunal on the said aspect is legal and deserves to be upheld.

24. With respect to the alleged discrepancies, which have been highlighted by learned counsel for the Insurance Company, it would be relevant to note that there is no such discrepancy in the evidence of Rajeev Kumar SI and PW5, inasmuch as, Rajeev Kumar SI while being examined as PW10 had stated in his cross-examination that he had never visited Aakash Hospital for recording the statement of the injured and even PW5 in his cross-examination had only stated that "police" had visited the Aakash Hospital and had nowhere stated that Rajeev Kumar SI had visited him in the said hospital. Moreover, on the basis of the said trivial alleged contradiction, the well reasoned award of the Motor Accident Claims Tribunal cannot be set aside. Even the fact that in the report dated 24.10.2019, with respect to Jindal Hospital, name of Kavita, wife of the claimant, has been mentioned and the name of PW5 has not been mentioned would also in no way call for setting aside of the impugned judgment or for this Court to come to the conclusion that PW5 was not an eye witness. A perusal of the evidence of PW5 would show that in his testimony, he had specifically stated that he had taken his father to S.P. Hospital and in the meanwhile his mother had also come to S.P. Hospital for shifting his father to Jindal Hospital. The relevant portion of the evidence in chief of PW5 on the said aspect is reproduced herein below:

> *"Many people gathered on the spot and* ***I took him to S.P. Hospital Jagadhri. Meanwhile my mother also came at S.P Hospital after first aid we shifted him to Jindal Hospital Sec 17 HUDA Jagadhri. He remained Admitted in Jindal Hospital for some time and his CT Scan was conducted at Jindal hospital and he was also medico legally examined. The condition of claimant/injured was very serious as such from there was shifted to AKASH HEALTH CARE Hospital DWARKA Delhi where the claimant was examined and his two major operation i.e. major brain surgeries conducted. The in Injured/claimant remained AKASH HOSPITAL with effect from 25.10.2019 to 07.11.2019. The claimant in still under the treatment of the doctors. He has not fully recovered yet****. There is no possibility of recovery in future also. The claimant has become permanently disabled and has lost his senses and memory due to the grievous head injuries sustained.*

25. Moreover, a perusal of the document (Annexure A-1), which has been highlighted by learned counsel for the appellant, does not prove that PW-5 had not accompanied the injured and the same only records that Kavita had accompanied the injured. There is no remark in the said report that there was no other person other than Kavita with the claimant. On the aspect of PW5 Harshit Singla having specifically stated that he had nabbed the driver of the offending vehicle, but he did not report the matter to the police till 16.11.2019, suffice it to say that the facts and circumstances clearly show that it is only after a few days after the claimant/injured had come back from Delhi that the son of the claimant was in the right frame of mind to get the FIR registered. Thus, the Motor Accident Claims Tribunal has rightly come to the conclusion that the claimant had sustained injuries in the accident caused by the car, bearing registration No.HR-O2-Q2984, on account of rash and negligent driving of Sunil. The finding on issue No.1 is

thus legal and does not call for any interference and the appeal filed by the insurance company i.e. FAO No.1762 of 2023 being meritless, deserves to be dismissed.

FINDING WITH RESPECT TO FAO NO.901 OF 2023:-

26. With respect to FAO-901-2023 in which prayer has been made on behalf of the claimant for enhancement of the compensation awarded, it would be relevant to note that the argument with respect to the grant of higher amount on account of pain and sufferings and loss of amenities of life has some merit. An amount of Rs.1,50,000/- has been awarded on the said count and the claimant has made a claim of Rs.15,00,000/- under the said heading. In para 49 of the judgment passed by the Motor Accident Claims Tribunal, certain observations had been made by the Motor Accident Claims Tribunal in favour of the claimant and the same are reproduced hereinbelow:-

> *"49. To calculate the amount payable towards loss of amenities and pain and suffering is to calculate the incalculable. Measure of such damages cannot be arrived at by precise mathematic calculations. No amount of compensation can renew and restore the loss suffered by the claimant.* ***It is impossible to equate suffering of claimant with money. He has a life long handicap on account of the accident and it is very difficult in the back ground of the case to assess the compensation on account of pain and suffering. The claimant can not enjoy the amenities of life. His family suffers with him, every single day. In the factual scenario of the case, considering claimant's case, a total sum of ₹1,50,000/- is awarded towards loss of amenities of life and physical and mental pain and suffering.****"*

27. The claim of Rs.15,00,000/- has primarily been raised by the

counsel for the claimant by relying upon the judgment of the Hon'ble Supreme Court in the case of ***Kajal*** (Supra). Learned counsel for the Insurance Company has highlighted the distinguishing facts of the said case from the present case which have been noticed hereinabove. Although, in the case of ***Kajal*** (Supra), the Hon'ble Supreme Court had held that the claimants therein were entitled to Rs.15,00,000/- on account of pain and suffering but there are two factors which dissuade this Court to grant an amount of Rs.15,00,000/- as claimed by the claimant. The first factor is that the age of the injured in the present case is 51 years whereas the age of the girl child in the said case was 12 years and thus, she had a very long life ahead of her. The second factor is that the minor girl had suffered 100% disability and it was observed that she had a "vegetable existence" whereas in the present case, as per the disability certificate (Ex.P51), the claimant is stated to be 61-80% disabled.

28. Keeping in view the abovesaid facts and circumstances and also keeping in view the law laid down by the Hon'ble Supreme Court in the case of ***Kajal*** (Supra), and also taking note of the distinguishing factors as aforesaid, this Court is of the opinion that a total amount of Rs.6,00,000/- would be an adequate amount to be granted to the claimant on account of pain and suffering and loss of amenities of life and thus, the amount of compensation which has been awarded deserves to be enhanced by Rs.4,50,000/-.

29. With respect to the argument raised on behalf of the claimant that for future medical expenses also, an amount of Rs.6,60,000/- should have been awarded, it would be relevant to note that the Motor Accident Claims Tribunal in para 37 had come to a positive conclusion that there was

no evidence to suggest that the claimant needed future medical treatment and that neither of the Doctors examined had stated so and the said findings have not been shown to be perverse and illegal and thus, this Court is of the opinion that on the said count, no amount can be awarded to the claimant.

30. Keeping in view the abovesaid facts and circumstances, the appeal filed by the Insurance Company bearing No.FAO-1762-2023 is dismissed and the appeal filed by the claimant bearing No.FAO-901-2023 is partly allowed and an additional amount of Rs.4,50,000/- over and above the amount already awarded by the Motor Accident Claims Tribunal is ordered to be paid by the Insurance Company to the claimant within a period of two months from today along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation.

31. It is brought to the notice of this Court that vide order dated 25.04.2023 passed in FAO-1762-2023, the Coordinate Bench of this Court had observed that subject to the deposit of the entire amount of compensation as awarded by the learned Tribunal below, which was to be kept in Fixed Deposits, notice of motion be issued. Learned counsel for the appellant in FAO No.1762 of 2023 has submitted that they had deposited the entire amount as awarded and the same is lying in the form of FDR. Accordingly, since the appeal filed by the Insurance Company has been dismissed, thus, the said amount is ordered to be released along with interest accrued thereon in favour of the claimant.

32. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

August 23, 2024 **(VIKAS BAHL)**
JUDGE

Naresh k./Pawan/Davinder Kumar

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