

## Master Akash Vs Gurdev Singh Mohal and others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** June 2, 2011

**Citation:** (2012) ACJ 2411 : (2011) 164 PLR 187

**Hon'ble Judges:** K. Kannan, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

K. Kannan, J.

Both the appeals are connected. FAO No. 3056 of 2006 is at the instance of the Insurance Company and FAO No. 2009

of 2006 is at the instance of the claimant for enhancement. There is no representation for the Insurance Company and I dismiss the appeal filed by

the Insurance Company challenging the award. The case is being taken up for disposal on merits only with reference to FAO No. 2009 of 2006

which deals with the issue of enhancement of claim for compensation.

2. A child, who was 11 years of age at the time of the accident, has remained in a permanently vegetative state since 19.10.1998. During the

tendency of the appeal, the Bench of this Court has directed a fresh assessment of the child by examination before PGI, Chandigarh. The Court in

its order dated 06.03.2009 took note of the present physical condition and the assessments made by the Medical Board relating to the possible

expenses that may have to be incurred for the taking care of the claimant in his present vegetative state. The direction became necessary for

realizing some amounts for the expenses for the child when the Insurance Company had obtained an order of stay of the award. The Medical

Superintendent's report is reproduced in the order dated 06.03.2009 and it contains the details, inter alia, of the expenses for medicines, regular

physiotherapy, transportation to the hospital, chest care and dietary expenses to be in the range of Rs. 10,000/- to Rs. 20,000/- per month. The

Committee, which has examined the child, has also given a report that he would require round-the-clock attention and visit of physiotherapist for

every day supervised physiotherapy. It says that the patient would require air mattress and appropriate splints for "contractures care". The later

part of the report relating to the expenses are really in the nature of explanation for the various expenses that may have to be incurred to enable the

party to obtain appropriate directions from Court for withdrawal of the amount.

3. The Tribunal has made an assessment of Rs. 17,65,000/-. The learned counsel states that the Tribunal has not properly assessed the loss of

income for the entire period of his life. The Tribunal has worked out the amount in the following fashion: It has taken that the person would have

earned Rs. 3,000/- per month and he may have to be taken care of for medical expenses to the tune of Rs. 1,500/- per month, and for attendant,

the Tribunal determined Rs. 1,500/- per month as the likely expenses and on the whole, the Tribunal took the loss of earning capacity and the

recurrent medical expenses at Rs. 6,000/-. This assumption was made by the Tribunal in the year 2005 when it made the compensation on

16.12.2005. The Medical Committee's assessment was a year later when it said that the expenses for nurturing the child including the

physiotherapy charges, dietary charges, medicines charges etc. at Rs. 10,000/- to Rs. 20,000/-. The only component which the Committee has not

referred to was the likely loss of income on account of the injuries. I will take the average expense for all types of charges like, medicines,

physiotherapy, diet, etc. at Rs. 15,000/- per month and make a further addition of Rs. 3,000/- in the manner assessed by the Tribunal for loss of

income. We are examining the situation of a claim for a boy, aged 11 years and the choice of multiplier and the mode of assessment will have to,

therefore, be taken as still for such a child. The multiplier principle itself yields to a corpus that can bring an assured a return, equivalent to the

monthly expenses and the income that we have estimated. In stead of Rs. 6,000/- as taken by the Tribunal, I will substitute it as Rs. 18,000/- and

take the loss to be Rs. 32,40,000/- (18,000 x 12 x 15). The Tribunal has provided for loss of amenities of life at Rs. 1,50,000/-. It has provided

for a "material loss" which does not come under any comprehensible head and, therefore, I would discard the same. The Tribunal has also

awarded Rs. 2,50,000/- for the inconvenience, discomfort, disappointment, frustration etc. which also I will discard since the loss of amenities is

how a hardship or inconvenience is perceived as the likely resultant loss. The Tribunal assessed Rs. 1,50,000/- for loss of amenities and has

awarded Rs. 2 lakh for material loss, Rs. 2,50,000/- for inconvenience, hardship, discomfort, disappointment, frustration etc. They seem

tautological and I would take under one comprehensible head of claim as loss of amenities for a boy, who had lost the purpose of his life and who

would have no more than a world surrounded by doctors and attendants for his company, medicines and potions for his food, diapers and sheets

for his clothing. A truly poignant situation that the life presents to him, no money could fetch but that is precisely the duty of the Court in assessing

some meaningful compensation that would bring a rough approximation to how the life presents to the child, I will estimate the loss of amenities at

Rs. 5 lakhs. The child lives a vegetative life and pain and suffering that he may have to silently undergo would require to be compensated for which

I will provide for Rs. 2 lakhs. The Tribunal has already provided for the medical expenses already incurred at Rs. 64,648/- and I will make no

separate provision for future medical expenses, for, I have factored them all in the Medical Committee's estimation of what it would cost per

month for the child to be fed on medicines, food and for treatment. The overall compensation which would become payable would be Rs.

41,14,648/- rounded off to Rs. 41,15,000/-. The amount in excess over what has been determined by the Tribunal already shall attract interest at

6% from the date of petition till date of payment. The liability shall be on the respondents and the award could be enforced against the Insurance

Company.

4. Since I am making an assessment for the rest of the life of the child and since I have applied a multiplier of 15 on an assessment that he would

require attendant for the rest of his life and take that he is about 11 years of age, I will direct the amount to be deposited in a nationalized bank,

after giving credit to" the payments which have been already made during the course of the proceedings, for a further period of 10 years, split into

11 equal shares, the first share being paid forthwith and 2nd share for a period of one year, the 3rd share for a period of two years and so on upto

10 years. The amounts shall be paid on the respective dates of maturity to the parent, who is the natural guardian for the petitioner. The award is

modified and the amount is enhanced in the manner referred to above. The appeal in FAO No. 2009 of 2006 is allowed to the above extent.