

(2011) 06 P&H CK 0037

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 2009 and 3056 of 2006 (O and M)

Master Akash

APPELLANT

Vs

Gurdev Singh Mohal and others

RESPONDENT

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 "contracutures 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/- ($18,000 \times 12 \times 15$). 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.