

FAO No. 3380 of 2012 (O&M)
Date of decision: 09.02.2016

2. **FAO No. 5465 of 2012 (O&M)**

CORAM: HON'BLE MR. JUSTICE K. KANNAN

K.Kannan, J. (ORAL)

The appeal by the Insurance Company is on the issue of negligence having been established. It is a case of motor-cyclist going ahead of the insured's vehicle who was alleged to have dashed against the motor-cyclist from behind and dragged him to a distance and ran him over. The driver of yet another another vehicle which was said to be driving behind the insured's vehicle was a witness to the accident.

The Tribunal relied on the evidence of the witness and assessed the compensation at Rs. 4, 75,000/-.

The counsel for the insurer would contend that there was no proof that the insurance vehicle was attempting to overtake the motor-cyclist and caused the collision. According to him, the witness himself admitted that he had been a close acquaintance of the deceased and hence interested in the testimony. I discard both these contentions and take the negligence as established from the fact that the motor-cyclist was dashed from behind and he could not in any way be responsible for the accident and if the driver of the insured vehicle was not even examined to free himself of the blame, I will not find any error in the reasoning of the Tribunal to hold insured's vehicle as responsible for the accident.

The deceased was said to be the owner of the trucks. There was no evidence brought before the Court below and the Tribunal took his income at Rs. 5,000/- as a skilled labour and assessed the compensation. The application under Order 41 Rule 27 CPC has been filed by the claimant to contend that he was having two trucks and his income could have been as merely Rs. 5,000/-. There is simply no justification for the claimant-petitioner not to have filed most crucial documents for proving the income. Considering, that the accident had taken place in the year 2010 and even if I should accept that he was the owner of the trucks, I will take the component of managing each truck to be not less than Rs. 3,500/- and assess the income at Rs. 7,000/-,

make a deduction of 1/3rd and apply a multiplier of 9. I will also provide for Rs. 1,00,000/- for loss of consortium to the widow and Rs. 25,000/- for funeral expenses. The various heads of claim are tabulated as under:

<u>Fatal</u>	Date of accident	25.03.2010	
Age	57		
Occupation	Skilled labour		
Claimants	Widow, son		
SR. No.	Heads of claim	Tribunal Amount (Rs.)	High Court Amount (Rs.)
1	Income	5,000/-	7,000/-
2.	Add, % of increase, 30%/50%		
3.	Deduction, 1/2, 1/3, 1/4,	1/3	4666.66
4.	Multiplicand	45,000/-	55,999.99
5.	Multiplier	9	9
6.	Loss of dependence	4,05,000/-	5,04,000/-
7.	Medical Expenses		
8.	Loss of Consortium	10,000/-	1,00,000/-
9.	Loss of love and affection		
10.	Loss to estate	10,000/-	10,000/-
11.	Funeral Expenses		
	Total	4,35,000/-	6,39,000/-

The total compensation shall be Rs. 6,39,000/- and the additional compensation shall be paid with interest at 9% from the date of petition till the date of payment and distribute it in the ratio of 2:1 between the widow and the adult son. The appeal by the insurance company in FAO No. 3380 of 2012 is dismissed and the appeal by the claimant in FAO No. 5465 of 2012 is allowed to the above extent.

(K.KANNAN)
JUDGE

09.02.2016

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