

**(1996) 09 MAD CK 0061**  
**In the Madras High Court**

Pallavan Transport Corporation Ltd.

APPELLANT

Vs

V.S. Menon and Another

RESPONDENT

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**Date of Decision :** 04-09-1996

**Acts Referred:**

**Citation :** (1997) 2 ACC 91 : (1997) 1 LW 135

**Hon'ble Judges :** Jagadeesan, J

**Bench :** Single Bench

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## Judgement

Jagadeesan, J.—By consent of both the Counsels, the appeal itself is taken up or final disposal. The Pallavan Transport Corporation is the appellant herein, the appeal has been filed against the award of the Motor Accident Claims tribunal, Madras in M.C.O.P. 928/85. The respondents herein have filed the said claim petition, claiming the compensation of a sum of Rs. 4 lakhs for the death of their son aged about 15 years. Their case is that on 25.12.1984 at 8.35 P.M. when the deceased was riding on his cycle in the Purasawalkam High Road near Abirami Theatre, the bus bearing Registration No. T.M.N. 8998 belonging to the appellant Corporation hit the deceased. The accident took place only due to the rash and negligent driving of the bus by its driver. In the impact the deceased died on the spot. The bus came on extreme right and caused the accident. The claimants have claimed a sum of Rs. 3 lakhs for loss of income, Rs. 20,000/- for loss of consortium, Rs. 15,000/- for mental agony, Rs. 8,500/- for loss of the gold chain, wrist watch and for the damages of the cycle and clothes of the deceased, further a sum of Rs. 22,500/- for their flight ticket, since they came from Singapore and Rs. 24,000/- for their stay at Madras. Apart from the above, a sum of Rs. 10,000/- has been claimed for the funeral expenses.

2. The said claim was opposed by the appellant stating that the deceased was riding his cycle having a pillion rider and he tried to overtake an auto carelessly and hence the accident took place. The deceased came and hit against the bus on the right side. Hence the accident took place only due to the negligence of the deceased.

3. The Tribunal awarded a sum of Rs. 78,000/- by way of compensation and found that the accident took place only due to the rash and negligent driving of the bus.

4. The main issues involved in this appeal are whether the accident occurred due to the rash and negligent driving by the driver of the bus and whether the compensation awarded by the Tribunal is reasonable?

5. P.W.2 is an eye-witness who was travelling in the cycle alongwith the deceased. He has stated in his evidence that he was travelling on the carrier of the cycle and that the bus came in the opposite direction in a high speed and hit against the cycle and in the impact the deceased had lost control and was thrown away from the cycle. P.W.2 also fell down. From the plan, it is clear that the bus had proceeded for nearly 148 feet after the accident, which means the driver was unable to stop the vehicle immediately after the accident. This itself prima facie shows that the vehicle might have been driven in a high speed. The Tribunal accepted the evidence of P.W.2 and also the plan and observation mahazar prepared by the police authorities and found that the accident took place only due to the rash and negligent driving of the bus by its driver. The Counsel for the appellant is not able to challenge those findings of the Tribunal on merits. Hence the same is confirmed.

6. So far as the quantum of the compensation is concerned, the Counsel for the appellant contended that the deceased is a student studying in Plus 2 Class. Though the parents are in affluent circumstances, that may not be a ground to grant compensation higher than what is reasonable. Normally when a student dies, the Court has to assess the compensation only on hypothetical basis, since his income cannot be ascertained. The Tribunal had awarded a sum of Rs. 72,000/- for loss of income on the basis that the deceased would have earned a sum of Rs. 400/- p.m. and adopted 15 years multiplier.

7. On the contrary, the Counsel for the respondents contended that the award is very much low, since the Tribunal has rejected the claim of the respondents for their transportation and for their stay in Madras; especially when the father of the deceased was working in Singapore. Though the compensation has to be calculated on hypothetical ground, there should be some basis for ascertaining the compensation and as such the method adopted by the Tribunal is correct.

8. I carefully considered the submissions made by the respective Counsels. There is no dispute that the deceased was aged about 17 years and was studying in Plus 2 standard. Both the parents are at Singapore and they have come down to Madras on hearing the sudden demise of their son. As submitted by both the Counsels, when a non-earning member dies, then the compensation has to be arrived at only on a hypothetical basis and there cannot be any hard and fast rule to assess the loss of income; especially when the parents are affluent, the compensation that is to be awarded is not for their necessity but only consolation for the loss of their beloved. The only son to their parents may weigh so much

for them and their expectations may also be much more; especially when they are in a position to offer their son good education to settle in his life. Hence to arrive at the compensation, it is not the loss to the family alone to be taken into consideration, the other circumstances also at times get importance. In this case, as already said, the father is employed in Singapore and both the parents are residing in Singapore. Naturally they are in a position to offer their only son whatever he needs to settle in his life. Considering the status of the parents, naturally the son could have also got some social status in the society.

9. The Tribunal had arrived at the compensation on the basis of the hypothetical earning of Rs. 400/-p.m. by the deceased. Though there may not be any basis for this, taking into consideration so many uncertainties in life, the Court has to assess the compensation. Considering the fact that the claimants have rushed to India from Singapore from where they are employed and the rejection of their claim for the travelling expenses and for their stay, I am of the opinion that the compensation awarded by the Tribunal can be sustained. In the absence of any arithmetical calculation to be followed, there should be some rough and ready method to arrive at the compensation and this is one case where considering the other circumstances, I am of the opinion that the compensation awarded is reasonable. One more relevant factor is that the accident is of the year 1984 and already nearly more than 11 years had passed. Considering the loss of time also and considering the money value as on today, I do not think the award can be interfered with.

10. Hence there is no merit in the appeal and accordingly the same is dismissed.