

**(2008) 09 MAD CK 0104**

**In the Madras High Court**

**Case No :** C.M.A. No. 2990 of 2006 and C.M.P. No. 1621 of 2008

State Express Transport Corporation Tamil Nadu Ltd.

APPELLANT

Vs

Mrs. Papathy and Others

RESPONDENT

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**Date of Decision :** 25-09-2008

**Acts Referred:**

**Citation :** (2008) 09 MAD CK 0104

**Hon'ble Judges :** R. Sudhakar, J

**Bench :** Single Bench

**Advocate :** V. Udayakumar, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

R. Sudhakar, J.—The State Transport Corporation has filed this appeal challenging the award dated 9.10.2001 passed in MCOP No. 637 of 2000 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge) Erode.

2. The fatal accident in this case happened on 14.5.1999. The deceased Kaliappan, aged 35 years, doing leather business, was proceeding on his motor cycle, when he was hit by the bus belonging to the appellant transport corporation. In that accident, the said Kaliappan was thrown out of the bike and sustained injuries. He was admitted to the Government Hospital and thereafter in Savitha Hospital and then into K.G. Hospital, Coimbatore. In spite of best efforts and treatment, he died.

3. The wife, aged 31 years, minor son aged 14 years and minor daughter aged 12 years, mother aged 55 years and father aged 60 years are the claimants, filed the claim petition, claiming a sum of Rs. 6,00,000/- as compensation stating that the deceased was earning a sum of Rs. 7,500/-p.m.

4. In support of the claim petition, the wife of the deceased was examined as P.W.1. One Ponnusamy, was examined as P.W.2. One Elango, the eye witness was examined as P.W.3. Documents Exs. A1 to A10 were marked. Ex.A1 is the copy

of the F.I.R. Ex.A2 is the copy of the sketch. Ex.A3 is the copy of the observation mahazar. Ex.A4 is the copy of the M.V.I. Report. Ex.A5 is the copy of the post mortem certificate. Ex.A6 is the copy of the charge sheet. Ex.A7 is the medical bills. Ex.A8 is the photo copy of the legal heirship certificate. Ex.A9 is the photo copy of the death certificate. Ex.A10 is the death report. On behalf of the appellant/ respondent before the Tribunal, the driver of the bus was examined as R.W.1. No document was filed on behalf of the appellant/ respondent before the Tribunal.

4. The only contention raised by the learned Counsel for the appellant is on the quantum of compensation. The finding of negligence on the part of the driver of the appellant transport corporation and the liability of the transport corporation to compensate the claimants is not in dispute and the same is confirmed.

5. Insofar as the quantum of compensation is concerned, the issue was decided in paragraph 7 in answer to point No. 2. P.W.2 was examined to state the nature of the leather business carried on by the deceased and to support the income. The income of Rs. 7,500/- claimed was rejected by the Tribunal on the ground that no proper evidence was let in and the Tribunal fixed the income of the deceased at Rs. 70/- per day of which Rs. 25/- was deducted towards personal expenses. The contribution to the family however, was taken as Rs. 50/- per day and Rs. 1,250/- p.m. stating that the deceased would have worked 25 days per month. The annual contribution to the family was fixed as Rs. 15,000/-. The age of the deceased was fixed as 35 years as per the post mortem certificate. The Tribunal by applying 14 multiplier, determined the pecuniary loss in a sum of Rs. 2,10,000/- (Rs.15,000/- x 14 =Rs.2,10,000/-). Since the deceased was in three hospital before he died, for the pain and suffering undergone by him, relying upon the decision in Cheran Transport Corporation Limited etc. v. V. Santhamani and Ors. reported in 1996(1) L.W. 306, a sum of Rs. 10,000/- was granted towards pain and suffering. Based on the medical bills- Ex.A7 series, a sum of Rs. 38,391/- was granted towards medical expenses. A sum of Rs. 15,000/- was granted to the wife for loss of consortium and Rs. 15,000/- for loss of love and affection to the other claimants. Rs. 5,000/- was granted towards funeral expenses. In all, the Tribunal granted a sum of Rs. 2,93,400/- as compensation with interest at the rate of 9% p.a.

Sl. No. Head Amount granted by the Tribunal  
1 Loss of Pecuniary benefits Rs. 2,10,000/-  
2 Pain and suffering undergone Rs. 10,000/- by the deceased  
3 Medical expenses Rs. 38,391/-  
4 Loss of consortium to the wife Rs. 15,000/-  
5 Loss of love and affection to Rs. 15,000/- other claimants  
6 Funeral expenses Rs. 5,000/-  
Total Rs. 2,93,391/- (rounded off as Rs. 2,93,400/-)

6. Learned counsel for the appellant contended that for the death of 35 year old person, 14 multiplier adopted is excessive and the compensation that has been granted has to be reduced.

7. This Court is unable to accept the contention of the learned Counsel for the

appellant for reduction of the multiplier or the compensation for the following reasons:

(i) The income of the deceased, who was supporting the family consisting of the wife, two minor children, father and mother, is taken as Rs. 2,100/- p.m. only and that is very meager. The fact that the deceased was doing leather business, is supported by the evidence of P.W.2.

(ii) The following two decisions would be relevant for the purpose of determining the income of the deceased.

(a) A Division Bench of this Court in B. Anandhi Vs. R. Latha and Another, (P. SATHASIVAM,J., as he then was) observed that a coolie would earn Rs. 100/- per day. In that case, the accident happened in the year 1995.

(b) The Apex Court in State of Haryana and Anr. v. Jasbir Kaur and Ors. reported in 2004 1 LWekly, was of the view that an agriculturist would earn Rs. 3,000/- per month. In that case, the accident happened in the year 1999.

(iii) In this case, the Tribunal has taken a lesser amount as income and therefore, the loss of pecuniary benefits was determined as Rs. 2,10,000/- whereas the compensation should be more, based on higher income. Even if the multiplier, is marginally higher, the fact that the income taken is on the lower side, the higher multiplier justifies the lower income taken.

(iv) Therefore, this Court finds no good reason to modify the quantum of compensation granted towards pecuniary loss.

(v) The sum of Rs. 10,000/- granted for pain and suffering is justified as the deceased was taken to three hospitals after he suffered the grievous injuries due to which he died. Therefore, he would have undergone pain and mental agony before his death.

(vi) Other amounts granted by the tribunal as well as interest at 9% is not seriously disputed by the learned Counsel for the appellant and the same are confirmed.

8. Finding no merits, this civil miscellaneous appeal is dismissed at the admission stage.

9. Learned counsel for the appellant seeks eight weeks time to deposit the award amount and the same is allowed. On such deposit, the claimants are entitled to withdraw the same as per the order of the Tribunal.