

**(2002) 12 MAD CK 0168**

**Madras High Court**

**Case No:** C.M.A. No. 881 of 1996

Mrs. Varadammal, Nagappan,  
Ellammal, Murugan, Danaselvi  
and Danasekaran

APPELLANT

Vs

Metropolitan Transport  
Corporation Limited

RESPONDENT

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**Date of Decision:** Dec. 10, 2002

**Citation:** (2003) 1 MLJ 471

**Hon'ble Judges:** P. Sathasivam, J; A.K. Rajan, J

**Bench:** Division Bench

**Advocate:** K.S. Narasimhan, for the Appellant; M. Krishnamoorthy, for the Respondent

**Final Decision:** Partly Allowed

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### **Judgement**

A.K. Rajan, J.

This appeal is filed by the claimants/legal representatives of the deceased Kandaswami against the award dated 2.3.1994 passed by the Motor Accidents Claims Tribunal (Chief Judge-in-charge), Madras in MCOP. No. 2822 of 1990.

2. According to the claimants, Kandaswami was running Sri Saravana Agencies and dealing in Typewriters, Colour Television etc. He was aged about 24 on the date of the accident viz., 14.6.1990. The claimants are his mother, father, widowed sister and her children. They filed petition for compensation claiming Rs.6 lakhs. To prove the claim, the claimants examined four witnesses and marked Exs.P1 to P12. On the side of the respondent, one witness has been examined. Considering the oral and documentary evidence produced, the Tribunal found that the respondent's driver was guilty of negligence and hence awarded the compensation of Rs. 80,000/-. Aggrieved by this, the claimants have preferred this appeal.

3. Learned counsel appearing for the claimants submitted that the Tribunal has arrived at a conclusion that the deceased would have earned Rs. 5,000/- per month

though it held that the claimants did not produce any documentary evidence to prove the income. Even assuming that he would have earned Rs. 5,000/- per month, the contribution to the family per year should be Rs. 60,000/- and out of that, he would have definitely contributed Rs. 40,000/- per year. So, we are of the view that the deceased would have contributed to the family for five more years, which comes to Rs. 2,00,000/-. But, the Tribunal has applied the multiplier of 3, which is not correct.

4. Learned counsel appearing for the respondent submitted that absolutely there is no evidence to prove the income of the deceased and hence the conclusion of the Tribunal that he would have earned at least Rs. 5,000/- per month is not sustainable. The learned counsel further submitted that in the absence of proof of document, the income of the deceased at the most can be taken as Rs. 3,000/- per month.

5. The claimants have marked Exs.P4 to P9 to prove the transaction of Sri Saravana Agencies. On perusal of Ex.P5, Statement of Account issued by Indian Bank to Sri Saravana Agencies, we find that large amount is found to be in credit of the Agency for long period. From this, it appears that the conclusion of the Tribunal that he would have earned Rs. 5,000/- per month does not appear to be on the higher side. Therefore, we accept the conclusion of the Tribunal that the deceased would have earned Rs. 5,000/- per month. So, he would have earned Rs. 60,000/- per year. Deducting one third for his personal expenses, he would have contributed Rs. 40,000/- per year to the family.

6. Considering the age of the parents of the deceased, we are of the opinion that the multiplier of 5 may be applied. Thus, the total amount payable comes to Rs. 2,00,000/- In view of the fact that the parents are aged about 65 and 59, we are not inclined to grant any other amount apart from Rs.2 lakhs. Though the claimants include the widowed sister of the deceased and her children, the Tribunal has rejected the plea of the claimants that they were depending the deceased in the absence of proof that they were living along with the deceased. There is no reason to alter that finding of the Tribunal. Therefore, the widowed sister of the deceased and her children are not eligible for any amount of compensation. Thus, we fix the enhanced amount of compensation payable to the claimants 1 and 2 as Rs. 2,00,000/-. This amount is payable together with interest at 9% per annum from the date of petition till the date of payment. Petitioners 1 and 2 shall share the enhanced amount of compensation equally.

7. The appeal is allowed in part. No costs.