



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2018

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH**

and

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

W.A. (MD) No.1210 of 2018

and

C.M.P No. 8455 pf 2018

The Administrator,  
The State Transport & Transport Corporation  
Retired Employee's Welfare Association,  
Thiruvaluvar Illam,  
Pallavan Road,  
Chennai - 600 002.

...Appellant

**vs.**

1.P.Muthuammal

2.N.Muthulakshmi

3.The Managing Director,  
Tamil Nadu State Transport Corporation  
Madurai Limited,  
Bypass Road,  
Madurai District - 625 010.

4.The General Manager,  
Tamil Nadu State Transport Corporation  
Madurai Limited,  
Dindigul Region,  
Bye-pass Road,  
Dindigul District.

...Respondents

**prayer:** Writ Appeal filed under Clause 15 of the Letter Patent Act against the order dated 19.1.2018 made in W.P(MD) No.203 of 2018 on the file of this Court.

Prayer in WP(MD). 203/ 2018 :

**Prayer in WP(MD).No.203/2018:** Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus, directing the Respondents to disburse the family pension from (23.01.2017) the date of demise of Petitioners husband in equal share to the Petitioners until the life time of <https://hccservices.com/hccservices/> also directing the Respondents to grant full pension to the surviving Petitioner in case of death of either one



of the Petitioners.

For Appellant : Mr.A.P.Muthupandian  
For (\*)RR 3 and 4: Ms.D.Ramya  
for Mr.A.Jeyaram  
For R2 : M/s.A.Santhanam  
M/s.G.Kavitha

### **JUDGMENT**

[Judgment of the Court was delivered by **M.M.SUNDRESH, J.**]

This writ appeal is directed against the order of the learned Single Judge, by which, both widows of the deceased were allowed to apportion the family pension until the life time of both of them and in case of death of either one of them, surviving one shall be entitled to full pension.

2.As rightly submitted by the learned counsel appearing for the appellant what governs the authorities is the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules. Clause 20(2) of the said Rules speaks about family pension, which is as under:

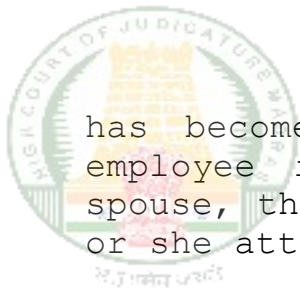
#### **20(2).Family Pension**

*(a)Family Pension shall be admissible to the family of the member, who has rendered less than 7 years but not less than one year of service from the date following the date of death of the member while in service at the rate of 30% of basis pay last drawn and the contribution for the period has been paid into the Fund, till the lifetime of the spouse (widow/widower).*

Exception: *In respect of employees who has rendered less than one year of service, the family pernsion may also be allowed to the family of a member who die in harness, provided that the deceased employee immediately prior to his appointment was examined and declared fit for employment.*

*(b)After the death of the spouse, the first child is eligible for family pension at the rate of 30% upto the period till he or she attains the age of 25; in the case of male child, family pension is admissible till he attains the age of 25 years or getting employment, whichever is earlier; and in the case of female child, family pension is eligible till she attains the age of 25 or the date of her marriage whichever is earlier."*

3.This Clause makes it very clear that only the spouse who



has become widow or widower in pursuant to the death of the employee is entitled for pension and after the death of the spouse, the first child is eligible at 30% upto the period till he or she attains the age of 25.

4. The learned single Judge appears to have made reliance upon Rule 49 of the Tamil Nadu Pension Rules, 1978. We are afraid that the said Rule does not have an application to an employee of the appellant, which is having its own Rules.

5. The learned counsel appearing for the second respondent would submit that presumption had to be drawn based upon prolonged years of cohabitation. The said contention cannot be accepted. We are not on the status of the widow, but the entitlement. In law, a Hindu male cannot have two wives at the same time. While upholding the compromise entered into between the parties, resulting in apportionment of the family pension, the same cannot be extended to the second wife, who is not a legally wedded wife. In such view of the matter, we set aside the order of the learned Single Judge, extending the family pension to the other widow who is not a legally wedded wife.

6. This writ appeal stands **(\*\*)Partly** allowed accordingly. We make it clear that the arrangements made between the private respondents is not disturbed and thus, the appellant is bound to comply in so far as the apportionment between the two widows as agreed upon by them. No costs.

Sd/-

Assistant Registrar(CS-III)

**(\*) and (\*\*) Amended as per order of this  
Hon'ble Court dated 23.10.2018**

/True Copy/

Sub Assistant Registrar(CS-IV)

To

**To be substituted the order already despatched on 26.09.2018.**

The Managing Director,  
TNSTC Madurai Ltd.,  
Bye pass Road,  
Madurai District - 625010.

+ 1 CC TO MR.A.P.MUTHU PANDIAN, ADVOCATE IN SR NO. 83933

+ 1 CC TO MS.G.KAVITHA, ADVOCATE IN SR NO. 83973

MJ

BU/SV/SAR-IV : 25.09.2018 : 3P/4C

BU/SV/SAR-IV : 30.10.2018 : 3P/4C