

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**FIRST APPEAL NO.803 OF 2022  
WITH  
CIVIL APPLICATION NO. 6058 OF 2022**

1. Shabana Sajid Shaikh  
Age: 26 years, Occu: Household
2. Sajida Sajid Shaikh, (in MACP no.149/2018)  
Samayya Sajid Shaikh (in MACP no.417/2017)  
(Both names are of same person)  
Age – 5 yrs, Occu. Nil,  
Minor through natural guardian  
mother i.e. Appellant no.1  
both R/o. Kalamatha, Gajranagar,  
Aurangabad Road, Ahmednagar

**... Appellants**

[Orig. Oppe. Nos.2 & 3]

**Versus**

1. Ibrahim Ismail Shaikh  
Age: 60 years, Occu: Labour
2. Parveen Ibrahim Shaikh  
Age: 45 years, Occu: Household
3. Miss. Simran Ibrahim Shaikh  
Age: 20 years, Occu: Education  
All r/o. Nannaj, Tal. Jamkhed,  
Dist. Ahmednagar
4. The Divisional Controller,  
Maharashtra State Regional  
Transport Corporation,  
Ahmednagar,  
A/P. MSRTC, Division Office,  
Sarjepura, Ahmednagar

**... Respondents**

[Res. Nos.1 to 3 Orig. Applicants &  
Resp. No.4 Orig. Opp. No.1]

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Mr. A. C. Darandale, Advocate for the Appellants

Mr. S. S. Kulkarni, Advocate for Respondent Nos.1 to 3

Mr. M. D. Shinde, Advocate for Respondent No.4

...

**CORAM : S. G. CHAPALGAONKAR, J.**

**DATE : 07.08.2023**

**ORAL JUDGMENT :**

1. The aggrieved appellants / wife and minor daughter of the deceased - Sajid are challenging a common judgment and award dated 20/10/2021, passed by the Motor Accident Claims Tribunal, Ahmednagar, in Motor Accident Claim Petition (MACP) Nos.417/2017 and 149/2018.
2. The challenge in this appeal is limited to the apportionment of compensation. The appellant nos.1 and 2 are widow and minor daughter of the deceased, who died in a motor vehicle accident dated 14/08/2017. The MACP No.417/2017 was lodged by the widow and minor daughter of the deceased, whereas, MACP No.149/2018 was lodged by the parents and minor sister of the deceased, thereby raising respective claims for compensation under Section 166 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short]. Both these claim petitions were commonly heard and decided under the impugned judgment and award dated 20/10/2021. The Tribunal partly allowed the claim petitions and granted compensation of Rs.17,06,340/- along interest @ 8% per annum to the claimants. However, while making the apportionment of compensation, 30%

share is given to widow [Shabana], 30% share is given to minor daughter [Samayya], 15% each is given to the parents [Ibrahim and Parveen] and 10% is given to the minor sister [Simran].

3. Mr. Darandale, learned Advocate appearing for the appellants would submit that while the parents of deceased are alive, the dependency of sister would never divert to the deceased / brother, particularly when deceased was having his dependent family i.e. wife and minor daughter. He would submit that no specific evidence is brought on record to indicate that the sister was dependent and the portion of earning of the deceased was being carved out for maintenance of the sister. He would further point out that the father of the deceased himself was a labour and there is nothing on record that he was incapacitated from the earning. Therefore, he would submit that maximum share in compensation ought to have been apportioned to the appellants. He would submit that there was no reason to carve out 10% compensation amount to the share of sister.
4. Mr. Kulkarni, learned Advocate appearing for respondent nos.1 to 3 supports the award. He would submit that the specific pleading is incorporated in the claim petitions regarding dependency of the sister on income of the deceased. He would further submit that there is nothing on record to show that the father was earning and on the other hand, all the claimants in both the claim petitions were dependent on the income of the deceased.

5. Having considered the submissions advanced by the learned Advocates appearing for the respective parties, it can be gathered that, the claims are filed seeking compensation in respect of accidental death of deceased Sajid, who was married and maintaining his wife and a minor daughter out of his income. There is nothing on record to show that the father of the deceased was not earning or he was not in a position to maintain his minor daughter. It facts of this case mother can only be considered dependent on deceased alongwith widow and infant daughter. The Tribunal has rightly considered the dependency of parents to the extent of 30% and carved out the share to that extent in their favour out of the compensation amount.
6. It cannot be ignored that the deceased left behind young widow and infant daughter. The maximum share in compensation must go to the widow and minor daughter, whose dependency will endure for maximum period as compared to the parents. In absence of specific evidence to show that even the minor sister was dependent on the income of deceased/brother, there is no reason to consider her dependency on deceased Sajid. The Tribunal has not assigned specific reason as to why the dependency to the extent of 10% of minor sister is considered on income of the deceased. The Tribunal has already awarded 30% amount in favour of the parents. They may take care of the minor daughter out of such shares. Considering the age of widow and minor daughter, it would be appropriate to modify the award of the Tribunal and direct the compensation of 10% to be added in the compensation in favour of them. No separate compensation

is necessary to minor sister - Simran when the parents are already given 30% share. In that view of the matter, the appeal deserves to be partly allowed. Hence, this Court proceeds to pass the following order:

**ORDER**

- (i) Appeal is partly allowed.
- (ii) The award passed by the Tribunal is modified as regards to the apportionment of compensation as under:
  - (a) The applicant - Shabana shall have 35% share in the compensation, applicant - Samayya shall have 35% share in the compensation and applicants - Ibrahim and Parveen shall have 15% each share in the compensation. No separate share shall be given to the minor sister i.e. Simran.
- (iii) Appeal is disposed of accordingly.
- (iv) Pending civil applications, if any, are also disposed of.

**[S. G. CHAPALGAONKAR]  
JUDGE**