

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved On: 4th of November, 2023
Pronounced On: 4th of December, 2023.

Mac App No. 19/2022

1. **Zarifa Banoo, Age: 63 Years**
W/O Late Ghulam Hassan Wani
2. Fehmeeda, Age: 46 Years
D/O Late Ghulam Hassan Wani
3. **Waheeda (Dead)**
D/O Late Ghulam Hassan Wani
4. **Zaffar Ahmad (Dead)**
S/O Late Ghulam Hassan Wani
5. Bilal Ahmad, Age: 38 Years
S/O Late Ghulam Hassan Wani
6. Sobia Hassan, Age: 33 Years
D/O Late Ghulam Hassan Wani

All Residents of Hillar, Arhama, Kokernag,
District Anantnag.

... Appellant(s)

Through: -

Mr Mohammad Amin Tibatbakal, Advocate.

V/s

1. **Manzoor Ahmad Sheergujri**
S/O Ghulam Qadir Sheergujri
R/O Khanmoh, Srinagar
(Driver of Bolero No. JK02V-1090).
2. Kiran Raina W/O Surinder Sharma
R/O Mohalla Afgan, Jammu.
3. Oriental Insurance Company B/O Gangyal
Through Divisional Manager, Srinagar.
4. Dr. Asiya Yaqoob
W/O Shabir Ahmad Wani
R/O Vecharnag, Nowshera, Srinagar.
5. Motor Accident Claims Tribunal, Srinagar.

... Respondent(s)

Through: -

Mr Mohammad Assim-ud-Din, Advocate for R-4.

Clubbed with:**Mac App No. 20/2022****Zarifa Banoo, Age: 63 Years**

W/O Late Ghulam Hassan Wani

R/O Hillar, Arhama, Kokernag,

District Anantnag.

... Appellant(s)

Through: -

Mr Mohammad Amin Tibatbakal, Advocate.

V/s

1. **Manzoor Ahmad Sheergujri**
S/O Ghulam Qadir Sheergujri
R/O Khanmoh, Srinagar
(Driver of Bolero No. JK02V-1090).
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W/O Late Shabir Ahmad Wani
R/O Vecharnag, Nowshera, Srinagar.
5. Motor Accident Claims Tribunal, Srinagar.

... Respondent(s)

Through: -

Mr Mohammad Assim-ud-Din, Advocate for R-4.

CORAM:**HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE****(JUDGMENT)**

01. Both the above titled Appeals, filed in terms of Section 173 of the Motor Vehicles Act, 1988 (for short 'the M V Act'), against the common Award passed by the Motor Accident Claims Tribunal, Srinagar (for short 'the Tribunal') in MACP No. 855/2018 titled '**Zarifa Bano & Ors. v. Manzoor Ahmad Sharegujri & Ors.**' and MACP No. 856/2018

titled '**Dr. Asiya Yaqoob Beigh v. Manzoor Ahmad Sharegujri & Ors.**' vide Judgment dated 18th of June, 2022, having common questions of facts and law, are proposed to be decided by this common Judgment.

02. One Shabir Ahmad Wani and his father, Ghulam Hassan Wani, Residents of Hiller, Arhama, Kokernag, District Anantnag, received fatal injuries in a Road Traffic Accident, while travelling in their vehicle bearing No. JK03A/5797 (Alto Car) on 14th of August, 2009 driven by Shabir Ahmad Wani, when it was hit by vehicle No. JK02V/1090 (Bolero) at Barsoo on the Jammu-Srinagar National Highway, within the jurisdiction of Police Station, Awantipora, and succumbed to the said injuries in the Hospital. A case was registered vide FIR No. 13/2009 for the commission of offences punishable under Sections 279, 304-A and 427 RPC at Police Station, Awantipora. During investigation, it was found that the accident had taken place due to the rash and negligent driving of the driver of the offending vehicle bearing No. JK02V/1090 (Bolero).

03. The deceased-Shabir Ahmad Wani, aged 38 years, was a KAS Officer and, on the date of his death, was working as Functional Manager in the Department of Commerce at District Industries Centre, Srinagar with a monthly salary of Rs. 32,218/-, whereas the second deceased, namely, Ghulam Hassan Wani, aged 57 years, was running a medical shop under the name and style of 'Wani Medical Store' and it was claimed that he was having a monthly income of Rs.15,000/-.

04. Zarifa Bano, mother of the deceased Shabir Ahmad Wani, his sisters, namely, Fehmeeda, Waheeda and Sobia Hassan as well as brothers, namely, Zaffar Ahmad and Bilal Ahmad filed a Claim Petition arraying Dr. Asiya Yaqoob, wife of deceased Shabir Ahmad Wani, as Respondent No.4, before the learned Motor Accident Claims Tribunal, Srinagar; whereas Dr. Asiya Yaqoob Beigh, as wife of the deceased Shabir Ahmad Wani, filed a separate Claim Petition arraying her mother-in-law Mst. Zarifa as one of the Respondents before the same Tribunal, claiming compensation for the death of her husband, Shabir Ahmad Wani.

05. In the Petition filed by the mother and siblings of the deceased Shabir Ahmad Wani, the Respondent-Dr. Asiya Yaqoob Beigh opposed the Claim Petition filed by the Petitioners on the ground that though her husband was the son and brother of the Petitioners respectively, however, they were never dependents upon the deceased because her mother-in-law/ Petitioner No.1 was looked after by her husband, namely, Ghulam Hassan Wani, who was a businessman and the rest of the Petitioners, being all employees, had nothing to do with the deceased husband of the Respondent No.4. The Respondent-Insurance Company also resisted the Claim Petition on the ground that the alleged accident is the outcome of the contributory negligence between the offending vehicle bearing No. JK02V/1090 (Bolero) and vehicle No. JK03A/5797, driven by the deceased Shabir Ahmad Wani.

06. In the clubbed Petitions, on the basis of the pleadings of the parties, following issues were framed:

- i. Whether on 14/08/2009, a vehicle (Bolero) bearing registration No. JK02V/1090 being driven by respondent No.1 rashly and negligently on reaching near Barsoo (NHW), hit the vehicle (Alto Car) bearing No. JK03A/5797 in which the deceased persons namely Shabir Ahmad Wani along with his father Ghulam Hassan Wani were travelling causing thereby grievous injuries, resulting their death in the hospital? (OPP);
- ii. Whether petitioners were not dependent on the deceased Gh. Hassan, the husband of the respondent No.4, as such, the petitioners are not entitled to any compensation? (OPR-4);
- iii. Whether the respondent No.1 (driver) was permitted by respondent No.2 (owner) to drive the offending vehicle bearing registration No. JK02V/1090 on the date of accident with invalid and ineffective D/L, if yes, the respondent-insured has committed breach of insurance contract absolving the respondent-company from its liability on account of petitioner's claim? (OPR-3);
- iv. Whether there has been any contributory negligence of the drivers of the vehicles involved in the accident and thus the respondent-insurance may not be saddled with entire liability? (OPR-3);
- v. In case issue No.1 is proved in affirmative, to what amount of compensation the petitioners are entitled to from whom and in what proportion? (OPP); and
- vi. Relief?

07. After leading evidence by the parties, the learned Tribunal, vide the impugned Judgment, granted a compensation of Rs.57,05,650/- in

favour of Petitioner No.1-Zarifa Begum (mother), Petitioner Nos. 3 & 6-Waheeda & Sobia Hassan (sisters) and Petitioner No.5-Bilal Ahmad (brother), whereas the Petitioner No.2-Fehmeeda (sister) and Petitioner No.4-Zaffar Ahmad (brother) were not considered as dependents upon the income of deceased Shabir Ahmad Wani and held not entitled to any compensation. Dr. Asiya Yaqoob Beigh, wife of the deceased Shabir Ahmad Wani, was also held entitled to compensation, being young and unemployed widow. While granting compensation, the apportionment of the compensation was granted in the ratio of 50 percent to the wife of the deceased and rest of the 50 percent was granted in favour of the Petitioners 1, 3, 5 and 6, mother and three siblings in equal shares.

08. The Appellants, having been aggrieved of the aforesaid Award, have challenged the same before this Court, primarily on two counts:

- i. Firstly, that the Petitioners-Fehmeeda and Zaffar Ahmad were denied compensation for not being dependent on the deceased-Shabir Ahmad Wani was not correctly decided by the Tribunal; and
- ii. Secondly, Dr. Asiya Yaqoob Beigh-wife of the deceased had been given 50 percent of the compensation as against her entitlement for 1/4th share of the award in view of the law of inheritance applicable to the parties, by which she is entitled to only 1/4th share, being an issueless widow.

Therefore, the afore-stated two important aspects of the case have fallen for consideration, before this Court in both these connected appeals.

09. The learned Counsel for the Appellant argued that the learned Tribunal has wrongly concluded that the Claimant No. 2, namely, Fehmeeda (sister of the deceased) and Claimant No.4, namely, Zaffar Ahmad (brother of the deceased) were not entitled to compensation, being major and employed in Government job. He has further argued that in the instant case, the Respondent No.4, being an issue-less widow of the deceased-Shabir Ahmad Wani, was entitled to only 1/4th share, instead of

half of the share granted to her by the Tribunal. It was finally prayed that these Appeals be allowed and the Claimants-Fehmeeda and Zaffar Ahmad, who were held not entitled to compensation, being major and employed in Government job, be also held entitled to the grant of compensation in the case, being brother and sister of the deceased and the share of Respondent-Dr. Asiya Yaqoob, wife of the deceased, be limited to 1/4th share, instead of 50 percent as ordered by the Tribunal. He, in order to buttress his arguments, has relied upon the following Judgments:

- i. National Insurance Company Limited v. Birender & Ors., (2020 ACJ 757);
- ii. Shriram General Insurance Company Limited v. Aasha Devi & Ors., (2021 ACJ 1649); and
- iii. Hafizun Begum v. Member, Motor Accidents Claims Tribunal & Ors., (2006 ACJ 2448).

10. Learned Counsel, appearing on behalf of the Respondent No.4-Dr. Asiya Yaqoob, on the other hand, argued that the learned Tribunal has considered the fact that the Respondent No.4 was totally dependent upon the deceased-Shabir Ahmad Wani and that the Respondent No.4 was studying at the time of death of her husband and she had also lost her parents and was survived by brother and sister, who were engaged with their own lives. It is also submitted that the Respondent No.4 was not doing any Government job at the relevant point of time and was also of a young age of 28 years, having suffered both mentally and economically due to the death of her husband and the learned Tribunal had rightly considered the fact that while passing the Award, the Respondent No.4 had not, till date, re-married and was putting up in a rented accommodation lonely even after Post-Graduating in Medicine from Delhi with the aid and assistance of her brother. He has further argued that the apportionment of the compensation in favour of the Claimants cannot be done as per the personal law of the parties, but each and every case is to be decided as per its own facts and circumstances and, therefore, by granting 50 percent of the compensation in favour of the widow, the Tribunal has taken a right decision which does not call for any interference. He also argued that the denial of compensation to

Claimants-Fehmeeda and Zaffar Ahmad, who were not dependent in any manner on the deceased, being major and having their own sources of income from Government jobs, cannot be said to be dependents on the deceased and were so rightly denied the compensation by the Tribunal. He further argued that the Appeals filed by the Appellants, being without any merit and substance, be dismissed. He has placed reliance on the following Judgments:

- i. D. Shanmukha Sundaramma v. D. Suneetha & Ors. (2009) 3 SCC 787;
 - ii. Abdul Rehman & Ors. v. Dayaram & Ors. (1989) 1 ACC 226; and
 - iii. The New India Assurance Company Limited & Ors. v. Francisco Xavier Fernandes & Ors. [2019 (3) 1 ABR 47].
11. The first plea raised by the Appellants in both the appeals with regard to entitlement of the Claimants-Fahmeeda and Zaffar Ahmad, having been repudiated by the Tribunal to claim compensation for the reason that they were major and also had incomes of their own from Government jobs, is taken up first. The Hon'ble Apex Court in case titled '**National Insurance Company Limited v. Birender & Ors.**', reported as '**2020 ACJ 759**', has held that the legal heirs, whether married and earning, can claim compensation for the death of the deceased and that the Tribunal was duty bound to consider their claim, irrespective of the fact that they are fully dependent on the deceased or not. The Gwalior Bench of the High Court of Madhya Pradesh, in a case titled '**Shriram General Insurance Company Limited v. Asha Devi & Ors.**', reported as '**2021 ACJ 1649**', also held that the major sons of the deceased are covered under the term 'legal representatives' and are entitled to compensation in a motor accident.
12. The Hon'ble Supreme Court, in case titled '**National Insurance Company Limited v. Birender & Ors.**', reported as '**2020 ACJ 759**', has held that the legal representatives are entitled to compensation. Paragraph No.15 of the aforesaid Judgment, being relevant, is extracted herein below:

“15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major, married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000 and Rs. 1,50,000 per annum. In that sense, they were largely dependent on the earnings of their mother and, in fact, were staying with her, who met with an accident at the young age of 48 years.”

13. Having regard to the authoritative law laid down by the Apex Court in Birender’s case *supra* (2020 ACJ 759) and the findings of the High Court of Madhya Pradesh in Asha Devi’s case *supra* (2021 ACJ 1649), it has been clearly laid down that even the major, married and earning legal heirs of the deceased are entitled to compensation, irrespective of the fact that they are fully dependent on the deceased or not.

14. In view of the Judgment passed by the Hon’ble Apex Court on the subject as to whether only the dependents are entitled or the legal heirs can also claim compensation, it appears that the learned Tribunal, while deciding the case which is the subject matter of these Appeals, has taken an erroneous view while holding that the Claimants-Fehmeeda and Zaffar Ahmad, sister and brother of the deceased respectively, were not entitled to any compensation, being major and employed. Therefore, the Appeals, on this count that the Claimants, irrespective of their age and income or dependents, are entitled to compensation, being legal heirs, deserve to be accepted. In this view of the matter, the Tribunal has committed an error by not granting compensation to two of the claimants, simply for the reason that they are major and have incomes of their own and were not dependent upon the deceased. Both the appeals to this extent are allowed, holding that the Claimants-Fehmeeda and Zaffar Ahmad are also entitled to claim compensation for the death of the deceased in terms of the M. V. Act.

15. In view of two more Claimants having been held entitled to secure compensation in the preceding para, having regard to the number of the Claimants, the amount of compensation is required to be worked out

afresh. The monthly income of the deceased at the time of his death was Rs.32,218/- and, with addition of 50% as future prospects, in view of the age of the deceased being below 40 years and he having a permanent Government job, as per the law laid down by the Hon'ble Apex Court in case titled '**National Insurance Company v. Pranay Sethi**', reported as '**AIR 2017 (SC) 5157**', the annual income of the deceased was worked out as Rs.5,79,924/- by the Tribunal. After deduction of income tax applicable in the assessment year 2009-10 for an amount of Rs.78,977/-, the annual income of the deceased was accepted as Rs. 5,00,947/- (5,79,924 - 78,977). As the number of dependent family members in both the Petitions, one filed by the mother and the siblings and the other by the wife of the deceased, was 07, therefore, in view of the Judgment passed by the Hon'ble Supreme Court in Sarla Verma's case, 1/5th income of the deceased was to be deducted towards his personal expenses, which comes to Rs.1,00,189/-. The multiplier of 15 has been accepted in view of the judgment of the Hon'ble Apex Court in Sarla Verma's case and, with the application of 15 as multiplier, the total loss of dependency comes to Rs.60,11,370/- (4,00,758/- x 15). Besides this, the wife of the deceased had also been granted an amount of Rs.40,000/- as spousal consortium, in addition to the conventional heads of loss of estate as Rs.15,000/- and funeral expenses as Rs.15,000/-. The same are maintained.

16. Therefore, the total amount of compensation payable to the Appellants and Respondent No.4 is modified as under:

S. No.	<u>Head under which compensation granted</u>	<u>Amount</u>
01.	Loss of Dependency	60,11,370/-
02.	Spousal Consortium to wife-Dr. Asiya Yaqoob	40,000/-
04.	Loss of Estate	15,000/-
05.	Funeral Expenses	15,000/-
<u>Total</u>		Rs. 60,81,370/- <u>Rounded upto Rs. 60,81,000/-</u>

17. Insofar as the second plea raised with regard to the apportionment of the awarded amount, as per the personal law of the parties, is concerned, the learned Counsel for the Appellants has based his arguments in view of the Judgment passed by the Hon'ble Guahati High Court in Hafizun Begum's case (2006 ACJ, 2448) that an issue-less widow of the deceased is entitled to 1/4th share of the compensation. The Hon'ble Apex Court in case titled '**D. Shanmukha Sundaramma v. D. Suneetha & Ors.**', reported as '**2009 (3) SCC 787**', considering the peculiar facts of the case, the age of the widow and that of the Appellant, thought it appropriate to grant a sum of Rs.1.25 lacs to the Appellant and the balance to the claimant-wife, i.e., the widow of the deceased. A Division Bench of the High Court of Bombay at Goa, in a case titled '**Abdul Rahman & Ors. v. Dayaram & Ors.**', reported as '**(1989) 1 ACC 226**', has held that the Court cannot be guided by personal law while deciding upon the apportionment of the compensation and the compensation was paid taking into consideration the dependency of the Claimants.

18. In view of the law laid down by the Hon'ble Apex Court as well as the Division Bench of the Hon'ble Bombay High Court, that the Court cannot be guided by personal law while deciding upon the apportionment of the compensation, which is to be paid taking into consideration the dependency of the claimants, the personal law is not applicable and I respectfully disagree with the view taken by the Gauhati High Court and follow the Judgments passed by the Apex Court and the High Court of Bombay, wherein it has been held that the apportionment of the compensation is to be made not as per personal law, but as per the loss of dependency. Having regard to the mandate of provision of Section 168 of the MV Act, coupled with the settled legal position, it is held that the compensation awarded by a Motor Accident Claims Tribunal, after determination of just and fair compensation, has to apportion the payment of compensation amongst the Claimants, as considered to be appropriate to the Tribunal in view of the loss of dependency to the Claimant, disregard of the inheritance as per personal law of the Claimants. It is, however, clarified that if any Claimant dies before the awarded compensation of his share is

released in his favour, his share of compensation is to be released as per applicable law of inheritance, among his legal heirs.

19. In the instant case, where due to demise of the deceased, a young wife was left behind, who had no issue by that time and, besides, the mother and siblings were left behind by the deceased. Since, the siblings of the deceased were not dependents on the deceased, as they were being looked after by their father, who had also died in the same accident and for whose death, they had also received the compensation, therefore, if the plea of the learned Counsel for the Appellants is to be accepted that the personal law is to be made applicable, then the mother and wife of the deceased were entitled to receive the major portion of the compensation and, on satisfying their shares, if some amount is left as a residuary, that would only go to the brothers and sisters of the deceased. In such a situation, the wife of the deceased, who was widowed at a young age and even if she had settled herself by way of re-marriage later on, as the plea is raised by the learned Counsel for the Appellants for the first time before this Court, the same cannot be any impediment to grant just compensation as wife of the deceased.

20. In normal course, as against the mother of the deceased, who would have been in an advanced age, the wife of the deceased, being of young age, could have been granted a lion's share in the compensation, however, the Respondent-wife of the deceased had not challenged the award of the Tribunal by which she was granted just 50% of the compensation, leaving the rest of the 50% for the mother and siblings of the deceased. The Tribunal, in the considered opinion of this Court, has, thus, not committed any error while making an order for apportionment of the compensation as 50% to the wife of the deceased and 50% to the mother and siblings of the deceased. The plea of the Appellants, to this extent, is, thus, misconceived and is over-ruled.

21. The aforesaid modified amount of compensation, except Rs.40,000/- of spousal consortium which has been awarded to the Respondent No.4-Dr. Asiya Yaqoob as wife of the deceased, shall be

payable as 50% to the Appellants, being mother and siblings of the deceased, and 50% to the Respondent No.4-Dr. Asiya Yaqoob, being wife of the deceased. During the pendency of these appeals, two of the Appellants, namely, Waheeda and Zaffar Ahmad, have died, as such, their shares shall be released in favour of their legal heirs by the Tribunal.

22. The amount of compensation, if any deposited in the Registry of this Court, is directed to be sent to the learned Tribunal, through available mode, along with a copy of this Judgment, for its onward disbursement, in favour of the Appellants and Respondent No.4-Dr. Asiya Yaqoob, after proper identification, as per their shares.

23. Both the Appeals shall stand **disposed** of partly allowed, along with all connected CMs. Registry to place a copy of this Judgment across the files of both the Appeals.

24. The Record of the Tribunal be returned, along with a copy of this Judgment for further compliance.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

December 4th, 2023

"TAHIR"

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|-----|------------------------------------|------|
| i. | Whether the Judgment is speaking? | Yes. |
| ii. | Whether the Judgment is reporting? | Yes. |