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**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE  
HON'BLE SHRI JUSTICE ROOPESH CHANDRA VARSHNEY**

**ON THE 18<sup>th</sup> OF MARCH, 2024**

**MISC. APPEAL No. 1224 of 2021**

**BETWEEN:-**

**OMPRAKASH S/O SHRI MAN SINGH DHAKAD, AGED 46  
YEARS, R/O VILLAGE CHITARA, P.S. BADARWAS,  
DISTRICT SHIVPURI (MADHYA PRADESH)**

**.....APPELLANT**

***(BY SHRI AKSHAT JAIN - ADVOCATE ON BEHALF OF SHRI SUNIL JAIN -  
ADVOCATE)***

**AND**

- 1. BALVEER GURJAR S/O SHRI HUMUM SINGH  
GURJAR OCCUPATION: DRIVER R/O VILL.  
KALITOR P.S ISAGARH, DISTRICT ASHOKNAGAR  
(MADHYA PRADESH)**
- 2. SHRI ANANDPUR TRUST ANANDPUR P.S.  
ISHAGARH, DISTRICT ASHOKNAGAR (MADHYA  
PRADESH)**
- 3. THE ORIENTAL INSURANCE CO. LTD A-25/27 ASAF  
ALI ROAD NEW DELHI -1100002 THROUGH  
BRANCH MANAGER, BYPASS ROAD, DISTRICT  
ASHOKNAGAR (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI R.V.SHARMA - ADVOCATE FOR RESPONDENT NO.3)***

*This appeal coming on for admission this day, the court passed the  
following:*

**ORDER**

Appellant/claimant has filed this appeal under Section 173(1) of Motor Vehicles Act, 1988 being aggrieved by award dated 5/4/2021 passed by Second Additional Member, Motor Accident Claims Tribunal, District Ashoknagar in

Claim Case No. 37/2019, whereby, the claim case preferred by appellant/claimant seeking compensation to the tune of Rs. 9,25,000/- for the death of his uncle (mama) has been rejected.

2. Briefly stated facts of the case are that on 17/11/2018 at about 6.00 pm when deceased Kaluram was going to his house on his motorcycle from Anandpur Trust, it is alleged that due to rash and negligent driving of respondent No. 1, the offending vehicle dashed the motorcycle due to which deceased fell down and sustained grievous hurts, he was taken to the hospital; however, during treatment he succumbed to the injuries sustained by him. Since the deceased was issue less, appellant showing himself to be Bhanja (Nephew/sister's son) of deceased filed claim case seeking compensation to the tune of Rs. 9,25,000/- which has been turned down by the learned Claims Tribunal holding that appellant failed to establish that he was dependent on deceased and is only legal representative of deceased.

3. It is the submission of learned counsel for the appellant that learned Claims Tribunal erred in dismissing the impugned claim case. It is submitted that due to death of deceased, appellant suffered great mental and physical agony. Deceased used to contribute to appellant and absence of any rebuttal, learned Claims Tribunal erred in dismissing the claim case against the settled principles of law. The evidence available on record has not been appreciated by Claims Tribunal in right perspective. Appellant being Bhanja and only Legal Representative of deceased, was entitled to received compensation. In support of his contentions, he relied upon the decisions of Apex Court in the matter of **Manjuri Bera Vs. Oriental Insurance Co. Ltd. and Anr., 2007ACJ1279N.Jayasree and Ors., Vs. Chola mandalam MS General Insurance Company Ltd., 2021ACJ2685 and Kishan Gopal and Anr. Vs.**

**Lala and Ors., (2014)1SCC244.**

4. On the other hand, learned counsel for the Insurance Company supported the impugned award and prayed for dismissal of the appeal.

5. Heard learned counsel for the parties and perused the record.

6. Instant is an appeal against the dismissal of the claim case moved on behalf of appellant claiming himself to be Bhanja and only LR of deceased.

7. Accident and death of deceased Kaluram in the accident by the offending vehicle is proved.

8. It is not in dispute that deceased was issue-less and appellant pretending himself to be Bhanja and only LR of deceased filed the claim case, which has been dismissed. Hence, this appeal.

9. No concrete evidence has been produced by the appellant to prove that he is the Bhanja of deceased in relation and in this regard the certificate and panchnama produced are not proved through evidence as no evidence of concerned was recorded. Even otherwise, it is accepted for a moment that appellant is Bhanja of deceased then also he is not covered under the purview of legal representative. Mother of appellant i.e. sister of deceased was alive in year 2018 when the claim case was filed and she died in year 2019 and since at the time of filing claim case she was alive, appellant cannot be treated as legal representative of deceased. Further appellant is aged 45 years and therefore, it cannot be accepted that he was dependent upon the deceased and used to live with him and further no evidence in this regard is produced by the appellant. Hence, appellant cannot be treated as legal representative and dependent upon the deceased. Hence, in the opinion of this Court, learned Claims Tribunal did not err in dismissing the claim case filed by appellant and no irregularity,

illegality or perversity has been caused while passing the impugned order.

10. In view of above discussion, the decisions of Apex Court cited by learned counsel for the appellant move in different factual realm and therefore, could not be applied to the facts and circumstances of the instant case.

11. Appeal sans merits and is hereby dismissed.

**(ROOPESH CHANDRA VARSHNEY)**  
**JUDGE**

JPS/-

