

**IN THE HIGH COUR OF MADHY PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE ANIL VERMA**

**MISC. APPEAL No. 3433 of 2022**

**BETWEEN:-**

**CHOLAMANDALAM MS GENERAL  
INSURANCE BRANCH MANAGER, R/O: AT  
PRESENT 351-A, VINAYAK REAL ESTATE  
MAHALAXMI NAGAR MAIN ROAD, NEXT  
TO AMERICIAN OPTICALS, INDORE  
(MADHYA PRADESH)**

**.....APPELLANT**

***(SHRI PANKAJ KUMAR JAIN - ADVOCATE)***

**AND**

**1. HAJARILAL S/O LATE SHRI SIDDHNATH,  
AGED ABOUT 31 YEARS, OCCUPATION: NIL,  
R/O: GRAM SIKANDERI, POST SANDAWATA,  
TEHSIL KHILCHIPUR, DIST. RAJGARH  
(MADHYA PRADESH)**

**2. RADHESHYAM GURJAR S/O SHRI  
MANSINGH GURJAR, AGED ABOUT 24  
YEARS, OCCUPATION: AGRICULTURIST,  
R/O: GRAM ROJDI, TEHSIL NALKHEDA,  
DISTRICT AGAR MALWA (MADHYA  
PRADESH)**

**3. MANSINGH GURJAR S/O BAPULAL  
GURJAR, AGED ABOUT 57 YEARS,  
OCCUPATION: AGRICULTURIST, R/O: GRAM  
ROJDI, TEHSIL NALKHEDA, DISTRICT  
AGAR MALWA (MADHYA PRADESH)**

**.....RESPONDENTS**

***(MR. AKHIL GODHA - ADVOCATE FOR RESPONDENT NO.1)***

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Reserved on : 08.02.2024

**Pronounced on : 16.02.2024**  
**Whether approved for reporting: YES**

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

**ORDER**

With the consent of both the parties, matter is heard finally at the stage of motion hearing.

2. This Misc. appeal has been filed by the appellant / Insurance Company under Section 173(1) of the Motor Vehicles Act, 1988 (in short 'MV Act') for setting aside the impugned award dated 30.03.2021 passed by the 2nd Additional Member, MACT, Rajgarh in MACC No.5/2018, whereby an award of compensation of Rs.16,32,200/- has been awarded in favour of respondent No.1.

3. The relevant and necessary facts are that on 23.09.2017 at about 11:45 PM, while the deceased Rambabu along with his friend Peerulal was going to village Choma on a motorcycle, at that time, nearby the College, respondent No.2 / driver of the Tractor bearing Registration No. MP-70-A-0769 had driven the said vehicle at high speed rashly and negligently and hit the deceased's motorcycle, due to which 32 years old deceased Rambabu seriously injured. The vehicle was insured offending by appellant's Company.

4. The respondent No.1 has preferred a claim petition before the claims Tribunal and claims Tribunal after scrutinizing the evidence available on record, awarded the compensation of an amount of Rs.16,32,200/- in favour of the respondent No.1. Being aggrieved by the

impugned award, appellant has preferred this Misc. Appeal.

5. Learned counsel for the appellant submits that deceased Rambabu was unmarried and his parents have already been died. Respondent No.1 is the brother of deceased. He has his own source of income and was not dependent upon the deceased. The respondent No.1 / claimant being legal representative of the deceased is entitled to get compensation to the extent of no fault liability *i.e.* Rs.50,000/-. These material aspects are not considered by the below Tribunal. In absence of proof of income, notional income of Rs.9,000/- per month is on much higher side. Insurance Company of the motorcycle is a necessary party. Hence, he prays that impugned award be set aside.

6. *Per contra*, learned counsel for respondent No.1 opposes the prayer and prays for its rejection by submitting that impugned award passed by below Tribunal is just and proper and does not deserve for any interference.

7. Counsel for both the parties heard at length and perused the record of below Tribunal with due care.

8. In the case of **National Insurance Company Ltd. vs. Birender and Others** reported in **2020 (11) SCC 356**, Hon'ble Apex Court has held that "even major married and earning sons of deceased being legal representatives have a right to apply for compensation and it would be bounden duty of Tribunal to consider application irrespective of whether they were fully dependent on deceased or not, in accordance with law". Para numbers 12 and 14 are reproduced as below:-

**"12. The legal representatives of the deceased could move application for compensation by**

**virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependent on the deceased, would be still covered by the expression “legal representative” of the deceased.** This Court in *Manjuri Bera* [*Manjuri Bera v. Oriental Insurance Co. Ltd.*, (2007) 10 SCC 643 : (2008) 1 SCC (Cri) 585] had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the legal representative concerned. Notably, the expression “legal representative” has not been defined in the Act. In *Manjuri Bera* [*Manjuri Bera v. Oriental Insurance Co. Ltd.*, (2007) 10 SCC 643 : (2008) 1 SCC (Cri) 585] , the Court observed thus: (SCC pp. 647-48, paras 9- 12)

“9. In terms of clause (c) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view [*Manjuri Bera v. Oriental Insurance Co. Ltd.*, 2003 SCC Online Cal 523 : (2004) 2 CHN 370] that the appellant could maintain a claim petition in terms of Section 166 of the Act.

9. According to Section 2(11) of CPC “legal representatives” means a person who in law represents the estate of a deceased person, and includes any person who inter-meddles with the estate of the deceased and where a party sues or is sued in a representative character

the person on who the estate devolves on the death of the party so suing or sued.

10. Learned counsel for the appellant submits that as per law laid down by Hon'ble Apex Court in the case of **Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another (2009) 6 SCC 121, National Insurance Company Limited Vs. Pranay Sethi and Ors. Special Leave Petition (Civil) No.25590/2014** that “*married brother / respondent No.1 cannot be considered as a dependent on the deceased, therefore, he is not entitled for compensation*”, but in the case of **Karri Krishna Mohan Vs. Kuppili Gaddemma, 2016 (1) ACJ 257** it has been held that “*sister is a dependent as well as the legal representative and is entitled to compensation*”.

11. As per law laid down by Hon'ble the Apex Court in the case of **Montford Brothers of St. Gabriel & Anr. Vs. United India Insurance & Anr. Etc. in Civil Appeal Nos.3269-3270 of 2007** judgment dated 28.01.2014 it has been held that “*brother of the deceased is a legal representative of the deceased*”. The same is held by the Chhattisgarh High Court in the case of **Oriental Insurance Company Ltd. Vs. Kamta Prasad Sahu and Ors. 2021 Legal Eagle (Chh) 628**, therefore, it is clear that in the instant case at the time of incident deceased was unmarried and his parents have already died before his death, therefore, his brothers and sisters can be treated as a legal representative as well as the dependent on the deceased.

12. Respondent No.1 is the real brother of the deceased, but from perusal of the statements of Peerulal (PW-2), it is also proved that

deceased Rambabu was having two younger sisters, but respondent No.1 did not implicate his two younger sisters as a legal representative of the deceased and no application has been made on behalf of two younger sisters of the deceased. Respondent No.1 has submitted a false declaration before the below Tribunal that no other legal heirs are available in respect of the deceased Rambabu, therefore, in the interest of justice, this Court is of the considered opinion that two younger sisters of the deceased would not be deprived from getting compensation of her deceased brother.

13. In light of the law laid down by Hon'ble the Apex Court in the case of **Brahampal and Ors. Vs. National Insurance Company, Manu/SC/0778/2020** and **National Insurance Corporation Ltd. vs. Kanti Devi (Mrs) and Others (2005) 5 SCC 789** that matter can be remitted back to MACT for its fresh consideration.

14. In view of the above, the appeal is allowed and the impugned award dated 30.03.2021 passed by the below Tribunal is set aside. As the Tribunal has not adjudicated the claim on merit, this Court remand back the matter to the concerned MACT for its fresh consideration on merits after implicating both the younger daughter of the deceased as a party and after giving sufficient opportunities of hearing to them.

14. Taking into consideration the fact that the accident had taken place in the year 2017, it is directed to below Tribunal to decide the same within a period of six months from the date of communication of this order.

15. Accordingly, the present Misc. Appeal is disposed off with no order as to costs.

Certified copy as per rules.

**(ANIL VERMA)**  
**J U D G E**

*Anushree*