

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**MISC. APPEAL (C) NO. 273 OF 2008**

Bajaj Allianz General Insurance Company Limited, Shiv Mohan Bhawan,  
Vidhansabha Road, Pandri, Raipur, District Raipur (C.G.)

**... Appellant**

**versus**

1. Banshilal Verma, S/o Shri Fudruram Verma, aged 50 years
2. Smt. Gangabai, W/o Banshilal Verma, aged about 45 years  
Both residents of Village Lavan, Police Chowki Lavan, P.S. Kasdol,  
District Raipur (C.G.)
3. Bhuneshwar Prasad, S/o Samarpal, aged 23 years, R/o Sonpuri,  
Tahsil Balodabazar, District Raipur (C.G.)
4. Smt. Chandabai Pradhan (since died), through LRs
- 4(A). Dauram Pradhan, S/o Kunuram Pradhan, aged 62 years
- 4(B). Dinesh Kumar, S/o Dauram Pradhan, aged 38 years
- 4(C). Dhanesh Kumar, S/o Dauram Pradhan, aged 35 years
- 4(D). Milan Kumar, S/o Dauram Pradhan, aged 32 years
- 4(E). Lalita Pradhan, D/o Dauram Pradhan, aged 31 years
- 4(F). Anita Pradhan, D/o Dauram Pradhan, aged 28 years
- 4(G). Sunita Pradhan, D/o Dauram Pradhan, aged 30 years  
All R/o Post Kumhari, Tah. Kasdol, District Raipur (C.G.)

**... Respondents**

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For Appellant : Mr. Ghan Shyam Patel, Advocate, under instructions  
of Mr. Abhishek Sinha, Advocate.

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**03/11/2017**

1. The matter is today listed on default, on account of non-compliance of order dated 28.6.2017 passed by this Court allowing I.A. No.3 for bringing on record the legal representatives of Respondent No.4 who has since expired.
2. Learned Counsel for the Appellant is directed to incorporate the necessary amendment in this regard during the course of the day itself.
3. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the Appellant-Bajaj Allianz General Insurance Company Limited, assailing the award dated 26.12.2007 passed by the First Additional Motor Accidents Claims Tribunal, Balodabazar, in Claim Case No. 251/2006.

4. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.1,20,000/- to the claimants with interest thereon at the rate of 7% per annum from the date of presentation of the claim application and fastened the liability for payment of compensation upon the insurance company indemnifying the owner and driver of the offending vehicle.

5. The primary ground of challenge to the impugned award by the insurance company is that the offending vehicle, which was a tractor-trolley bearing registration no. CG04-DA-4435/4436, was registered and insured for agriculture purpose but was being used for commercial purpose.

6. Perusal of record would show that, to substantiate the contention put forth by the insurance company they have led evidence of one Vikash Khande, a law officer of the insurance company. Except for the statement of the said law officer, there is no evidence on record by which it can be said that the insurance company has been able to prove its case that the offending vehicle was being used for other than that for agriculture purpose. On the contrary, there is a pleading of the owner-cum-driver who have categorically stated that the sand which was loaded in the offending vehicle was being used to be taken to the agriculture field for construction of boundary wall to protect the field from animals and cattle. In view of the same, this Court is of the opinion that there is no substantive material brought forth by the insurance company to interfere with the impugned award.

7. The appeal of the insurance company thus being devoid of merits deserves to be and the same is accordingly dismissed.

Sd/-  
**(P. Sam Koshy)**  
Judge