

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal No. 765 of 2005**

1. Hajari Lal Kashyap S/o Shri Rammilan Singh, aged about 38 years, R/o near Geeta Lodge, Bus Stand, Bilaspur, Tahasil & District Bilaspur, CG (Owner of Vehicle Tractor bearing No. CG 10A/4045)
2. Shiv Kumar Sahu S/o Shri Mangluram Sahu, aged about 30 years, R/o Nayapara Birkona, P.S. Koni, Tahasil & District Bilaspur, CG

---- Appellants**Versus**

1. Santoshi Bai W/o late Nankiram Soni, aged about 30 years, R/o Karbal Road, Kumharpara Bilaspur, Tahasil & District Bilaspur, CG
2. Manoj Kumar S/o late Nankiram Soni, aged about 11 years
3. Kumari Gayatri S/o late Nankiram Soni, aged about 8 years
4. Sanju Kumar S/o late Nankiram Soni, aged about 6 years
5. Kumari Thleshwari S/o late Nankiram Soni, aged about 2 years

Respondents 2 to 5 are minor and represented through their mother Santoshi Bai W/o late Nankiram Soni, aged about 30 years, R/o Karbal Road, Tahasil & District Bilaspur, CG

6. Kirtin Bai W/o Tengnu, aged about 52 years, R/o near Sanjay Nagar Station, Akaltara Tahasil & District Janjgir, CG
7. The United India Insurance Company Ltd. Branch Office Medekar Complex, Rajendra Nagar Chowk, Tahasil & District Bilaspur, CG

---- Respondents

For Appellants	:	Smt. Kiran Jain, Advocate
For Respondents 1 to 5	:	M/s Minu Banerjee, Advocate
For Respondent no.7	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board**

20/11/2017

Present is an owner's appeal under Section 173 of the Motor Vehicles Act assailing the award dated 19.04.2005 passed by the 10th Additional Motor Accident Claims Tribunal (FTC), Bilaspur (CG) in Claim Case No. 45 of 2004. Vide the impugned award the Tribunal in a death case under Section 166 of the MV Act has awarded a compensation of Rs.2,67,120 with interest @ 6% per annum from the date of application.

2. While passing the impugned award the Tribunal has exonerated the Insurance Company of its liability on the ground that on the date of accident the vehicle was being used for a purpose other than agricultural work for which it was registered and insured.

3. Counsel for the appellants opposing the award submits that the evidence of the Insurance Company does not disclose sufficient fact with which it could be said that the vehicle was being used for commercial purpose. According to the counsel for the appellants, admittedly, on the date of accident the tractor was being used for carrying bricks but the same was being transported for construction of the house of the appellant-owner and therefore it cannot be said that it was being used for commercial purpose. Counsel for the appellants further submits that since the policy issued was a Kisan package policy, the Insurance Company should have been liable for indemnifying the owner and it should have been directed to pay the compensation amount awarded.

4. However, perusal of the record would show that the appellant-owner himself had entered appearance before the Tribunal but has not led any evidence so far as proving the fact that the tractor was being used for agricultural purposes or that the bricks transported in the tractor were being

taken to the agricultural field/farm of the appellant-owner. In the absence of any such strong proof, evidence or deposition on the part of the appellant-owner, the finding of the Tribunal cannot be said to be either bad in law, erroneous or contrary to the evidence which has come on record. This Court does not find any strong case made out by the appellants to interfere with the impugned award fastening the liability upon the Insurance Company.

5. The appeal thus being devoid of merit, deserves to be and is accordingly dismissed.

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