

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR

First Appeal No.68 of 2016  
(Subhash Gangadhar Ratnaparkhi v. Sk. Salim Sk. Jumman (Abated),  
United India Insurance Co. Ltd., Akola, and others)

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Office Notes, Memoranda of Coram,  
appearances, Court's orders or directions      Court's or Judge's orders  
and Registrar's order

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Shri O.Y. Kashid, Advocate for Appellant.  
Shri H.V. Thakur, Advocate for Respondent No.2.

**Coram : R.K. Deshpande, J.**  
**Date : 8<sup>th</sup> February, 2016**

The appeal is dismissed as abated against the respondent No.1, who is the owner of the offending vehicle, on 17-11-2015. No steps are taken to bring his legal representatives on record.

Shri Thakur, the learned counsel appearing for the respondent No.2-Insurance Company, has relied upon the following decisions of the Apex Court, this Court and the Madhya Pradesh High Court :

- (1) **1998 ACJ 121** -  
Oriental Insurance Co. Ltd. v. Sunita Rathi and others.
- (2) Decision of this Court in First Appeal No.65 of 1995 (Nandkishore s/o Narayandas Jakhete v. Devidas s/o Bhimji Mahajan and another) delivered on 27-4-2009.

- (3) **AIR 2010 Madhya Pradesh 121** -  
Smt. Sushila and another v. Rajeersingh and others.

The view taken in the aforesaid decisions is that the liability of the insurer arises only when the liability of the insured has been upheld for the purposes of indemnifying the insured under the contract of insurance. It is held that if the appeal is dismissed as abated against the owner, the appeal cannot proceed against the Insurance Company.

In view of this, the appeal is dismissed as abated.

Needless to say that the appellant shall be at liberty to file an application for setting aside the abatement.

Judge.

Lanjewar