

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 764 OF 2018
IN
FIRST APPEAL NO. 2050 OF 2007**

Shobha w/do. Jagannath SopeApplicant

In the matter between :-

The New India Assurance Co. Ltd.Appellant

V/s.

Shobha w/do. Jagannath Sope & Anr. ...Respondents

Mr. P.M. Khankar for the applicant.

Ms. Poonam Mittal for respondent no.1.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 20th FEBRUARY, 2019.**

P.C.:

. By this application, the applicant herein has sought dismissal of the appeal as abated.

2. The respondent / insurance company has challenged the award dated 01/03/2006 in Claim Application No.2971/1996 awarding compensation of Rs.3,68,000/- with interest @ 7.5% per annum to the mother and the widow of the deceased. Out of the said compensation of Rs.3,68,000/-, Rs.1,00,000/- is ordered to be paid to Sundarabai Sukhadeo Sope, mother of the deceased and the balance is ordered to be paid to Shobha Sope, widow of the deceased.

3. The insurance company has deposited the amount before the MACT, as per the impugned judgment and award. The appeal has been admitted. It appears that during the pendency of the appeal, the mother of the deceased i.e. Sundarabai Sope has expired and no application was filed for bringing on record the legal representatives of the deceased Sundarabai Sope. The applicant herein who is the widow of the deceased has filed the application stating that the entire appeal be dismissed as abated.

4. Mr. P.M. Khankar, learned counsel for the applicant submits that since the award of compensation was jointly in favour of both, the appeal cannot proceed as against the respondent no.2. He has relied upon the decision of the Apex Court in *State of Punjab v/s. Nathu Ram [AIR 1962 SC 89]*.

5. At the outset, it may be mentioned that the pleader / counsel for the applicant herein had not informed the Court about the death of the respondent no.1, the mother of the deceased as required under OXXII Rule 10A of the Civil Procedure Code. Furthermore, the right to challenge the quantum awarded in favour of respondent no.2 survives. Hence, the appeal as a whole would not abate. Decision relied upon by

the learned counsel for the applicant is distinguishable and is not applicable to the facts of the present case. The application has no merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)