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

**FIRST APPEAL NO.1202 OF 2016
WITH
CIVIL APPLICATION NO. 1544 OF 2014**

Senior Divisional Controller,
N.W.K.R.T.C. Belgaum Divisional
Office, Belgaum (Karnataka) ..APPELLANT

VERSUS

1. Keyur s/o Ajay Hardas,
Aged 16 years, (Minor), Occ: Student,
Through his natural guardian
mother Smt. Neeta w/o Ajay Hardas,
R/o. 498-A, "Ramayana" Professor
Colony, Hanuman Nagar, Nagpur.
2. The Managing Director,
M/s Vijayanand Road Lines Ltd.,
No.3, Ekkey Complex, Hubli,
Dist. Dharwad (Karnataka).
3. The Divisional Manager,
United India Insurance Company
Limited, through its
Divisional Officer, Divisional
Office at Enkay Complex,
Keshawapur, Hubli,
Dist. Dharwad (Karnataka). ..RESPONDENTS

WITH

**FIRST APPEAL NO.1203 OF 2016
WITH
CIVIL APPLICATION NO. 1471 OF 2014**

Senior Divisional Controller,
N.W.K.R.T.C. Belgaum Divisional
Office, Belgaum (Karnataka) ..APPELLANT

VERSUS

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1. Dr. Ajay Nilkanth Hardas,
aged 50 years, Occ: Medical
Practitioner, R/o. 498-A,
Ramayana" Professor Colony,
Hanuman Nagar, Nagpur.
2. The Managing Director,
M/s Vijayanand Road Lines Ltd.,
No.3, Ekkey Complex, Hubli,
Dist. Dharwad (Karnataka).
3. The Divisional Manager,
United India Insurance Company
Limited, through its
Divisional Officer, Divisional
Office at Enkay Complex,
Keshawapur, Hubli,
Dist. Dharwad (Karnataka). ..RESPONDENTS

Mr V.G. Wankhede, Advocate for appellant;

CORAM : N.W. SAMBRE, J.

DATE : 24th APRIL, 2017

ORAL ORDER :

Both these appeals are by Statutory State Transport Corporation, State of Karnataka, questioning the award delivered by Motor Accident Claims Tribunal, Nagpur in Motor Accident Claim Petition No. 1150 of 2005 on 5th May, 2012 under Section 166 of the Motor Vehicles Act, 1986 directing the present appellant to pay 50%

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compensation of total compensation of Rs.1,20,000/- including no fault liability i.e. Rs.60,000/- to the claimant-respondent in First Appeal No.1202 of 2016 and Rs.25,000/- i.e. 50% compensation of Rs.50,000/- to the claimant-respondent in First Appeal No. 1203 of 2016.

2. The accident in question took place due to collision of two buses bearing No. KA-22/F-797 and KA-25/A-1732.

3. According to learned Counsel for the appellant, later bus bearing No.KA25/A-1732 was owned by respondent No.2 and insured with respondent No. 3. According to him, in the same accident, High Court of Karnataka, Circuit Bench at Dharwad by judgment and order dated 22nd August, 2012 in M.F.A. No. 12572 of 2006 (M.V.) has exonerated liability of present appellant and directed the same as against respondent No. 3- insurance company.

4. The respondents though served, none appears.

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5. That by the judgment delivered by the Karnataka High Court, Circuit Bench at Dharwad in M.F.A. No.12572 of 2006 (M.V.) on 22nd August, 2012, has decided controversy qua liability to pay compensation. Said High Court has directed insurance company to pay and said liability is not questioned before the Apex Court by the Insurance Company. Hence, said judgment has attained finality qua parties to the said appeal.

6. Having perused the said judgment, it is noted that the compensation awarded by Motor Accident Claims Tribunal, Nagpur arising out of same accident, the appellant-Statutory State Transport Corporation, Karnataka is held to be liable for payment of compensation. The High Court of Karnataka, Circuit Bench at Dharwad while dealing with the claim, particularly liability to pay compensation in paragraph-7 has considered issues framed by the Motor Accident Claims Tribunal and thereafter proceeded to analyze the evidence brought on record. In paragraph-14 of the said judgment while fastening liability on present respondent Nos. 2 and 3, High Court of Karnataka,

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Circuit Bench at Dharwad has made following observations.

"14. The claimants have produced Exh.P-6, the scene of offence/Panchnama in the case. The recitals in Ex.P-6/Scene of offence-Panchnama reveal that the road at the spot of accident i.e., the tar portion of the road has a width of 16'. The bus belonging to the Corporation was proceeding from Bailhongal to Belavadi i.e., from north to south. The bus owned by the 1st respondent and insured with the 2nd respondent was proceeding from south to north i.e., from Belavadi to Bailhongal. Further, the recitals in the spot panchnama/Ex.P-6 reveal that the road to an extent of 13' had been left, to the right side of the Corporation bus in the direction in which it was proceeding. If 13' width road has been left to the right side of the Corporation bus, the bus owned by the 1st respondent involved in the accident had sufficient space to pass on the said road, if it were to be on its left side. In view of the material on record, having regard to the recitals in the spot panchnama/Ex.P-6, applying the principles of *res ipsa loquitor*, it has

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to be held that the bus owned by the 1st respondent and insured with the 2nd respondent has come to the off-side of the road and has dashed against the bus belonging to the Corporation.

Therefore, the contention of the 2nd respondent/insurer that the accident has not taken place due to the fault of the driver of their bus cannot be upheld."

7. In the wake of said observations and having regard to the fact that respondents to the present appeal have not disputed the same, and have chosen to remain absent, it will be appropriate, in my opinion, to order notice to the respondents for final disposal, returnable in eight weeks. It is made clear that the appeal will be heard and disposed of finally at admission stage.

8. In view of above detailed order, there shall be stay to further execution.

(N.W. SAMBRE, J.)

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