Before Kanwaljit Singh Ahluwalia, J.

KULWANT SINGH,—*Petitioner*

versus

MUNICIPAL CORPORATION, AMRITSAR AND OTHERS,—*Respondents*

CWP No. 10565 of 1989

15th September, 2010

Constitution of India, 1950—Art.226—Instructions dated 21st March, 2002 issued by Government of Punjab—Death of a man in an accident of Government vehicle—MACT awarding compensation to claimants—M.C. taking stand that driver was not negligent and responsible for causing accident—Whether recovery of compensation could be effected from petitioner—Held, no-Once respondents themselves were not satisfied with findings of Tribunal, order to effect recovery could not be passed-Government instructions dated 21st March, 2002 holding driver of Government vehicle squarely responsible for an accident not applicable as the same were not existing when accident took place—Respondents also failing to take into consideration acquittal of petitioner by Criminal Court and antecedents of his previous conduct—Petition allowed, order of recovery quashed.

Held, that the respondent-Municipal Corporation, Amritsar was vicariously liable for the act of the driver. However, in **Sampuran Singh** *versus* **State of Punjab and another,** 2009 (3) S.C.T. 137, the driver was held liable because of the Government instructions issued in the year 2002 and especially in the writ petition, there was no challenge to those instructions. In the present case, the accident had taken place in the month of August, 1983. At that time, no such instructions were in existence. Therefore, the ratio of law laid down in **Sampuran Singh's** case cannot be applied to the facts and circumstances of the present case. Thus, when the accident had taken place, there were no Government instructions in vogue, on the basis of which recovery could be effected from the petitioner.

(Paras 14 & 15)

Further held, that once the respondents themselves were not satisfied with the findings of the Tribunal, the impugned order to effect recovery could not be passed relying upon the findings of the Tribunal. Furthermore, the Municipal Corporation, while ordering recovery, had not considered the import and effect of the judgment of the Criminal Court, whereby the petitioner was acquitted of the charges. It was incumbent upon the respondent-Municipal Corporation to go through the contents of the judgment, whereby the petitioner was acquitted, and to find out as to whether the benefit of doubt given to the petitioner on the facts and circumstances of the case, can be considered as an honourable acquittal or not, as it has been held by the Courts that mere use of words '*benefit of doubt*' is not sufficient to infer that the acquittal has not been honourable.

(Para 17)

Vanita Sapra, Advocate, *for the petitioner.*

Sandeep Khunger, Advocate, *for respondent No. 1.*

J.S. Puri, Additional Advocate General, Punjab *for the State.*

Kanwaljit Singh Ahluwalia, J.

(1) Petitioner, an employee of the Punjab Roadways, Amritsar Depot was on deputation with the Municipal Corporation, Amritsar in the year 1975. Being an employee of the Punjab Roadways, he had a lien in the State Services of the Punjab Transport Department.

(2) On 18th August, 1983, the petitioner was driving a bus bearing registration No. PYE-5506 belonging to the Municipal Corporation, Amritsar and during the course of duty, he caused an accident, as a result whereof a cyclist, namely Kartar Singh, received injuries and subsequently died in the hospital. Legal heirs of the deceased-Kartar Singh instituted a claim petition for grant of compensation in the Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as, 'the Tribunal'). The Tribunal,—*vide* its judgment dated 16th January, 1987, awarded compensation to the claimants to the tune of Rs. 36,000 with interest at the rate of 12 per cent per annum from the date of filing of the claim petition till actual payment. The employer along with the petitioner was held jointly and severely liable to satisfy the award. An application for execution was filed and the Municipal Corporation,

Amritsar paid Rs. 51,120 to the widow and daughter, the only legal heirs of the deceased-Kartar Singh, towards discharge of the claim. The employer, with whom the petitioner was on deputation, having paid the amount of compensation, issued a show-cause-notice dated 12th May, 1989 as to why the amount be not recovered from salary of the petitioner at the rate of Rs. 500 per month. The petitioner filed reply and pleaded therein that since the accident had taken place during the course of employment, the amount cannot be recovered from the employee. However, respondent No. 1 Municipal Corporation, Amritsar on 13th July, 1989 passed the impugned order (Annexure P-4) to deduct Rs. 500 per month from the salary of the petitioner to recoup the recovery. The impugned order (Annexure P-4) further stated that in case the High Court enhances the amount of compensation, further action against the petitioner shall be considered lateron. In the present writ petition, the petitioner has assailed order (Annexure P-4), whereby the amount was sought to be recovered after making necessary deduction from the salary of the petitioner. It is prayed that the impugned order (Annexure P-4) be quashed by this Court.

(3) Ms. Vanita Sapra, Advocate appearing from the petitioner, has contended that the employer is vicariously liable for the conduct of its servant and therefore, recovery of the amount cannot be effected from the petitioner. It is further submitted that the respondent-Corporation had taken a categoric stand before the Tribunal that the accident had not occurred due to rash and negligent driving of the petitioner. Referring to the written statement filed by the employer, it is submitted that the employer genuinely believed that the accident had taken place on account of negligence of the deceased-cyclist himself, therefore, once the employer was convinced that the petitioner was not responsible for the accident, then without holding any enquiry and following principles of natural justice, the petitioner could not be made liable to pay Rs. 500 per month from his salary. It is further submitted that the employer had led an appeal bearing FAO No. 402 of 1987 in this Court. The grounds of appeal have been annexed as Annexure P-6 with the petition. It is stated that from a perusal of grounds of appeal it is evident that the employer had pleaded that the petitioner, being a driver of the bus, was not negligent at all and the accident had taken place due to negligence of the cyclist. Counsel for the petitioner has further placed reliance upon the judgment (Annexure P-7) passed by the Additional

Sessions Judge, Amritsar, wherein the appeal filed by the petitioner was accepted and he was acquitted of the charges under Section 304-A IPC. It is submitted that once the petitioner has been acquitted of the charges of rash and negligent driving, he cannot be made liable to pay the amount of compensation.

(4) To rebut the arguments advanced by counsel for the petitioner, counsel for the opposite party has relied upon the judgment (Annexure P-1) dated 16th January, 1987 passed by the Tribunal, wherein it was held as under :

> "11. ……… I find sufficient circumstances on the file to show that the accident took place as alleged due to rash and negligent act of the bus driver.
>
> Therefore, issue No. 3 is decided accordingly that the accident resulting the death of Kartar Singh took place due to rash and negligent driving of driver Kulwant Singh respondent No. 1, by driving bus No. PJE-5506."

(5) It is stated that once the Tribunal, on the basis of the evidence led, came to a conclusion that the accident had occurred due to rash and negligent driving of the petitioner in driving the bus, there was no need to hold any enquiry and on the basis of findings returned by the Tribunal itself, the impugned order (Annexure P-4), whereby recovery was ordered to be effected from the petitioner, is justifiable.

(6) Having noticed the rival contentions, it is necessary to notice the case law relied upon by counsel for the parties.

(7) A Division Bench of this Court, in '**Sampuran Singh** *versus* **State of Punjab and another, (1)** has held that an employer is entitled to recover the pecuniary loss caused due to negligence of a Government servant. For coming to this conclusion, the Division Bench relied upon Government instructions issued on 21st March, 2002 and further concluded that since there was no challenge to these instructions, therefore the employer had a right to effect recovery from the driver, who caused the accident.

(1) 2009 (3) S.C.T. 137

The instructions, so issued by the Government, form part of the judgment rendered in **Sampuran Singh's case** *(supra)* and are reproduced below from the said judgment :

"No. 14/148/2001-1FEI/2601
GOVERNMENT OF PUNJAB
DEPARTMENT OF FINANCE

(Finance expenditure-I Branch)

Dated, Chandigarh, the 21st March, 2002

All Heads of Departments,
Commissioners of Divisions,
Registrar, Punjab & Haryana High Court,
District & Sessions Judges and
All Deputy Commissioners in the State.

Subject : Payment of half of compensation money by the driver of the Government vehicle responsible for an accident.

Sir,

I am directed to refer to the subject noted above and to say that in order to safeguard public interest it is made mandatory that in case any Court comes to the conclusion that the driver of a Government vehicle was squarely responsible for an accident, the concerned driver will have to pay atleast half of the compensation money awarded by the Court.

(Sd.) . . .,
Under Secretary Finance(C)"

(8) In **Sampuran Singh's case** *(supra),* further reliance has been placed upon **'Depot Manager, A.P.S.R.T. Corpn** *versus* **N. Ramulu and another (2)** and it was held that since Regulation 8(v) of the Andhra Pradesh State Road Transport Corporation Employees (CCA) Regulation, 1967 and Clause (5) thereof has been upheld by Hon'ble the Apex Court, therefore right of the employer to recover the pecuniary loss caused to it by an employee due to his negligence, exists. Another Division Bench of this Court in **'Jaswant Singh** *versus* **State of Haryana and others (3),** has held that recovery of the amount paid by the employer to the claimants can be made under the Civil Service Rules and such a recovery will amount

(2) (1997) 11 S.C.C. 319
(3) 2005 (2) S.C.T. 710

to minor punishment. Therefore, in case a show-cause-notice, detailing the gist of allegations, is served and thereafter, the employer considering the reply filed to the show-cause-notice, comes to a conclusion that recovery of the amount is to be effected from the employee, no fault can be found with the same. It will be apposite here to reproduce concluding portion of the judgment rendered in **Jaswant Singh** *versus* **State of Haryana** *(supra)*, which reads as under :—

> "6. *After due consideration of the reply, liability has been fastened on the petitioner, on the basis of the finding of rash and negligent driving given by this Court. The aforesaid order passed by the respondents is neither without jurisdiction nor contrary to the provisions of the rules. Under the rules, the loss caused to the exchequer can be recovered from the erring official, provided the procedure for inflicting minor penalty is duly followed. In the present case, the respondents have passed a detailed speaking order. There is no breach of rules of natural justice. The petitioner has been given every opportunity to put forward his version of the events. The legal and factual defences raised by the petitioner have been duly considered. In our opinion, no injustice has been caused to the petitioner.*

(9) In '**Sarwan Singh** *versus* **State of Punjab and others,** (4) it was held that where before the Motor Accident Claims Tribunal, it has been a consistent stand of the employer that the employee was not negligent, later-on the employer cannot recover the amount from such employee, without holding any enquiry to this effect. The reasoning adopted in **Sarwan Singh's case** *(supra)* was that the findings given by the Tribunal, *ipso-facto*, cannot be relied upon in the departmental proceedings. The employer has to come to a definite conclusion after affording due opportunity of hearing that negligence of the employee was such that the amount ought to be recovered from him. Following portion of the judgment rendered in **Sarwan Singh's** case *(supra)* is required to be noticed :

> "16. *Having considered the facts and circumstances of the case in extenso, I am of the considered opinion that the stand of the respondents has throughout been that the*

(1) 2010 (1) R.C.R. (Civil) 488

petitioner was not rash and negligent in performance of his duties as a driver. While investigating the criminal case, (FIR No. 34 P.S. Samrala dated 7th June, 1996 under Sections 304-A, 279, 337, 338-A and 427 IPC), a conscious conclusion has been drawn on the basis of relevant evidence and material that the accident occurred on account of mechanical failure and not in view of rash and negligent driving of the petitioner.

17. *The stand of the respondents, as asserted before the Motor Accident Claims Tribunal, as is evident from the extracted portion from reply filed on behalf of SSP, also indicates that the petitioner was not at fault and the accident occurred on account of reasons beyond the control of the petitioner i.e. because of mechanical failure of the vehicle.*

18. & 19. *XXXX XXXX XXXX*

XXXX XXXX XXXX

20. *I have further taken note of the fact that the respondents have not initiated any departmental proceedings against the petitioner so as to independently judge the conduct of the petitioner on 7th June, 1996, when the vehicle driven by the petitioner met with an accident. Order Annexure P-13 has not been passed under the statutory rules of service, which provide procedure to proceed against an employee. Absence of departmental inquiry proceedings in this regard and any finding indicating culpability of the petitioner also disentitle the respondents to effect recoveries from the petitioner.*

21. *There is another aspect of the matter also viz the impugned order Annexure P-13, although adversely affects the civil rights of the petitioner, has been passed without giving an opportunity of hearing to the petitioner. The order having been passed without following principles of natural justice is rendered illegal.*

22. *A perusal of Annexure P-13 indicates that the order has been passed by SSP, Jalandhar on premise that petitioner "caused accident because of driving the vehicle rashly and negligently, at high speed and as a result of which Head Constable Kuldip Singh No. 720/Khanna died." The stand of the respondents, however, has throughout been to the effect that petitioner was not rash or negligent and the accident had been caused on account of mechanical failure of the vehicle, which event was beyond the control of the petitioner. The respondents are, therefore, reprobating only because an award has been passed by the Tribunal for compensating the next of kin of Head Constable Kuldip Singh. This is not permissible as the basis of passing order Annexure P-13 is against the very stand of respondents, taken at various stages. The State is not expected to behave like an ordinary litigant. The action is unreasonable, irrational, injudicious and arbitrary.*

23. *Another aspect of the case is required to be considered viz. the respondents are only employer of the petitioner but also owners of the vehicle that was involved in the accident. It is the admitted case of the respondents that the petitioner-driver working for the respondents was on official duty. It has been the stand of the respondents that the petitioner, as per his duties, has done lawful acts by way of driving the vehicle correctly and properly, without negligence and rashness. The petitioner has not done any act which was disadvantageous to the interest of the respondent employer. Under these circumstances, at this juncture it does not behoove of the respondents to repudiate the acts of the petitioner and direct him to pay part of the compensation. The respondent-employer rather is required to indemnify the petitioner-employee against the consequence of the lawful acts done by the petitioner in exercise of authority conferred on him by the respondents for driving the vehicle."*

(10) Another Single Bench of this Court, in '**Amar Nath** *versus* **State of Haryana (5)** has held that an employee cannot be burdened with the liability by the State, when the accident occurred during the course of performance of the duties.

(11) In **Sampuran Singh's case** *(supra),* a reference was made to the judgment rendered by a Division Bench of Hon'ble the Apex Court in '**State of Maharashtra** *versus* **Kanchanmala Vijaysing Shirke (6)** and another judgment rendered by Rajasthan High Court in '**Jaswant Singh** *versus* **State of Rajasthan (7).** But the reasoning adopted in the above said two judgments was not considered. The Rajasthan High Court, in **Jaswant Singh** *versus* **State of Rajasthan** *(supra),* defined vicarious liability and held that to apply the doctrine of vicarious liability, two conditions must co-exist. First, the relationship of master-servant must exist between the defendant and the person committing the wrong complained of and the second that the servant committing the wrong has acted in the course of his employment. In **Jaswant Singh** *versus* **State of Rajasthan** *(supra),* further reliance has been placed upon '**State of Rajasthan** *versus* **Vidhyawati' (8)** wherein Hon'ble the Apex Court has held that the State is vicariously liable for the act of the driver in case the accident had occurred during the course of employment.

(12) '**State of Maharashtra** *versus* **Kanchanmala Vijaysing Shirke'** *(supra)* is a treatise regarding vicarious liability and relationship of master-servant, therefore, it will be better to extensively quote from that judgment, as the maxim of law propounded therein cannot be described in other words. The Division Bench of Hon'ble the Apex Court held as under :

> "9. *The question of payment of compensation for motor accidents has assumed great importance during the last few decades. The road accidents have touched a new height in India as well as in other parts of the world. Traditionally, before the court directed payment of tort compensation,*

(5) 2001 (2) S.C.T. 521
(6) 1995 (5) S.C.C. 659
(7) 2004 (1) S.C.T. 612
(8) AIR 1962 S.C. 933

the claimant had to establish the fault of the person causing injury or damage. But of late, it shall appear from different judicial pronouncements that the fault is being read as because of someone's negligence or carelessness. Same is the approach and attitude of the courts while judging the vicarious liability of the employer for negligence of the employee. Negligence is the omission to do something which a reasonable man is expected to do or a prudent man is expected to do. ***Whether in the facts and circumstances of a particular case, the person causing injury to the other was negligent or not has to be examined on the materials produced before the court. It is the rule that an employer, though guilty of no fault himself, is liable for the damage done by the fault or negligence of his servant acting in the course of his employment."***

(13) Their Lordships considered what Salmond had said in his book Law of Torts regarding master and servant relationship and further referred to Halsbury's Laws of England on this issue. Thereafter, the above said judgment considered case law on the subject and discussion can be read as under :

"11. In the case of ***London County Council*** *versus* ***Cattermoles (Garages) Ltd. (1953) 2 All ER 582,*** *a workman was employed as a general garage hand, for moving cars by pushing them or giving guidance to the drivers. He was not competent to drive, had no licence, and had been forbidden to do so. He got into a stationary van, started the engine, drove the van and went on to the highway. On the highway he collided with the plaintiff's van. The employers were held liable. A person who is a servant has always a personal independent sphere of life and at any particular time he may be acting in that sphere. In that situation, the master cannot be responsible for what he does. When the act of the servant causes injury to a third party the question is not answered by merely applying the test whether the act itself is one which the servant was ordered or forbidden to do. The employer has to shoulder*

the responsibility on a wider basis. In some situation he becomes responsible to third parties for acts which he has expressly or implicitly forbidden the servant to do.

12. It was said in the case of ***Ilkiw*** *versus* ***Samuels (1963) 2 All ER 879 at p. 998.***

'The driver of the vehicle, Waines, was employed, as I see it, not only to drive, but to be in charge of his vehicle in all circumstances during any such times as he was on duty. That means to say that, even when he was not himself sitting at the controls, he remained in charge of the lorry, and in charge as his employers' representative. His employers must remain liable for his negligence as long as the vehicle was being used in the course of their business. As I understand the authorities, the employers escape liability if, but only if, the vehicle was, at the time of the negligent act, being used by the driver for the purpose of what has been called a 'frolic' of his own. That is not this case. Here, at the material time, this vehicle was in fact being used in the course of the defendants' business.'

It was further said at p. 1005 :

'If, as in Ricketts' case ***(Ricketts*** *versus* ***Thomas Tilling Ltd.*** *(1915) 1 KB 644), and in the present case, the master puts the vehicle in the charge and control of his servant to be used for the purposes of the master's business, he thereby delegates to the servant his duty so to control it that it is driven with reasonable care while being used for that purpose ; and an express prohibition upon allowing any other person to drive it whilst being used for that purpose is no more than a direction as to the mode in which the servant shall perform the duty. It is a prohibition dealing with conduct within the sphere of employment.'*

In respect of a contention that the driver to whom the vehicle had been entrusted for driving had no authority from employer to delegate the driving of the vehicle to another person and because of that the employer cannot be made vicariously liable for the negligence of someone to whom he had purported to delegate the control of the vehicle, it was said at p. 1006 :

'The duty in tort of which he was in breach was, in my view, a duty delegated to him by the defendants under his contract of employment, and for that breach the defendants are vicariously liable notwithstanding that it resulted from his breach of an express prohibition by the defendants against permitting any other person to drive, for that prohibition did not limit the sphere of his employment, but dealt with the conduct of Waines within that sphere.'

It need not be pointed out that different considerations might arise if the servant or some stranger was using the vehicle for purposes other than the purpose of his master's business and the accident occurred while the vehicle was being used for that other purpose. But once it is found and established that vehicle was being used for the business of the employer, then the employer will be held vicariously liable even for the lapse, omission and negligence of his driver to whom the vehicle had been entrusted for being driven for the business of the employer.

13. In ***Staveley Iron and Chemical Co. Ltd.*** *versus* ***Jones (1956)*** *1 All ER 403, it was said that the legislation has in no way altered the standard of care which is required from workmen or employers or "that the standard can differ according to whether the workmen is being sued personally or his employer is being sued in respect of his acts or omissions in course of his employment".*

14. In the case of ***Pushpabai Purshottam Udeshi*** *versus* ***Ranjit Ginning and Pressing Co. (P) Ltd.*** *(1977) 2 SCC 745, it was said : (SCC pp. 756-57, para 14)*

> *'...we would like to point out that the recent trend in law is to make the master liable for acts which do not strictly fall within the term 'in course of the employment' as ordinarily understood. We have referred to* ***Sitaram Motilal Kalal*** *versus* ***Santanuprasad Jaishankar Bhatt*** *AIR 1966 SC 1967, where this Court accepted the law laid down by* ***Lord Denning in Ormrod*** *versus* ***Crosville Motor Services Ltd.*** *(1953) 2 All ER 753 that the owner is not only liable for the negligence of the driver if that driver is his servant acting in the course of his employment but also when the driver is, with the owner's consent, driving the car on the owner's business or for the owner's purposes. This extension has been accepted by this Court. The law as laid down by* ***Lord Denning in Young*** *versus* ***Edward Box and Co. Ltd.*** *(1951) 1 TLR 789, already referred to i.e. the first question is to see whether the servant is liable and if the answer is yes, the second question is to see whether the employer must shoulder the servant's liability, has been uniformly accepted as stated in Salmond's Law of Torts, 15th Edn., p. 606, in Crown Proceedings Act, 1947 and approved by the House of Lords in* ***Staveley Iron and Chemical Co. Ltd.*** *versus* ***Jones and ICI Ltd.*** *versus* ***Shatwell*** *(1964) 2 All ER 999.'*

From the facts of Pushpabai case, it will appear that one Purshottam Udeshi was travelling in a car which was driven by the Manager of the first respondent-Company. The car dashed against a tree resulting in the death of Purshottam. The widow and children of Purshottam filed a claim for compensation. The High Court held that the respondent-Company could not be held vicariously liable for the act of their driver in taking Purshottam as a

passenger as the said act was neither in the course of his employment nor under any authority whatsoever. Therefore, the respondent-Company was not liable to pay any compensation. It was pointed out by this Court that recent trend in law was to make the master liable for acts which do not strictly fall within the term "in the course of the employment" as ordinarily understood. It was held that the respondent-Company was vicariously liable in respect of the accident.

15. *On behalf of the appellants reliance was placed on the judgment in the case of* ***Sitaram Motilal Kalal*** *versus* ***Santanuprasad Jaishankar Bhatt.*** *In that case the owner of the vehicle entrusted it to A for plying as a taxi. B used to clean the taxi. He was either employed by the owner or by A. A trained B to drive the vehicle and took B for obtaining the licence for driving. While taking the test B caused bodily injury to the respondent. At the time of the accident, A was not present in the vehicle. On the question whether the owner was liable, it was held in the majority judgment that the owner was not liable because evidence did not disclose that owner had employed B to drive the taxi or given him the permission to drive the taxi. However, Subba Rao, J, (as he then was) held that the owner was liable because A did not exceed the authority conferred on him by the owner in employing B as a servant and permitted him to drive the vehicle in order to obtain the licence for assisting him as a driver. This case was considered by this Court in the case of Pushpabai and it was said that recent trend in law is to make the master liable for acts which do not strictly fall within the term "in the course of the employment" as ordinarily understood. The learned counsel for the appellants sought to distinguish Pushpabai case by contending that therein this Court accepted the unauthorised act of the driver being within the course of employment because of his occupying "high position of Manager", whereas in the case at hand Appellant 3—the*

driver—was a Class IV employee. We do not think that the ratio of the case turns on the position occupied by the driver. The real thrust of the decision is acceptance of the trend to make the master liable for acts which do not strictly fall within the term "in the course of employment" as ordinarily understood.

16. *In view of sub-section(1) of Section 94 of the Motor Vehicles Act, 1939 (Section 146 of the Motor Vehicles Act, 1988) no person can use or allow any other person to use a motor vehicle in a public place, unless there is in force relation to the vehicle by that person, a policy of insurance complying with the requirements of Chapter VIII. In view of sub-section (2) of Section 94 [sub-section (2) of Section 146 of Motor Vehicles Act, 1988], the said provision is not applicable to any vehicle owned by the Central or State Government and used for Government purposes. Sub-section (3) vests power in the appropriate Government to exempt from the operation of sub-section (1) of Section 94 any vehicle even owned by any local authority or any transport undertaking. Section 94 of the old Act as well as Section 146 of the new Act requires that a policy of insurance must provide insurance against any liability to third parties incurred by the person using the vehicle. But there is no such requirement so far the vehicles owned by the Central or State Government are concerned and if the exemptions are granted from operation of sub-section (1) of Section 94 it is not incumbent even on the part of any local authority or any State transport undertaking to take out insurance policy providing insurance against any liability to third parties incurred by the person using the vehicle. In this background, according to us, the courts while judging the liability of the Central or State Government or local authorities or transport undertakings, which have been exempted from the provision of sub-section (1) of Section 94, have to*

be more cautious, while recording a finding as to whether in the facts and circumstances of a particular case the Central or the State Government or the local authority or the transport undertaking in question can be held vicariously liable for any act of its employee in the course of employment. As a result of commercial and industrial growth, even motor accidents are on steep rise. For no fault or any contributory negligence of the victims of such accidents, the families are deprived of their breadwinners. The jurisprudence of compensation for motor accidents must develop towards liberal approach, because of mounting highway accidents."

(14) Having quoted extensively from **'State of Maharashtra** *versus* **Kanchanmala Vijaysing Shirke'** *(supra)*, it will be necessary to notice the brief facts of that case. The jeep was driven by a Clerk of the office, who is said to have snatched the keys of the jeep from its driver under the influence of liquor. However, the High Court had rejected the case of the State that the Clerk snatched the keys from the jeep driver. The High Court further held that the Clerk in question was driving the jeep with the consent and under an authority of the jeep driver. Since the concept of vicarious liability was not considered by both the Division Benches of this Court in **'Jaswant Singh** *versus* **State of Haryana'** *(supra)* and **Sampuran Singh's case** *(supra)*, this Court, relying upon **'State of Maharashtra** *versus* **Kanchanmala Vijaysing Shirke'** *(supra)*, has no hesitation to hold that the respondent-Municipal Corporation, Amritsar was vicariously liable for the act of the driver. However, in **Sampuran Singh's case** *(supra)*, the driver was held liable because of the Government instructions issued in the year 2002 and especially in the writ petition, there was no challenge to those instructions. In the present case, the accident had taken place in the month of August 1983. At that time, no such instructions were in existence. Therefore, the ratio of law laid down in **Sampuran Singh's case** *(supra)* cannot be applied to the facts and circumstances of the present case. In **'Jaswant Singh** *versus* **State of Haryana'** *(supra)* also, it was only held that the act of the State was neither without

jurisdiction nor contrary to the provisions of the rules. However, in both of these judgments, there was no discussion as to whether each and every negligence attributed to an employee will be sufficient for the State to recover the loss caused by the employee due to his act of negligence. What is the kind of negligence, in which an employee can be held liable, has been considered in **'Punjab State Civil Supplies Corporation Limited** *versus* **Sikander Singh (9)** wherein propounding the concept that negligence simpliciter may or may not amount to misconduct, their Lordships observed as under :

> *"21. It is now well settled that negligence simpliciter may or may not amount to misconduct. In* ***Union of India*** *versus* ***J. Ahmed*** *(1979) 2 SCC 286, this Court stated the law thus : (SCC p. 293, para 11)*
>
> *'The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under :*
>
> *'Misconduct means, misconduct arising from ill motive ; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.'*
>
> *In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in* ***Utkal Machinery Ltd*** *versus* ***Shanti Patnair*** *AIR 1966 SC 1051, in the absence of the Standing Orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In* ***S. Govinda Menon*** *versus* ***Union of India*** *AIR 1967 SC 1274 the manner in which a member of the service discharged his quasi-judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not*

(1) 2006 (3) S.C.C. 736

> *constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in* ***P.H. Kalyani*** *versus* ***Air France, Calcutta*** *AIR 1963 SC 1756, wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or male violence."*

(15) Therefore, on the facts and circumstances of the present case, this Court can hold that when the accident had taken place, there were no Government instructions in vogue, on the basis of which recovery could be effected from the petitioner. Therefore, the ratio of law laid down in **Sampuran Singh's case** *(supra)* will not be applicable to the facts and circumstances of the present case.

(16) Furthermore, before the Tribunal and in the appeal filed in this Court, respondent-Municipal Corporation had taken a stand that the petitioner was not negligent and was not responsible for causing accident.

Even the finding of the Tribunal was not accepted by the respondent-Municipal Corporation. They had assailed the same by taking following grounds in First Appeal against Order No. 402 of 1987 :

> "1. *That the award of the learned Addl. Motor Accident Claims Tribunal, Amritsar, is against law and facts on the file.*
>
> 2. *That the learned Tribunal has wrongly held issue No. 3 against the appellant, where there is ample evidence on the record to show that Kulwant Singh Driver of the Bus was not at all negligent. The eyewitnesses Shri Rajwant Singh was admittedly present at the place of occurrence ; and who removed the injured to the Hospital. It is borne from the statement of Kulwant Singh that Kundan Singh son of Kartar Singh was not at all present at the place of occurrence. It was the case of claimants that Kartar Singh was dragged for a long distance by the bus. Such an incident would necessarily resulted in some injuries on the face, arms, legs in the shape of contusions as a result of dragging. But only two contusions were found on the person of deceased which indicates that he banged against some hard surface only once and was not dragged for a long distance. Thus facing the above evidence the learned Addl. Sessions Judge, Amritsar, was forced to hold that there is no possibility of the accident having taken place in the manner asserted by the prosecution and thus acquitted Shri Kulwant Singh Driver of the charge under Section 304-A IPC. The copy of the judgment of the Appellate Court is placed on the record by moving separate application.*"

(17) Once the respondents themselves were not satisfied with the findings of the Tribunal, the impugned order to effect recovery could not be passed relying upon the findings of the Tribunal. Furthermore, the Municipal Corporation, while ordering recovery, had not considered the import and effect of the judgment of the Criminal Court, whereby the