been constituted in village Kaushak but in order to give separate identity the names of other areas have been mentioned as III-A, III-B and so on. According to him, it can safely be inferred that all the Gram Sabhas have been constituted in village Kaushak. I regret my inability to accept the contention of the learned counsel. In column No. 2 the places mentioned have been described as villages. In column No. 5, the names of the Panchayats are the same which have been described as villages in column No. 2. In the circumstances, it cannot be held that 7 Gram Sabhas have been constituted in village Kaushak. In the end, it may be mentioned that the learned counsel for the petitioner has fairly conceded and in my view rightly that the Governor could declare in village Kaushak more than one Sabha area if in each area the population was not less than five hundred.

(7) No other argument was raised in the other writ petitions.

(8) For the aforesaid reasons, I accept the writ petitions and quash the impugned notification. No order as to costs.

N. K. S.

Before S. S. Sandhawalia C.J. and G. C. Mital, J.

JIWAN DASS ROSHAN LAL MADAN,—*Appellant.*

versus

KARNAIL SINGH and others,—*Respondents.*

Letters Patent Appeal No. 620 of 1975.

October 22, 1979.

Motor Vehicles Act (IV of 1939)—Sections 2(8), 110B and 112—Punjab Motor Vehicle Rules, 1940—Rule 4.60—Driver unauthorisedly carrying a passenger in a goods vehicle in violation of rule 4.60—Vehicle involved in an accident—Such carriage—Whether in the course of employment of the driver—Owner of the vehicle—Whether vicariously liable.

Held, that in unauthorisedly carrying a passenger in a goods vehicle, its driver was plainly intracting rule 4.60 of the Motor Vehicles Act, 1939. In such a situation there can obviously be little question of any authorisation by the owner of the vehicle to carry the

passenger in contravention of the statute. Acting in direct contravention of a statutory provision which is made an offence by an employee cannot be easily conceived as in the normal course of employment. No employer can be deemed or assumed to authorise the contravention of law or the commission of an offence. On plain principle, therefore, the only answer seems to be that the driver in this situation cannot even remotely be said to be acting in the course of his employment in order to make the owner of the vehicle vicariously liable therefor.

(Paras 8 and 9)

Letters Patent Appeal under Clause X against the order of Hon'ble Mr. Justice Pritam Singh Pattar, dated 27th October, 1975 in F.A.O. No. 291 of 1971, modifying that of Shri J.S. Chatha P.C.S. Motor Accident Claims Tribunal Patiala (whereby he dismissed the suit), dismissing the appeal against the Oriental Fire and General Insurance Co. Ltd., Respondent No. 3 and accepting the appeal against the respondent Nos. 1 and 2 i.e. Karnail Singh and M/s. Jiwan Dass Roshan Lal Madan, and further setting aside the order of the Tribunal and awarding Rs. 19,200 as compensation to them against the respondents 1 and 2.

Claim in Appeal :—For compensation of Rs. 1,00,000.

S. C. Sibal, Advocate with Narinder Singh, Advocate, *for the Petitioner.*

V. P. Gandhi, *for the respondent No.* 2.

Maharaj Bakhsh Singh, *for respondent Nos.* 3 *to* 8.

M. S. Rakkar, Advocate, *for respondent No.* 1.

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether the unauthorised carrying of a passenger in a goods truck by its driver in contravention of rule 4.60 of the Punjab Motor Vehicles Rules, 1940, can nevertheless be deemed to be in the course of the employment of the owner of the truck so as to saddle the latter with vicarious tortious liability, is the somewhat significant question which falls for consideration in this set of two connected appeals under clause 10 of the Letters Patent.

2. Though the question aforesaid is plainly legal, the matrix of the facts giving rise thereto do call for some detailed notice. The unfortunate victim of the fatal accident was one Pritam Singh,

deceased, and the case set up by Hansa Singh, his father, and his other legal representatives was that on the 15th of February, 1969, at about 5.30 p.m., the deceased was waiting to catch a bus at Sehoran Bus Stop. M/s. Jiwan Dass Roshan Lal Madan, appellants' goods truck No. PNH-2351, loaded with stones and rashly and negligently driven by Karnail Singh, driver, is alleged to have first knocked down a cyclist and then swerving sharply ran over Pritam Singh, who was allegedly standing on the *kutcha* portion of the road. Pritam Singh, deceased, received mortal injuries and was later removed to hospital where he succumbed thereto. A report was lodged with the police station regarding the accident and the case against the driver, Karnail Singh, was also registered. The petitioner-respondents preferred a petition for recovery of rupees one lac as compensation against the appellant-owners of the truck, along with the insurers of the truck, Oriental Fire and General Insurance Company Limited, as also the driver, Karnail Singh. As regards the quantum of compensation, it was averred on behalf of the petitioners that the deceased Pritam Singh was the sole proprietor of Pritam Automobile, Railway Road, Nangal, and had a monthly income of Rs. 800 only. His age at the material time was claimed to be 23½ years.

3. In contesting the claim, the positive plea set up by the driver, Karnail Singh, and also the appellant-owners of the truck was that the truck driven by Karnail Singh accompanied by Tara Singh (A.W. 6) was carrying stones from Manimajra towards Nangal and when it was near Sector 17 in Chandigarh, Pritam Singh, deceased, who was known to Tara Singh, gave him a signal to stop and entreatingly sought a lift and apparently on the intercession of Tara Singh this was allowed and he sat on the left side of Tara Singh on the front seat. Whilst the truck was being safely driven at the slow speed of 20 miles, near Sehoran Bus Stop a cyclist suddenly swerved in front of the truck and while taking evasive action to save him the truck collided with a tree resulting in serious injuries to Karnail Singh, driver, Tara Singh (A.W. 6) and Pritam Singh, deceased. The three injured were taken out of the truck with great difficulty and later removed to hospital where, as already noticed, Pritam Singh succumbed to his injuries. A somewhat similar stance was also taken by the insurers with the added defence that the policy of insurance issued in respect of this truck did not cover the liability of the passenger and was not required to be so covered under section 95 of the Motor Vehicles Act.

4. On the pleadings of the parties, the following issues were framed:—

1. Whether the occurrence of this case took place due to the neligence and carelessness of the driver of the truck, if so, to what effect ?

2. To what compensation the claimant is entitled to receive ?

3. Whether the Oriental Fire and General Insurance Company is not bound to pay the claim since the deceased was travelling in a public carrier ?

4. Whether the petitioners are not competent to bring the claim application ?

Issue No. 1 was decided in favour of the petitioner-respondents whilst on issue No. 3, the finding was that the deceased was in fact travelling in the truck as a passenger and, therefore, the insurance company was not liable to pay any compensation. On issues Nos. 2 and 4 it was held that the petitioners were not entitled to any compensation and were not competent to file the petition and these issues were decided against them.

5. Aggrieved by the judgment of the Tribunal, the petitioner-respondents appealed and the learned Single Judge in an elaborate judgment, after appraising the evidence, affirmed the findings of the Tribunal on issues Nos. 1 and 3. Findings on issues Nos. 2 and 4 were, however, reversed and holding that the petitioner-respondents were competent to bring this claim, the compensation was assessed at Rs. 19,200 only. In view of the aforesaid findings, the appeal was accepted against the appellant-owners and the driver, Karnail Singh.

6. The elaborate findings of fact arrived at by the learned Single Judge have not been seriously challenged before us and indeed appear to be unassailable and even on an independent appraisal we would affirm them. What, however, emerges therefrom is the fact that there is now a concurrent finding that the deceased, Pritam Singh, was a passenger in the goods truck at the material time and had been allowed to board the same by its driver, Karnail

Singh, apparently at the behest of Tara Singh (A.W. 6). On this established factual foundation, the forceful argument raised on behalf of the appellant-owners of the truck is that no tortious liability can possibly be foisted on them. It has been plausibly argued that there is not even a title of evidence that the appellant-owners had, in any way authorised or even acquiesced in the carrying of the deceased, Pritam Singh, in the truck. This apart, the act of the driver in doing so was in direct contravention of rule 4.60 of the Punjab Motor Vehicle Rules, 1949, involving all the penal consequences for the infraction thereof. The appellants, therefore, claimed that they could not be saddled with any liability for the unauthorised carrying of the deceased by the truck driver, Karnail Singh, who was thus not remotely acting in the normal course of his employment in doing so.

7. Inevitably, the argument would revolve around the material provision of rule 4.60 which may be read at this stage:—

> "4.60. (1) Save in the case of a vehicle which is being used for the carriage of troops or police or in the case of a stage carriage in which goods are being carried in addition to passengers no person shall be carried in a goods vehicle other than a *bona fide* employee of the owner or the hirer of the vehicle and except in accordance with this rule. The owner of a goods vehicle may also travel in it for a purpose connected with the *bona fide* business of the vehicle.
>
> (2) No person shall be carried in the cab of a goods vehicle beyond the number of which there is seating accommodation at the rate of 380 millimetres (measured along the seat excluding the space reserved for the driver) for each person, and not more than six persons in all in addition to the driver shall be carried in any goods vehicle.
>
> Provided that in the case of goods vehicle owned by Government carriage of more than six persons may be allowed by the State Transport Authority provided that such number shall not exceed the area in square metre of the floor of the vehicle divided by .63 subject to a maximum of 12.
>
> (3) * * *.
>
> (4) Notwithstanding the provisions of sub-rule (2) a Regional Transport Authority may, as a condition of a permit

granted for any goods vehicle, specify the conditions subject to which a larger number of persons may be carried in the vehicle, provided that such number shall not exceed the area in square metre of the floor of the vehicle divided by .63 subject to a maximum of 12.

(5) Nothing contained in this rule shall be deemed to authorise the carriage of any person for hire or reward in any vehicle unless there is in force in respect of the vehicle a permit authorising the use of the vehicle for such purpose, and save in accordance with the provisions of such permit.

(6) * * *".

Reference must also be made to Section 2(8) and Section 112 of the Motor Vehicles Act, 1939. Indeed it would be apt to quote these provisions also *in extenso*:—

"2(8) "goods vehicles" means any motor vehicle constructed or adapted for use for the carriage of goods or any motor vehicle not so constructed or adapted when used for the carriage of goods, solely or in addition to passengers".

* * *.

"112. *General provisions for punishment of offences.*—

Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for the offence be punishable with fine which may extend to one hundred rupees, or, if having been previously convicted of any offence under this Act, he is again convicted of an offence under this Act, with fine which may extend to three hundred rupees".

It is not in dispute that the Punjab Motor Vehicles Rules, 1940 have been validly framed under the parent statute of the Motor Vehicles Act, 1939. Once that is so, they would form an integral part of the Act in view of the authoritative pronouncement in *State of Uttar Pradesh and ors.* v. *Babu Ram Upadhya,* (1). This apart, a combined reading of Rule 4.60 and Section 112 would make it plain

(1) A.I.R. 1961 S.C. 751.

that the infraction of the former would be punishable as an offence under the law. Reference may also be made to Section 132 of the Punjab Motor Vehicles Act, 1939, which provides that no Court inferior to that of a presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this act or any rule made thereunder.

8. Reverting back now to the established and the virtually undisputed findings of fact in the present case, it would be manifest that in unauthorisedly carrying Pritam Singh deceased in the goods truck, its driver Karnail Singh was plainly infracting rule 4.60 and therefore, committing an offence punishable under the Act. In such a situation there can obviously be little question of any authorisation by the owner of the truck to carry Pritam Singh in particular or any passenger in general in contravention of the statute. In any case, in the present record it bears repetition that there is not the least evidence that the appellant-owners of the truck had in any way authorised or acquiesced in the carriage of the deceased-Pritam Singh in the truck as passenger. Therefore, Pritam Singh must be deemed in law as a trespasser *qua* the appellants in the vehicle. The appellant- owners therefore, owed no duty of care to him.

9. The solitary question that thus remains is whether Karnail Singh driver can be deemed to be acting in the course of the employment of the owners in unauthorisedly carrying the deceased, Pritam Singh therein? Acting in direct contravention of a statutory provision which is made an offence by an employee cannot be easily conceived as in the normal course of employment. No employer can be deemed or assumed to authorise the contravention of law or the commission of an offence. Assuming so entirely for the argument sake than in such a remote contingency it could only be so by an established express command by the employer and here as already noticed, there is not the least evidence to this effect. On plain principle, therefore, the only answer to the question seems to be that Karnail Singh, driver in this situation cannot even remotely be said to be acting in the course of his employment in order to make the appellant-owners vicariously liable therefor.

10. Apart from principle, however, authority also is not lacking on the point. In *Twine* v. *Beans's Express, Ltd.*, (2), the driver of

(2) 1946 (1). All England Law Reports 202.

a commercial van had unauthorisedly carried a passenger therein and it was held that the owners were not vicariously liable, with the following observation :—

> "On the facts as I have stated them, it was outside the scope of the driver's employment for him to bring within the class of persons to whom a duty to take care was owed by the employer, a man to whom, contrary to his instructions he gave a lift on a commercial van. On this basis, Twine, *vis-a-vis* Bean's, remained simply a trespasser on the van, who came there in particular circumstances, and the question is whether Bean's, in the circumstances in which Twine was a passenger, owed to him any duty to take care as to the proper driving of the van. In my opinion, they did not."

The aforesaid view was noticed with approval by the Court of Appeal in *Conway* v. *George Wimpey and Co., Ltd.*, (3). Therein also the driver of an open lorry designed for carrying goods and not men had unauthorisedly allowed a lift to a passenger who was not an employee of the owners. It was held that the owners were not vicariously liable for the accident that ensued. Asquith, L.J. observed as follows:—

> "To put it differently, I should hold that taking men other than the defendants' employees on the vehicle was not merely a wrongful mode of performing an act of the class which the driver in the present case was employed to perform, but was the performance of an act of a class which he was not employed to perform at all. In other words, the act was outside the scope of his employment for the same reason that the act complained of in Twine's case was held to be outside the scope of the driver's employment there....."

It seems to me that the present case is even on a stronger footing than the above mentioned two cases, in so far as here, there is a direct contravention of a statute and the commission of an offence involved as against the mere acting against the instructions of his

(3) 1951 (1) All England Law Reports 363.

employer by the driver of the vehicle. There is again the authority of the Division Bench of the Mysore High Court—*Mohiddinsab Gaffarsab Kundgol* v. *Rohidus Hari Kindalkar and another*, (4) taking an identical view.

11. Both on principle and precedent, therefore, the answer to the question posed at the very out set must be rendered in the negative. It is held that the owners of the vehicle would not be vicariously liable for the tortious act of the driver.

12. In view of the above, the Letters Patent Appeal No. 320 of 1975 preferred by the appellant-owners has to be necessarily allowed and the judgment of the learned Single Judge saddling them with liability is hereby set aside. We may, however, notice that virtually no argument was addressed to us on behalf of respondent No. 1—Karnail Singh driver—by his learned counsel. We therefore, see no reason to disturb the judgment of the learned Single Judge as regards the liability of this respondent.

13. In L.P.A. No. 28 of 1976 preferred on behalf of the claimants to seek enhancement of the compensation Mr. Maharaj Bakhsh Singh could advance no argumen worth the name to challenge the considered view of the learned Single Judge. We, therefore, affirm the findings with regard to the quantum of compensation awarded. On a minor point, however, appellants are entitled to succeed. It was contendedd that the view in this Court is now settled that interest on the compensation awarded should be allowed normally from the date of application unless there are reasons to hold to the contrary. Agreeing with this we modify the judgment of the learned Single Judge to this effect that the appellants in this appeal would be entitled to the grant of interest from the date on which the claim petition was presented.

14. In both the appeals, the parties shall bear their own costs.

G. C. Mital, J.—I agree.

N. K. S.

(4) 1973 A.C.J. 424.