(7) As regards the contention that the plaintiffs are not entitled to the relief of specific performance, particularly, when both the defendants Har Kaur and her daughter Amarjit Kaur had died, has no force. Admittedly, the plaintiffs are the nearest collaterals of the deceased Bachittar Singh, whereas, the legal representatives of the deceased Har Kaur who are her brothers reside in another village Harike Kalan claiming the property under the will executed in their favour by Har Kaur during the pendency of the appeal. Thus, it could not be successfully argued that the plaintiffs were not entitled to the relief of specific performance in these circumstances.

(8) Consequently the appeal fails and is dismissed with costs.

H.S.B.

FULL BENCH

Before S. P. Goyal, G. C. Mital and S. S. Sodhi, JJ.

PRITHI SINGH and another,—*Appellants.*

versus

BINDA RAM and others,—*Respondents.*

First Appeal from Order No. 324 *of* 1981

May 30, 1986

Motor Vehicles Act (IV of 1939)—*Section* 110 *A—Motor Vehicles Rules,* 1940—*Rule* 4.60—*Driver of truck carrying passengers in contravention of Rule* 4.60—*Truck meeting with accident leading to the death of the passenger—Said accident taking place in the course of employment on owner's business—Owner of truck—Whether vicariously liable for the act of the driver—Such owner—Whether absolved of his liability as passengers carried in violation of rule* 4.60.

Held, that the determining factor in order to fasten the liability to pay compensation under Section 110-A of the Motor Vehicles Act, 1939, so far as the liability of the owner is concerned, is whether the act was committed by the driver in the course of his employment or not. If the driver was acting in the course of his employment then the owner would be liable even though the driver acted in violation of rule 4.60 of the Motor Vehicles Rules, 1940; As such the owner of the truck cannot be absolved of his vicarious liability simply because the driver carried the deceased as passenger in the truck in contravention of the provisions of the aforesaid rule. (Paras 3 and 4).

Jiwan Dass Roshan Lal *vs.* Karnail Singh and others 1980 A.C.J. 445.

(Over-ruled)

United India Insurance Co. Ltd. *vs.* Abdul Munaf Majur Hussain Momin and others

1984 A.C.J. 653.

Krishna Ramayya Gounda *vs.* C.P.C. Motor Co. and others. A.I.R. 1983 Karnataka 176. (Dissented from)

First Appeal under Section 110-D, *Motor Vehicle Act against the order of the Court of Shri Hari Ram, Motor Accidents Claims Tribunal, Bhiwani dated 26th March,* 1981 *awarding Rs.* 5,000 as *compensation to Pirthi Singh and Smt. Lilawati in claim petition No.* 2 *of* 1977, *Rs.* 500 *in favour of Manbir Singh in claim petition No.* 10 *of* 1977 *and Rs.* 100 *in favour of Neelam daughter of Bishan Singh in claim petition No.* 11 *of* 1977 *with proportionate costs. The claim will be satisfied by respondent No.* 2 *Mahabir. The petitions against the other respondents are dismissed with no order as to costs.*

Hemant Kumar Gupta, Advocate with G. C. Garg, Advocate, *for the Appellant.*

S. C. Kapoor, Advocate, *for Respondents* 1 *to* 3 & 5.

Muneshwar Puri, Advocate with G. S. Bhatia, Advocate for *respondent No.* 4.

JUDGMENT

S. P. Goyal, J.

(1) Kanwar Pal son of the appellant died of the injuries received by him on November 29, 1976 while travelling in Truck No. HYB 5137 driven by Mahavir respondent No. 2. In the claim petition filed against the owners of the truck, driver and the Insurance Company, the appellants were awarded Rs. 5,000 as compensation and Mahavir alone was held responsible for its payment. The owner of the truck was exonerated on the ground that as the deceased was carried as a passenger unauthorisedly in contravention of rule 4.60 of the Punjab Motor Vehicles Rules, 1940, he could not be fastened with vicarious liability for the tortuous act committed by the rash and negligent driving of the truck by his employee. Reliance for this view was placed by the Tribunal on the Division

Bench decision of this Court in *M/s. Jiwan Dass Roshan Lal* v. *Karnail Singh and others*, (1). When the matter came up in appeal before my learned brother Sodhi, J. he thought that the decision in *Jiwan Dass Roshan Lal's case* (supra) required reconsideration in view of the decision of the Supreme Court in *Pushpabai Purshottam Udeshi and others* v. *M/s Ranjit Ginning and Pressing Company and another*, (2) and referred the case to the Larger Bench. This is how we are seized of this matter.

(2) In *Pushpabai Purshotam Udeshi's case* (supra) *Purshottam* Tulsidas met with his death in a motor car accident when he was travelling in the car which was driven by Madhavjibhai, Manager of the opponent company, Messrs Ranjit Ginning and Pressing Company Private Limited, in a rash and negligent manner. The heirs of the deceased claimed compensation from the owner as well as the Insurance Company. One of the pleas raised in defence was that the deceased was travelling in the said vehicle on his own responsibility, for his own purpose and absolutely gratis and not on behalf of or at the instance of the owner or the driver of the vehicle and, therefore, the respondents could not be made vicariously liable for any negligence on the part of the driver. The High Court found that the car was going on the business of the Company and so was Madhavjibhai but further held that there being no pleading or the material on the record to establish that Purshottam Tulsidass was travelling in the vehicle either for some business of the owner or under any ostensible authority from them, the accident could not be said to have taken place in the course of the employment of Madhavjibhai or under the authority of the company. Relying on the statement of law expressed by Lord Justice Denning in *Young* v. *Edward Box and Company Limited* (3) the Supreme Court reversed the judgment of the High Court observing thus:—

> "Lord Justice Denning concluded by observing that the passenger was, therefore, a trespasser, so far as the employers were concerned; but nevertheless the driver was acting in the course of his employment, and that is sufficient to make the employers liable. It will thus be seen that while two of the learned Judges held that the right to give the plaintiff leave to ride on the lorry was within the ostensible authority of the foreman and the

(1) 1980 A.C.J. 445.
(2) 1977 A.C.J. 343.
(3) (1951)1 T.L.R. 789.

plaintiff was entitled to rely on that authority as a licensee, Lord Denning based it on the ground that even though the plaintiff was a trespasser so far as the defendants were concerned, as the driver was acting in the course of his employment in giving the plaintiff a lift it was sufficient to make the defendants liable. Applying the test laid down there can be no difficulty in concluding that the right to give leave to Purshottam to ride in the car was within the ostensible authority of the manager of the company who was driving the car and that the manager was acting in the course of his employment in giving leave to Purshottam. Under both the tests the respondents would be liable."

After discussing the case law, Kailsam, J. who spoke for the Bench in *Pushpabai Purshottam Udeshi's case* summed up the law concerning the vicarious liability of the master for the acts of the servant as under:

"Before we conclude 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 the course of the employment" as ordinarily understood. We have referred to *Sitaram Motilal Kalal* v. *Santanuprasad Jaishankar Bhati* where this Court accepted the law laid down by Lord Denning in *Ormrod and another* v. *Crosville Motor Services Limited and another* (supra) 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* v. *Edward Box and Company Limited* 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 uniformally accepted as stated in Salmond Law of Torts 15th Ed. p 606 in Crown Proceeding Act, 1947 and approved by the *House of Lords in Staveley Iron and Chemical Company Limited* v. *Jones* and *I.C.I. Limited.* v. *Shatwell.* The scope of the course

of employment has been extended in *Navarro* v. *Moregrand Limited and another* where the plaintiff who wanted to acquire the tenancy of a certain flat applied to the second defendant, a person with ostensible authority to conduct the business of letting the particular flat for the first defendant, the landlord. The second defendant demanded from the plaintiff a payment of £ 225 if he wanted the flat and the plaintiff paid the amount. The plaintiff sought to recover the sum from the landlord under the landlord and Tenant (Rent Control) Act, 1949. The Court of Appeal held that the mere fact that the second defendant was making an illegal request did not constitute notice to the plaintiff that he was exceeding his authority and that, though the second defendant was not acting wihin his actual or ostensible authority in asking for the premium as the landlord had entrusted him with the letting of the flat, and as it was in the very course of conducting that business that he committed the wrong complained of; he was acting in the course of his employment. Lord Denning took the view that though the second defandant was acting illegally in asking for and receiving a premium and had no actual or ostensible authority to do an illegal act, nevertheless he was plainly acting in the course of his employment, because his employers, the landlords, had entrusted him with the full business of letting the property, and it was in the very course of conducting that business that he did the wrong of which complaint is made. This decision has extended the scope of acting in the course of employment to include an illegal act of asking for and receiving a premium though the receiving a premium was not authorised. We do not feel called upon to consider whether this extended meaning should be accepted by this Court. It appears Lord Goddard, Chief Justice, had gone further in *Barker* v. *Lavinson* and stated that the master is responsible for a criminal act of the servant if the act is done within the general scope of the servant's employment. Lord Justice Denning would not go to this extent and felt relieved to find that in the authorised Law Reports (1951) I.K.B. 342, the passage quoted above was struck out. We respectfully agree with the view of Lord Denning that the passage attributed to Lord Chief Justice Goddard went a bit too far."

The ambit of the vicarious liability of the owner for the acts of the servant committed in the course of the employment was further enlarged by the Supreme Court in *State Bank of India* v. *Mrs. Shyama Devi* (4) and the law laid down by the Privy Council in *United Africa Company Limited* v. *Saka Owoade* (5) that a master is liable for his servant's fraud perpetrated in the course of master's business, whether the fraud was for the master's benefit or not, if it was committed by the servant in the course of his employment, approved. There is no difference in the liability of a master for wrongs whether for fraud or any other committed by a servant in the course of his employment, and it is a question of fact in each case whether it was committed in the course of the employment. In the case before the Privy Council the appellant company had expressly committed to servants of the respondent a transport contractor, at his request goods for carriage by road, and the servants stole the goods. From the evidence it was established that the conversion took place in the course of their employment. The respondent on these facts was held liable to the appellant for the value of the goods. From the principle enunciated in the above noted two decisions of the Supreme Court on the question of vicarious liability of the master, it is evident that it does not depend on the lawful or unlawful nature of the acts of the servant and the master would be liable for the alleged act of the servant which had taken place in the course of his employment even though the servant may have acted in contravention of some of the provisions of the statute or the Rules made thereunder. Relying on *Pushpabai Purshottam Udeshi's case* (supra), the Full Bench of the Madhya Pradesh High Court in *Narayanlal and another* v. *Rukhmanibai and others*, (6) took a similar view and overruled the previous Division Bench decision of that court holding thus:—

> "Now, a statutory rule providing that no person should be carried in a goods vehicle other than a *bona fide* employee of the owner or hirer of the vehicle deals with the conduct of the driver within the sphere of employment. The sphere of employment of appellant No. 2 is to drive the vehicle in execution of the master's business from Udaigarh to Indore. That sphere is not in any manner limited by the prohibition contained in the statutory rule

(4) 1979 A.C.J. 22.

(4) 1979 ACJ. 22.
(5) (1955) A.C. 130.
(6) 1979 A.C.J. 261.

For all these reasons, it must be held that the proposition enunciated in *Bhaiyalal* v. *Rajrani* does not lay down correct law and, in our opinion, the answer to the question referred, to us is that the act of a servant employed to drive a vehicle, in giving lift to a person in disregard of a statutory rule or prohibition while driving the vehicle in execution of the owner's business is an act for which the owner is vicariously liable."

The view expressed in *Jiwan Dass Roshan Lal's case* (supra) that 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 because no employer can be deemed or assumed to authorise the contravention of law or the commission of an offence, therefore, cannot be sustained and has to be overruled. Moreover, though the contravention of the Rules framed under the Act is punishable with fine but such a contravention cannot be termed a criminal offence. Under a large number of statutes the contravention of the Rules or the provisions of the statute are punishable with fine but such a contravention has never strictly been taken to be a criminal act or offence. Again, suppose a driver of the vehicle disobeys the driving regulations contained in the Seventh Schedule and thereby causes an accident resulting in the death of some person lawfully travelling in the truck, can in such a case it be said that the owner of the vehicle would not be liable vicariously because the accident was caused by disobeying the traffic regulation which is punishable under section 12 of the Act. The answer obviously has to be in the negative.

(3) Now, we may notice the decisions relied upon by the learned counsel for the respondents. In *Sitaram Motilal Kalal* v. *Santanuprasad Jaishankar Bhatt and others* (7), the Supreme Court referred to the English case, *Britt* v. *Galmove and Nevill* in para 27 and pointed out that the owner of the car will not be liable for the accident caused by his employee if it was caused outside master's employment. What happened there was that the owner lent the van to his driver after day's work was over to take his friends to a theatre and the driver by his negligent driving injured the plaintiff. On these facts it was held that the journey was not on the master's business and, therefore, he was not liable for the servant's act. The rule laid down in this case obviously, is of no help to the respondents.

(7) 1966 A.C.J. 89.

In *Krishna Ramayya Gouda* v. *C.P.C. Motor Co. and others,* (8) the Bench relying on the observations quoted above from the Supreme Court judgment in *Pushpabai Parshottam Udeshi* held that the owner was not vicariously liable because the deceased was carried in the truck in direct contravention of rule 161. The Supreme Court in *Pushpabai Parshottam Udeshi's case* only disapproved the observation of Lord Goddard, Chief Justice, in *Barker* v. *Lavinson* to the effect that the master is responsible for the criminal act of the servant if the act is done within the general scope of the servant's employment. The disapproval of the said observation cannot be interpreted to mean that the master would not be liable for the civil consequences of the act of his employee done in the course of his employment because in doing so, he has contravened some rule or the provision of the Act. Causing the death by rash and negligent driving by an employee of the master is also a criminal act punishable under the law of crimes. Even though the act of the employee amounts to a criminal act still the master is liable for the civil consequences of the act of his employee. With due respect to the learned Judges, we feel that the observations of the Supreme Court in *Pushpabai Parshottam Udeshi's case* (supra) were not correctly interpreted in *Krishna Ramayya Goude's case* (supra) and are, therefore, unable to subscribe to the rule laid down therein. In *United India Insurance Company Limited* v. *Abdul Manaf Majur Hussain Momin and others* (9) the Bombay High Court on appreciation of the evidence took the view that the driver was expressly prohibited from taking the passengers in the vehicle and as such it was held that the conveyance of the passengers by the driver was not during the course of his employment. With due respect to the learned Judges we are unable to accept the proposition that if the driver had been expressly prohibited not to take passengers in the truck, the owner would be absolved of his liability. The express prohibition by the master cannot have better sanction than the provisions of the rule framed under the Act which prohibits the carrying of passengers in a truck. The determining factor as already stated above so far as the liability of the owner is concerned is whether the act was committed by the driver in the course of his employment or not. If the driver was acting in the course of his employment then the owner would be liable even though he acted against the express instructions of the owner or in violation of the Rules framed under the Statute.

(8) A.I.R. 1983 Karnataka 176.

(9) 1984 A.C.J. 653.

(4) On consideration of the two decisions of the Supreme Court and the other cases discussed above, we hold that *Jiwan Dass Roshan Lal's case* (supra) was not correctly decided and that the owner of the truck cannot be absolved of his vicarious liability simply because the driver, his employee, carried the deceased as passenger in the truck in contravention of the provisions of rule 4.60 of the Punjab Motor Vehicles Rules, 1940. This reference is answered accordingly and the case sent back to the learned single Judge for disposal on merits.

G. C. Mital, J.—I agree.

S. S. Sodhi, J.—I too concur.

H.S.B.

FULL BENCH

Before P. C. Jain, C.J., S.P. Goyal and S. S. Kang, JJ.

SAT PAL BANSAL,—*Applicant*

versus

COMMISSIONER OF INCOME TAX,—*Respondent*

Income Tax Reference 131 *of* 1979

August 13, 1986

Income Tax Act (XLIII of 1961)—Section 171—Assessee a Hindu Undivided Family consisting of a husband as Karta and wife—Assessee claiming benefit of partial partition under Section 171 qua family business capital—Wife or sole surviving co-parcener—Whether entitled to claim partition—Benefit of partition—Whether available to the assessee.

Held, that the female members of the Hindu Undivided Family, according to the Hindu Law, have no share in the joint family property and their interest is confined to maintenance only. A wife cannot herself demand a partition of HUF property, but if a partition does take place between her husband and his sons, she is entitled to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband. The share which is allotted to the wife or the mother is in lieu of her right of maintenance and the