a topper in the final result may be placed in third division on re-evaluation but still he will get the benefit as topper in terms of the decision dated May 17, 1982. The contention is without merit.

(13) The decision dated May 17, 1982, has been taken by the competent authority (University Syndicate) with an object to make the merit list prepared before the re-evaluation process, final. The example cited by the learned counsel is too hypothetical and remote from reality. The decision dated May 17, 1982, does not suffer from the vice of arbitrariness and is, therefore, not violative Article 14 of the Constitution.

(14) In the result, the writ petition fails and is dismissed with no order as to costs.

H.S.B.

Before S. S. Sodhi, J.

TIRLOK SINGH,—*Appellant*

versus

KAILASH BHARTI AND OTHERS,—*Respondents.*

First Appeal from Order No. 439 *of* 1980.

September 10, 1984.

Motor Vehicles Act (IV of 1939)—Section 110-B—Accident between a motor-cycle and cycle leading to the death of the cyclist—Driver of the motor-cycle not owner thereof—Motor-cycle being driven without the knowledge or consent of the owner—Such motor-cycle not being driven wholly or partially for the purposes of the owner—Owner of the motor-cycle— Whether can be held to be vicariously liable for the accident.

Held, that the position in law is indeed well settled that mere ownership of a motor vehicle and permission by its owner to another to drive it would not render the owner vicariously liable for the damages recoverable from the driver for the accident caused by his negligence. The mere permission to drive the vehicle cannot by itself constitute the driver the agent of the person who grants permission or who has the right either by way of ownership or as a bailee to control the vehicle. In order to become liable for the driving of the vehicle, the owner or the bailee of the vehicle who has

the general control of the vehicle and who allows somebody else to drive it, must have authorised some other person to drive it wholly or partially for purposes of the bailee or the owner of the vehicle, as the case may be. That being the position, it cannot be said that the motor-cyclist was driving the vehicle for any purpose of the owner and there is thus no escape from the conclusion that no liability for compensation awarded can be fastened on the owner under Section 110-B of the Motor Vehicles Act, 1939.

(Paras 16 & 17).

First Appeal from the order of the Court of Shri S. D. Bajaj, Motor Accidents Claims Tribunal, Ambala, dated the 29th day of May, 1980 holding the claimants are entitled to obtain from the respondents a sum of Rs. 36,000/- by way of compensation for the death of Jagdish Bharti deceased. The respondents shall also pay the claimants costs of the present petition.

Ram Singh Bindra, Senior Advocate with Vinod Kumar Sharma, Advocate, *for the Appellant.*

Gopi Chand, Advocate, *for the Respondent.*

JUDGMENT

S. S. Sodhi, J.

(1) The accident here was between a cycle and a motor-cycle, resulting in the death of the cyclist—Jagdish Chander Bharti, who later died in hospital on account of the injuries sustained. This happened at Yamuna Nagar on September 22, 1978.

(2) It was the finding of the Tribunal that the accident here had been caused by the rash and negligent driving of Sukhdev Singh, the driver of the motor-cycle. A sum of Rs. 36,000 was awarded as compensation to the claimants, they being the widow and children of Jagdish Chander Bharti deceased.

(3) Assailed in appeal now, is the finding recorded on the issue of negligence as also the liability fastened upon Tirlok Singh—the owner of the motor-cycle, for the compensation awarded. The contention raised being that the deceased had died as a result of the injuries sustained on falling from his cycle when he suddenly turned it and not on account of the motor-cycle hitting into it. As regards Tirlok Singh, the case pleaded was that he was in Dubai at the time of the accident and Sukhdev Singh—his younger brother, had taken the motor-cycle without his knowledge or consent and he

could not, therefore, be held vicariously liable for the accident that occurred.

(4) The case pleaded by the claimants was that Jagdish Chander Bharti, deceased, was proceeding towards his Transport Company on cycle when the motor-cycle came from behind and hit into his cycle as a result of which he fell down and sustained injuries. It was said that the motor-cycle was being driven at a fast speed and in a rash and negligent manner when this happened.

(5) The driver of the motor-cycle, Sukhdev Singh, on the other hand, came forth with the version that Jagdish Chander Bharti had suddenly come on to the road from an approach road and then abruptly turned to his right when somebody had shouted to him to get a truck unloaded. Seeing this, he (Sukhdev Singh) had to immediately apply his brakes as a consequence of which he fell off the motor-cycle and it was then that the cycle of Jagdish Chander Bharti came and hit into the fallen motor-cycle as a result of which he too fell down and sustained a head injury.

(6) Further, it was said that after this accident, he (Sukhdev Singh) signalled to a truck standing nearby which then came and took him and Jagdish Chander Bharti and left them at the gate of the Civil Hospital, Yamuna Nagar.

(7) The accident, as per the case of the claimants, was deposed to by A.W.-2 Madan Lal Taneja, who stated that he was an eye-witness to it. According to him, Jagdish Chander Bharti was on his correct side of the road when the motor-cycle came from behind at a very fast speed and struck against his cycle, knocking him down unconscious. It was further his testimony that it was he and Om Parkash who then removed Jagdish Chander Bharti to the Civil Hospital, Yamuna Nagar in a truck where he died in the early hours of the next morning.

(8) When the driver of the motor-cycle R.W. 6—Sukhdev Singh, came to the witness box, he had a somewhat different story to narrate than one given in his return, namely, that when he suddenly applied the brakes on seeing Jagdish Chander abruptly turn his cycle, he became unconscious "on seeing the situation".

(9) He made a categoric statement that his motor-cycle did not strike the cyclist nor did he made any mention of the cycle hitting

the motor-cycle as had been stated in the written statement. The two witnesses examined in support, namely, R.W. 4—Tara Singh and R.W. 5—Charanjit Singh also did not depose to any collision between the cycle and the motor-cycle.

(10) The Tribunal rightly relied upon the testimony of A.W. 2—Madan Lal considering the fact that it was on his statement that the first information report relating to this accident was recorded, which was consistent with what he had deposed in court. Further, it was he who had taken the deceased to the hospital and there is also his unchallenged testimony that he had come with the police from the hospital to the place of accident after leaving the deceased there. On the other hand, it deserves note that while his written statement Sukhdev Singh had stated that it was he who took Jagdish Chander Bharti, deceased, to the hospital in a truck, when he came to the witness box, he deposed differently, namely, that he became unconscious when the accident occurred. He made no mention of the deceased being taken to the hospital by him and in what manner. The two witnesses examined by him, namely, R.W.4—Tara Singh and R.W.-5 Charanjit Singh, did not join in the investigation of the case and it was the first time in court that they came and deposed in this manner. The Tribunal, therefore, rightly did not rely upon their testimony or that of Sukhdev Singh.

(11) Mr. R. S. Bindra, counsel for the appellant sought to impeach the credibility of A.W. 2—Madan Lal by seeking to brand him as an interested witness on the ground that he shared his office and telephone with Jagdish Chander Bharti, deceased. This cannot be taken as a circumstance against this witness. Great stress was also laid upon the fact that there was a delay in the recording of the first information report. In the circumstances, the delay here cannot be treated as a matter of much significance considering the fact that it was this witness who took the injured to the hospital and was with the police when they went to the place of accident. The delay in making of the statement to the police cannot thus be attributed to Madan Lal.

(12) A point was also sought to be made of the fact that the motor-cycle and the cycle involved in the accident were not exhibited in this case. It deserves note that at no stage was any such request made by any of the parties. This circumstance, cannot, therefore, be taken as any ground for questioning the finding of the Tribunal on the issue of negligence.

(13) Taking an over-all view of the circumstances of the case in the light of the evidence on record, no exception can be taken to the finding of negligence recorded against the driver of the motor-cycle.

(14) In the matter of assessment of compensation payable to the claimants, the Tribunal clearly fell in error in taking '12' to be the appropriate multiplier. The settled rule now is that '16' is the normal multiplier in such cases. With the deceased here being only 44 years of age and having a widow and four children to support, no occasion was provided for adopting any lesser multiplier. Taking the loss at Rs. 3,000 per annum, as determined by the Tribunal, the claimants must be entitled to Rs. 48,000 as compensation.

(15) The main contest in the present appeal was with regard to the liability of Tirlok Singh—the owner of the motor-cycle for payment of the compensation awarded. The evidence on record would show that Tirlok Singh was out of the country on the day when the accident occurred. According to his wife R.W.-2, Kulwant Kaur, the motor-cycle was lying locked and parked in the verandah of their house, when in her absence, her husband's younger brother—Sukhdev Singh, without her knowledge or consent took it away. R.W.-6, Sukhdev Singh admitted that he had taken away the motor-cycle after getting a duplicate key made from the Bazar.

(16) The position in law is indeed well-settled that mere ownership of a motor vehicle and permission by its owner to another to drive it, would not render the owner vicariously liable for the damages recoverable from the driver for the accident caused by his negligence. In *Klein* v. *Caluori* (1), it was held that mere permission to drive the car cannot by itself constitute the driver, the agent of the person who grants permission or who has the right either by way of ownership or as a bailee to control the car. In order to become liable for the driving of a car, the owner or the bailee of the car, who has the general control of it and who allows somebody else to drive it, must either have authorised that other person to drive wholly or partially for purposes of the owner or bailee of the car, as the case may be. A similar view was expressed in *Hewitt* v. *Bonvin* (2), where a son driving his father's car with

(1) 1971 A.C.J. 448.

(2) (1940) 1 K.B. 188.

the consent of his father, caused an accident. In dealing with the liability of the car-owner, Du Parcq, L.J. observed that it was plain that ownership of the car could not by itself impose any liability on the owner. The owner, without further information was *prima facie* liable, because the court was entitled to draw the inference that the car was being driven by the owner, his servant or agent, but when the facts were given in evidence, the court was not left to draw an inference. The owner would be liable if the driver had authority, express or implied, he drive on the owner's behalf. This depends not on ownership, but on the delegation of a task or duty. Permission to drive the car is consistent with a mere loan or bailment. The relationship of father and son is not of itself evidence of agency.

(17) Next to note is the decision of the House of Lords in *Morgans* v. *Launchbury and another* (3), where it was held, that mere permission to drive a motor vehicle is not enough to establish vicarious liability of its owner. In order to fix vicarious liability on the owner of the car, it must be shown that the driver was using it for the owner's purpose under delegation of a task or duty. This authority was followed by the High Court of Allahabad in *Devki Devi Tiwari and others* v. *Raghunath Sahai Chatrath and others* (4), where a jeep had been given by its owner to the Congress Party for election purposes. While with them the jeep was involved in an accident with a petrol tanker. It was held, that the owner of the jeep was not liable as the jeep was at that time under the control or management of the Congress Party and the driver thereof could not be said to be the agent of the owner.

(18) Turning to the present case, it would be seen that there is no material on record to warrant Tirlok Singh—the owner of the motor-cycle being held vicariously liable for the accident. Sukhdev Singh—his younger brother cannot be deemed to be his agent or to have been driving the motor-cycle for any purpose of the owner—Tirlok Singh. There is thus no escape from the conclusion that no liability for the compensation awarded could be fastened upon the owner—Tirlok Singh.

(19) It may be mentioned here that in an effort to fasten liability, for the compensation awarded, upon the owner—Tirlok

(3) 1973 A.C.J. 21.

(4) 1978 A.C.J. 169.

Singh, Mr. Gopi Chand, counsel for the claimants had sought to rely upon *Mohinder Singh and another* v. *Gurdial Singh and another* (5), *Nimayi Chand Mahapatra and others* v. *Kartika Chandra Sahu and others* (6), and, *Association Pool, Bombay* v. *Radhabai Babulal* (7). Neither of these authorities lays down any proposition of law contrary to the position as set out above. All the cases cited were decided on their own facts where the owner was held liable on the ground that at the time of the accident, the driver was engaged in some business of the owner. These cannot, therefore, be taken to support the point sought to be canvassed by the counsel for the claimants.

(20) In the result, the compensation payable to the claimants is hereby enhanced to Rs. 48,000, which they shall be entitled to along with interest at the rate of 12 *per cent* per annum, from the date of the application to the date of the payment of the amount awarded. Half of the amount awarded shall be payable to the children of the deceased, in equal shares and the balance to his widow. The liability for the compensation awarded shall be that of the driver—Sukhdev Singh only. No liability can be fastened upon its owner Tirlok Singh.

(21) The appeal filed by Tirlok Singh and the cross-objections of the claimants are accordingly accepted, while the appeal of Sukhdev Singh is hereby dismissed. The claimants shall, however, be entitled to their costs of these proceedings. Counsel fee Rs. 300.

H.S.B.

Before D. S. Tewatia, J.

COMMISSIONER OF INCOME-TAX,—*Applicant.*

versus

SHRI SAROOP KRISHAN,—*Respondent.*

Income Tax Reference No. 118 *of* 1979.

January 14, 1985.

Income-tax Act (*XLIII of* 1961)—*Sections* 15 *to* 17—*Assessee retired Government servant drawing pension—Such assessee claiming standard deductions from pension taxed under head 'salary'—Such deductions—Whether admissible.*

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(5) 1978 A.C.J. 279.

(6) 1977 A.C.J. 58.

(7) 1976 A.C.J. 362.