(11) No other point has been argued before us.

(12) For the reasons given above, this appeal is dismissed with costs and the decree passed by the learned Single Judge is affirmed.

Mehar Singh, C.J.—I agree.

N.K.S.

APPELLATE CIVIL

Before H. R. Sodhi, J.

HIMACHAL GOVERNMENT TRANSPORT SIMLA AND ANOTHER,—*Appellants.*

versus

JOGINDER SINGH AND ANOTHER,—*Respondents.*

First Appeal From Order No. 194 of 1966

November 27, 1969.

Motor Vehicles Act (IV of 1939)—Sections 100-B and 110-D—Law of Master and servant—"Acting in the course of employment"—Meaning and scope of—Stated—Driver of a vehicle taking it on a route not prescribed in the permit—Such driver—Whether acting within the course of employment —Owner of the vehicle—Whether liable for the wrongful act of the driver.

Held, that it is a settled proposition of law that a master is liable to third persons for the torts committed by his servant in the course of employment and within the scope of his authority. No abstract rule can be laid down as to what amounts to acting within the course of employment and each case has to be decided on its own peculiar facts and circumstances. Broadly speaking, the master will not be liable to a third party if a servant instead of doing what he is employed to do does something which he is not employed to do at all. At the same time every deviation of the servant from the fixed execution of duty or disregard to instructions cannot be said to constitute such an interruption in the course of employment as to absolve the master from his responsibility. In order that a master can escape his liability, departure from the course of business must be total and not a mere deviation. (Para 8)

Held, that a driver of a vehicle owned by a master cannot be held to be not on his master's business and the latter not being in control of acts of his servant simply because the servant has chosen a route different from

that he was normally expected to follow and which is not prescribed in the document described as a permit under the Indian Motor Vehicles Act. The permit only gives an authority for a vehicle being driven on a particular route and taking of the vehicle to any other route will be breach of a condition of the permit entitling the same to be suspended or cancelled by the appropriate authority. This permit is only for the purpose of regulating traffic on the road and cannot in every case be taken as a guide for determining the liability of the master in the matter of torts committed by his servant. It cannot be held that whenever a vehicle deviates from the normal route, the master is not liable for the wrongful act of his servant who is the driver of the vehicle. If it were so, deviation from the route howsoever small, will disentitle the third party from claiming damages against the employer for the wrongful act done by the servant. What has to be determined in each case is whether the servant is discharging his duties to his employer when the accident occurs. A master cannot be exonerated on the ground that his servant driving the vehicle deviated from the prescribed route. He has to establish, the burden of proof being on him, the extent of deviation and the circumstances under which it took place so that it can be said that the servant acted outside the scope of his employment. (Para 8)

First Appeal from the order of the Court of Shri G. S. Bajwa, Motor Accidents Claims Tribunal, Punjab, Chandigarh, dated 26th July, 1966, awarding the applicant Rs. 9,600 as compensation under section 110-B of the Motor Vehicles Act against the Himachal Pradesh Government with costs of the application.

L. M. SURI, R. M. SURI, AND P. N. GARG, ADVOCATES, for the appellants.

A. S. AMBALVI, ADVOCATE, for the respondents.

Judgement.

H.R. Sodhi, J.—This is an appeal against an award of the Motor Accidents Claims Tribunal, Punjab, who on 26th July, 1966, allowed a compensation of Rs. 9,600 under section 110-B of the Indian Motor Vehicles Act, to Joginder Singh respondent against the appellants. Facts as are necessary for decision of the appeal may be stated as under.

(2) On 11th December, 1959, truck No. HIM—1015 driven by Daula Ram, who died during the pendency of the proceedings before the Tribunal, came from Rampur-Bushehr to Surajpur in order to collect some cement. After having loaded the truck, the deceased driver instead of going straight back to Rampur-Bushehr came towards

Chandigarh side from the main Ambala-Kalka road when the truck struck against Kaka Singh, aged about 16 years, and another boy Sadhu Singh, aged 7 years, both of whom were going on a cycle in the same direction towards Manimajra. Daula Ram was driving the vehicle at a high speed and did not stop after the accident. The vehicle again collided with another truck No. PNE 8096 at Manimajra. The identity of the truck was established as the occupiers of some other two trucks who came from the side of Manimajra told on enquiry that the accident had taken place with a truck loaded with cement. The injured boys were taken to the General Hospital, Chandigarh, where Kaka Singh succumbed to his injuries while Sadhu Singh recovered after 3-4 days. Joginder Singh respondent, father of the deceased Kaka Singh, filed a claim application before the Tribunal on 9th February, 1960, and claimed Rs. 30,000 as compensation for the loss caused to him on account of the death of his son. The claim was made against Himachal Pradesh Government which was admittedly the owner of the truck driven by Daula Ram and involved in the accident. The Government filed a written statement pleading *inter alia* that it was not liable for the alleged negligence of the driver since the latter had no authority to go towards Chandigarh and the accident did not, therefore, take place when he could be said to be acting for and on behalf of his employer. It was further pleaded that there was no negligence on behalf of the driver. The quantum of compensation claimed by the respondent was also challenged. On the pleadings of the parties, the following issues were framed:—

1. Whether the accident was due to the rash and negligent act of the driver of vehicle No. HIM—1015 and, if so, its effect ?

2. Whether the Himachal Government Transport is liable in view of the objection taken up in para 1 of the written statement filed by the respondent, in case the facts stated therein are proved ?

3. What is the quantum of compensation due, if any, and from whom ?

4. Relief.

(3) The Tribunal dismissed the claim and First Appeal from Order No. 121 of 1962 preferred by Joginder Singh was allowed by Harbans Singh, J., on 18th January, 1966. The order of the Tribunal was set aside holding that the accident did take place with the truck in question due to the rashness and negligence of the driver. Following two additional issues were framed by the learned Judge and the case remanded to the Tribunal:—

1. Whether, in the circumstances of the case, the Himachal Pradesh Government is not liable to pay the damages ? and

2. If so, what is the quantum of damages ?

(4) After remand, the Tribunal came to the conclusion that Himachal Pradesh Government was liable and the respondent entitled to a compensation of Rs. 9,600. Hence the present appeal.

(5) Mr. L.M. Suri, learned consel for the appellants, has raised the following contentions:—

(1) That Himachal Pradesh Government was not impleaded as a party and no award could, therefore, be made against it.
(2) That claim has been made only on behalf of the father and no amount could be awarded in respect of the loss caused to the mother of the deceased, and that the claim should have been filed on behalf of both of them.

(3) That there is no liability of the employer in the circumstances of the instant case as the driver acted beyond the scope of his authority in taking the loaded vehicle out of the prescribed route which was Rampur-Bushehr to Surajpur and back.
(4) That the amount of compensation awarded is excessive and at least deductions should have been made because of the amount having been ordered to be paid in lump sum.

(6) The first contention of the learned counsel is wholly misconceived. There was no objection as to joinder of the parties before the Tribunal and the only objection was that notice of the proceedings must go to the Secretary, Himachal Government Transport Department and that representation of the said Government through the General Manager of the Himachal Government Transport, was not

enough. Seceretary Transport, Himachal Administration, as representing the said Government was impleaded by an order dated 22nd March, 1960, on the joint request of the parties. In view of their statement, the appellants are barred from agitating that Himachal Pradesh Government was not represented, and the contention of the learned counsel is without substance.

(7) The second contention too is ill-founded, we have it in evidence of Joginder Singh father of the deceased that the boy was looking after both the parents. No such objection was taken before the Tribunal that the claim was bad for non-joinder of proper parties. Be that as it may, the Tribunal has awarded compensation to the respondent who is father of the deceased and was also certainly entitled to compensation under the Fatal Accidents Act as a member of the family whom loss had occasioned by the death of the deceased. Assuming that one of the claimants entitled to compensation had not put forth his claim, it could not deprive the other claimants of their right to compensation if they are entitled to the same under the Fatal Accidents Act. The Tribunal has taken into consideration the claim of the father who, according to it, was 44 years of age at the time of the accident and could reasonably be expected to live up to the age of 60 years. It is he who, in the opinion of the Tribunal, has been deprived of the services of his son on account of the unfortunate accident and the amount has been calculated accordingly. Compensation is available to all those members of the family who suffer monetary loss as a result of the death of a person having been caused by accident and it is not necessary that all must join as claimants before any one of them can be held to be entitled to compensation in his own right.

(8) Mr. Suri has very forcefully and strongly urged that the employer, namely Himachal Administration, is not liable since the accident took place as a result of the illegal act of the driver who took the vehicle out of the prescribed route and such an illegal act could not be said to be within the scope of his authority for which the master could be made liable. I am afraid the contention is without merit. It is a settled proposition of law that a master is liable to third persons for the torts committed by his servant in the course of employment and within the scope of his authority. The sole question for determination thus is whether, in the circumstances of the present

case, Daula Ram who took the vehicle to Manimajra after having loaded the same with cement acted within the course of his employment so as to render the appellant liable. No abstract rule can be laid down as to what amounts to acting within the course of employment and each case has to be decided on its own peculiar facts and circumstances. Broadly speaking, the master will not be liable to a third party if a servant instead of doing what he is employed to do does something which he is not employed to do at all. At the same time every deviation of the servant from the fixed execution of duty or disregard of instructions cannot be said to constitute such an interruption in the course of employment as to absolve the master from his responsibility. In order that a master can escape his liability, departure from the course of business must be total and not a mere deviation. A driver of a vehicle owned by a master cannot be held to be not on his master's business and the latter not being in control of acts of his servant simply because the servant has chosen a route different from that he was normally expected to follow. The document described as a permit under the Indian Motor Vehicles Act only gives an authority for a vehicle being driven on a particular route and taking of the vehicle to any other route will be a breach of the condition of the permit entitling the same to be suspended or cancelled by the appropriate authority. This permit is only for the purpose of regulating traffic on the road and cannot in every case be taken as a guide for determining the liability of the master in the matter of torts committed by his servant. It cannot be held that whenever a vehicle deviates from the normal route, the master is not liable for the wrongful act of his servant who is the driver of the vehicle. If the argument of the learned counsel were accepted deviation from the route howsoever small, will disentitle the third party from claiming damages against the employer for the wrongful act done by the servant, but what has to be determined in each case is whether the servant was discharging his duties to his employer when the accident occurred. A master cannot be exonerated only on the ground that his servant driving the vehicle deviated from the prescribed route but he has to establish, the burden of proof being on him, the extent of deviation and the circumstances under which it took place so that it can be said that the servant acted outside the scope of his employment. The learned counsel for the appellants has drawn my attention to *Hilton* v. *Thomas Burton (Rhodes), Ltd., and another* (1), The facts of that case are clearly distinguishable. A

(1) (1961) 1 All. E.R. 74.

van had been kept by the employer who was engaged in demolition work at different places. This van was intended to carry the employees to and from the sites on which they were working and any workman having a driving licence was authorised to drive the van between 7-30 a.m. to 5-30 p.m. which were the working hours. On the fateful day, the deceased and another man got into the van and went into a public house near the site for drinks, stayed there for about an hour, and, on returning to the site, decided to go to a cafe, which was about seven miles away. When they were returning to the site, the van overturned on a curve owing to the negligent driving of one H, and the deceased was killed. In a claim for compensation by the widow of the deceased, it was held that on the facts of that case the employer was not liable as H was not at that time doing anything that he was employed to do. The vehicle had certainly not been kept for that purpose and it was just that the employees took it away for their own fun.

(9) The other case relied upon by Mr. Suri is *Storey* v. *Ashton* (2). Again, this case cannot give any assistance to the appellants. The defendant, in this case, who was a wine merchant had entrusted his carman and clerk with a horse and cart to deliver some wine, and bring back some empty bottles. It appears that the employees, instead of performing their duties and coming back to defendant's offices during business hours, drove in quite another direction on business of the clerk himself and it was in that journey that the plaintiff was run over due to the negligence of the carman. The defendant contractor was not held liable on the ground that the carman was not doing the act in the course of his employment as servant. It will be noticed that emphasis in the case was laid on the act having been done after business hours. It was also observed by Cockburn, C.J., that it should not be held that whenever a servant took a somewhat longer route, he would cease to be in employment of the master owing to the deviation so as to divest the latter of all liability, and that in such cases it was a question of degree as to how far the deviation could be considered to be a separate journey.

(10) Reference has also been made on behalf of the appellants to *Stanes Motors, Ltd.* v. *Vincent Peter* (3), where *Storey's case*

(2) Law Rep. 4 Q.B. 476.
(3) 70 M.L.J. 155.

(2), was noticed, and also to a Supreme Court judgment in *Sitaram Motilal Kalal* v. *Santanuprasad Jaishankar Bhatt and others* (4), Facts of both these cases are distinguishable and neither of them can, therefore, be of any help to the appellants. In the case of *Stanes Motors, Ltd.*, (3); a car was taken by the driver of the company to a customer with instructions of the manager that the driver should bring the car back to a certain bungalow after the customer had finished with the car. The customer having done his job asked the driver to bring the car back again at 8 O'clock. The driver again took the car to the customer who finished with it late in the evening, the following day, and drove it back to the company's garage which was closed at that time. The driver then went home with the car where he stayed for the night. On the next day, he again started off in the morning, but on a route about a mile distant from the one which was the normal course to have been adopted for taking the car back to the bungalow as instructed by the manager of the company. He also did not go back on the same night on which he should have gone, may be because of the subsequent instructions given by the customer who required the car for another day. On these facts, it was held by the High Court of Madras that the car was taken back by the driver in the course of his employment and that it made no difference that the driver, for his own convenience and in defiance of the orders of his master, started off for home instead of starting off for the bungalow or that he stayed longer than he was permitted to do. This case rather goes against the appellants. In *Sitaram Motilal Kalal's* (4) case, the appellant had entrusted his car to the second respondent for being used as a taxi, but at the time of accident it was driven by the third respondent, whom the second respondent employed as a cleaner and handed over the vehicle for taking a driving test to obtain a driver's licence. In a suit for damages against the owner of the car, a dispute arose as to the relationship of the said owner with the third respondent who was actually at the wheel when the accident took place. On going into the evidence, their Lordships of the Supreme Court found that there was nothing to show that the owner had given any authority to the second respondent to employ strangers to drive the taxi and to take driving tests. On these facts, it was held that the owner of the vehicle could not be held responsible. It was observed that the

(4) 1966 A.C.J. 89.

presumption that the vehicle was driven on the master's business and by his authorised agent or servant had been negatived in that case because the vehicle was proved to be driven by an unauthorised person and on his own business. The third respondent who was a *de facto* driver was, therefore, held not to be agent of the owner and the latter could not, thus, be made liable. There are several cases noticed and vicarious liability of the master for the acts of his servant discussed, but it has been observed that the expression "scope of employment of a servant" need not be viewed narrowly, and that the essential element that the wrong must be committed by the servant during the course of employment, that is, in doing the master's business ought always to be present.

(11) In the instant case, the truck was to return to Rampur-Bushehr after taking delivery of cement from Surajpur. It cannot be disputed that Daula Ram deceased did take the truck to Manimajra side when the accident took place. Daula Ram was summoned as a witness for 4th November, 1960, but he did not appear. Shri K. L. Malhotra, R. W. 1, Technical Expert and Traffic Controller, Himachal Government Transport, stated that Daula Ram had told him that he took the truck to Manimajra to meet his friend, whereas R.W. 2, Manohar Lal Sud, Superintendent, Himachal Government Transport, stated that Daula Ram never told him why he had gone to Manimajra, nor had he asked him for the reason. Shiv Dass, cleaner of the truck was produced as R.W. 4 on 1st May, 1961, and by this time Daula Ram had died. This witness stated that he was told by Daula Ram that the latter had taken the truck to Manimajra to see a friend. It is not understood why Daula Ram was not produced earlier, nor did the cleaner, make such a statement before the death of Daula Ram. There is no evidence brought on the record by the appellant to show what led Daula Ram to deviate from the normal route and go to Manimajra. Mr. A. S. Ambalvi, learned counsel for the respondents, submits that there is a route to Rampur-Bushehr from Ropar side as well but there is no evidence to that effect either. Be that as it may, no positive finding can be given why Daula Ram deceased took the truck to Manimajra as there is no reliable evidence on which a finding can be based. The truck was certainly in the course of journey back to Rampur-Bushehr and it cannot, therefore, be said that the driver was not acting in the course of

his employment. As observed by their Lordships of the Supreme Court, the scope of employment of a servant must not be viewed narrowly. It may be true that the driver violated the conditions of the permit and deviated from the normal route prescribed for the vehicle, but, as already observed, the mere fact that there is a violation of the conditions of the permit and the vehicle deviated from the route prescribed therefor cannot necessarily lead to the conclusion that the driver was not acting within the scope of his employment. The truck was loaded with cement and it had to be taken back by Daula Ram in the discharge of his duties to Rampur-Bushehr. In my opinion, the driver was acting within the scope of his employment and the appellants are liable for damages for the tort committed by their servant in the course of employment.

(12) The only contention that survives for consideration is about the quantum of compensation. The amount awarded by the Tribunal cannot by any reason be held to be excessive and as a matter of fact no serious arguments were addressed on this question. The learned counsel for the appellants, however, strongly submitted that the Tribunal was in error in not allowing a deduction of 20 per cent for uncertainties of life when the amount was to be paid in lump sum. In making an estimate of the amount of compensation, the Tribunal has taken the normal span of life in case of the respondent claimant to be 60 years which, in my opinion, is on the lower side. The respondent is quite healthy and was 44 years of age when the present accident resulting in the death of his son Kaka Singh took place. The amount of financial loss caused to the respondent has been calculated at Rs. 50 per month which is not much. Even a labourer today gets more than Rs. 3 per day and it could not be expected that the deceased who was a young man of 16 years would not have ever made a contribution of more than Rs. 50 per mensem to his father for the maintenance of the family. The Tribunal has, however, curiously enough, taken the basis of daily wages as Rs. 3. In such a situation, there could not indeed be any challenge to the amount of compensation awarded and the contention that the deduction of 20 per cent must be made for uncertainties of life is, in the present context, also not worthy of serious notice. There is no absolute rule that in every case while assessing compensation, the deduction of 10 to 20 per cent in the total amount must be made on account of uncertainties of life. It is true that such a deduction is made

in cases falling under the Fatal Accidents Act and the same practice is usually followed in motor accidents cases under the Indian Motor Vehicles Act, and the total amount is taxed down by a proportion ranging between 10 to 20 per cent. Circumstances of each case are unique and peculiar. The rule of deduction is based on equity and equities in each case cannot be the same. There may be a case where the Court, taking an overall picture of the whole case, keeping in view the conduct of the parties, time spent in litigation, defences taken up by the wrong-doer, any other allied matters, comes to the conclusion that it is a fit case where, in the exercise of its discretion, no deduction be allowed. No mathematical formula has been pointed out at the bar for basing a decision in regard to the deductions to be made. In *Krishnamma* v. *Alice Veigas and another* (5), no reasons have been given but deduction was ordered. The learned Judges of the Delhi High Court have observed in *Ishwari Devi and others* v. *Union of India and others* (6), that the reasons for the said deduction are based on justice and fair-play between the parties and in the circumstances of that case a deduction of 15 per cent was considered to be fair and just. A Division Bench of this Court also followed similar practice in *Dr. Ram Saran and another* v. *Shrimati Shakuntala Rai* (7), and allowed a deduction. In none of the authorities cited by the learned counsel it has been observed that the rule of deduction is obligatory and must be followed in every case. We notice in the present case that the accident took place as early as 1959 and the litigation has been going on for about 10 years. The conduct of the appellants has also not been examplary and litigation got prolonged for one reason or the other, with the result that payment of the compensation was avoided. I, therefore, find no justification to allow any deduction in the circumstances of the instant case.

(13) For the foregoing reasons, there is no merit in the appeal which stands dismissed with costs.

N.K.S.

(5) 1966 A.C.J. 366.
(6) 1968 A.C.J. 141.
(7) A.I.R. 1961 Pb. 400.