

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 57 of 2025

State of Jharkhand through I.G. of Police
(Modernization & Provision) Jharkhand, Ranchi office
at Jharkhand Police Head Quarter, DPRD Building,
P.Q. & PS.-Dhurwa, Dist. Ranchi. (Owner of Boleró
Jeep bearing Engine No. GHDA624 and Chesis No.
MAIXA2GHKD2A53592).

..... Appellant

Versus

1. Pruan Prasad Guria S/o Late Albis Guria
2. Bahalen Guria W/o Sri Pruan Prasad Guria All
are residents of village Simgara, P.O.-Bikwadag,
P.S.-Karra, Dist. Khunti.

..... Respondents

with

M.A. No. 28 of 2022

I.G. OF Police (Modernization & Provision)
Jharkhand, Ranchi office at Jharkhand Police Head
Quarter, DPRD Building, P.O. & P.S.- Dhurwa, Dist.-
Ranchi. (Owner of Bolero Jeep bearing Engine No.
GHDA624 and Chesis No.MAIXA2GHKD2A53592).

..... Appellant

Versus

1. Etwa Aind S/o Late Chamru Aind
2. Bibiana Aind @ Mundian W/o Etwa Aind

All are residents of village Simgara, P.O.-
Bikwadag, P.S.-Karra, Dist.- Khunti.

..... Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellant-State : Mr. Sanjay Kumar Tiwari, S.C.-I.

06/ 25.04.2025 Heard Mr. Sanjay Kumar Tiwari, learned S.C.-I appearing
for the appellant-State.

2. Since both these appeals, arising of the same accident, in
view of that both these appeals have been taken up together.

3. M.A. No. 57 of 2025 is barred by time of 851 days and for condoning the said delay, I.A. No. 1997 of 2025 has been filed.

4. So far as M.A. No. 28 of 2022 is concerned, in view of the Covid-19 Pandemic and the order of the Hon'ble supreme Court, it appears that the said appeal is within time.

5. Mr. Sanjay Kumar Tiwari, learned S.C.-I appearing for the appellant by way of referring para-6 of the aforementioned I.A., submits that against the award dated 19.02.2020, passed in Motor Accident Claim Case Nos. 277 of 2013 and 278 of 2013, a common M.A. No. 28 of 2022 was filed. He submits that in view of the defect, pointed out by the office to file the different appeal, separate M.A. has been preferred in view of that the delay of 851 days has occurred.

6. Further in view of the statements made in para-7 of the said I.A., the court finds that sufficient explanation is there to condone the said delay. As such, the delay of 851 days in filing M.A. No. 57 of 2025 is hereby, condoned and the aforesaid I.A. is allowed and disposed of.

7. M.A. No. 57 of 2025 has been preferred against the judgment dated 19.02.2020, passed in Motor Accident Claim Case No. 278 of 2013, by the learned Presiding Officer, Motor Vehicles Accident Claims Tribunal, Ranchi, whereby, he has been pleased to allow the claim application and directed the appellant to pay compensation amount of Rs. 3,48,880/- to the claimants within thirty days from the date of award along with interest @ 7.5% per annum till its realization.

8. M.A. No. 28 of 2022 has also been preferred against the judgment dated 19.02.2020, passed in Motor Accident Claim Case No. 277 of 2013, by the learned Presiding Officer, Motor Vehicles Accident Claims Tribunal, Ranchi, whereby, he has been pleased to allow the claim application and directed the appellant to pay compensation amount of Rs. 3,48,880/- to the claimants within thirty days from the

date of award along with interest @ 7.5% per annum till its realization.

9. Mr. Sanjay Kumar Tiwari, learned counsel appearing for the appellant in both the appeals submits that both these appeals are arising out of the same accident and two claim cases have been filed by the relatives of the deceased and by the common judgment, the said two claims cases are allowed. He submits that the claim application was filed alleging therein that on 11.07.2013, the informant a Chowkidar namely Neophil Bengra, after attending duty from the police station at about 07.30 was returning home and at about 18.00 hours, when he reached near Churgi Pool, he observed two motorcycles in front of him coming from the side of Khunti. He further submits that both the motorcycles were driven in zig-zag manner, as a result of which, both collided with each other and all the three persons were thrown on the road and they were unconscious and at the same time, Bolero Jeep was also coming from the side of Khunti, crushed the victims and the said victims were identified by local persons therein as Amit Aind, Roshan Guria and Prince Kundulna. It has been pointed out that Amit Aind and Roshan Guria succumbed to injuries.

10. It has further been pointed that the accident took place between the Motorcycle, bearing registration No. JH-01-AV-8516 and unregistered Bolero vehicle. The driver of the Bolero was escaped and informant went to the police station and gave his fardbeyan and on the said fardbeyan, an FIR, being Torpa P.S. Case No. 43 of 2013 dated 11.07.2013 under Sections 279, 337, 338, 427 and 304-A of the Indian Penal Code was registered. Post-mortem was done at Sadar Hospital, Khunti on 12.07.2013, wherein the doctor has assessed the age of Amit Aind as 18 years male. The post-mortem of Roshan Guria was performed at RIMS, Ranchi vide P.M. Report No. 144/13 dated 12.07.2013 wherein the doctors have assessed his aged about 22 years.

He submits that after investigation, the I.O. submitted chargesheet against the driver namely Sushil Soy, as driver of the offending vehicle namely Bolero without registration number.

11. He further submits that the I.O. identified the vehicle, as police vehicle in the name of I.G. of Police (Modernisation and Provisions, Jharkhand). He then submits that the I.O. submitted chargesheet No. 32/13 dated 31.07.2013 for the offences punishable under Sections 279, 337, 338, 427 and 304-A of the Indian Penal Code. In these backgrounds, learned counsel appearing for the appellants submits that the claim cases were instituted. He fairly submits that the vehicle, which was purchased in the name of the I.G. of Police (Modernisation and Provisions, Jharkhand) was not insured. He then submits that the compensation cases, filed before the learned tribunal are not maintainable. He submits that the Bolero Jeep in question was not being driven rashly and negligently. On these grounds, he submits that the award is not in accordance with law and the motorcycle was also involved and in view of the contributory negligence, the appellants herein cannot be fasten the liability.

12. The court has gone through the materials available on record including the award dated 19.02.2020, by which, the M.A.C. Case Nos. 277 of 2013 and 278 of 2013 were allowed by the learned tribunal. For deciding the said claim of the claimants, the learned tribunal framed five issues. The issue Nos. 3 and 4 were with regard to rash and negligent driving of the Bolero vehicle and entitlement respectively. The learned tribunal has taken up issue Nos. 1, 2 and 3 jointly, as all these issues were interlinked and has considered that A.W.-1 Etwa Aind has deposed that she is the mother of deceased Amit Aind, who died in a vehicular accident, when his motorcycle was dashed by a police Bolero vehicle, being driven in rash and negligent

manner. The speeding vehicle dashed the motorcycle of her son by going to wrong side and her son was grievously injured and he was taken to Torpa Hospital, wherein the doctors declared her son dead. The engine number and chasis number were also disclosed and the FIR was instituted and further postmortem was also done and these things have been stated by A.W.-1.

13. A. W. 2 is Puran Prasad Guria, in his oral testimony, he has deposed that the deceased Roshan Guria was his son. The accident took place on 11.07.13 at about 6.00. P. M. at village-Patrabhus Jora Tiril within the jurisdiction of Torpa Police station. His son had accompanied his friend namely Amit Aind and returning home and their Motorcycle was dashed by a Bolero Police Jeep. The police Jeep went to the wrong side and dashed the Motorcycle of his son. His son was grievously injured and taken to Torpa Hospital. After primary treatment, he was referred to RIMS, Ranchi, wherein his son died during course of treatment. The witness has disclosed the Engine and Chasis number of the police Bolero engaged in the vehicular accident. He has also deposed about the FIR and age of the deceased.

14. In these backgrounds, the learned tribunal has found that the contents of the FIR, chargesheet, postmortem report goes on to establish that on 11.07.2013, an accident took place when a motorcycle with three occupants was dashed by a Bolero Jeep belonging to the police, as a result of the aforesaid accident, two of the three occupants of the motorcycle namely Amit Aind and Roshan Guria succumbed to the multiple injuries. The act of the driver of the Bolero Jeep was rash and negligent, which was established by the oral and documentary evidence, as discussed therein and on these backgrounds, the learned tribunal has decided the Issue Nos. 1, 2 and 3 in favour of the claimants. Issue No. 4 was with regard to the compensation, that has

been further considered and in course of argument, the perversity on the compensation has not been shown by the learned counsel appearing for the appellant herein, as such, the court finds that there is no illegality in the impugned award, passed by the learned tribunal.

15. Undisputed principle of the law of torts is that the master is answerable for every such wrong of his servant as is committed in the course of his service, though no express command or privity of the master be proved and the wrongful act may not be for the master's benefit. In fact, there is a catena of authority even for the proposition that although the particular act which gives the cause of action may not be authorised, still, if the act is done in course of employment which is authorised, the master is liable. It would suffice to refer in this connection to *Citizens' Life Assurance Co. versus Brown*, reported in (1904) AC 423, *Machay versus Commercial Bank of New Brunswick*, reported in (1874) L.R. 5 P.C. 394 and *Trading Corporation Ltd. versus M. M. Sherazee*, reported in (1878) I.L.A. 130. In *Gah Choon Seng v. Lee Kim Soo*, reported in (1925) A.C. 550, it has been ruled that when a servant does an act which he is authorised by his employer to do under certain circumstances and under certain conditions and he does them under circumstances or in a manner which is unauthorised and improper, even in such cases the employer is liable for the wrongful act.

16. This doctrine of liability of the master for the acts of his servant is based on the *maxim respondeat superior*, which means 'let the principle be liable' and it puts the master in the same position as if he had done the act himself. It also derives validity from the *maxim qui facit per alium facit per se*, which means 'he who does an act through another is deemed in law to do it himself'. The true principle, as is stated by Ratan Lal at page 79 of his book 'The Indian and English Law

of Torts' 19th Edition, is as under:-

“A person who puts another in his place to do a class of acts in his absence, necessarily leaves him to determine according to the circumstances that arise, when an act of that class is to be done, and trusts him for the manner in which it is done; consequently, he is answerable for the wrong of the person so entrusted either in the manner of doing such an act, or in doing such an act under circumstances in which it ought not to have been done ; provided that what is done is not done from any caprice of the servant, but- in the course of the employment.”

17. The general principles of law of torts with regard to the liability of the master for the acts of his servant are not in dispute and in the case in hand, it is an admitted position that the vehicle in question is of the police department, which has been driven by the driver of the said department. This aspect of the matter was before the full Bench of Punjab and Haryana High Court, in the case of ***Baxi Amrik Singh Versus The Union of India*** [F.A. from Order No. 31 of 1969], wherein the following propositions of law and rules of guidance for determining the liability of the State for damages for the tortious acts of its servants was ruled, which are as under:-

“(i) The Union of India and States are liable for damages occasioned by the negligence of servants in the service of the Government if the negligence is such as would render an ordinary employer liable ;

(ii) The State is not liable if the tortious act complained of has been committed by its servants in exercise of sovereign powers that is powers which cannot be lawfully exercised except by a sovereign or a person by virtue of delegation of sovereign rights;

(iii) The Government is vicariously liable for the tortious acts of its servants or agents which are not proved to have been committed in the exercise of its sovereign functions or in exercise of the sovereign powers delegated to such public servants ;

(iv) The mere fact that the act complained of is committed by a public servant in course of his employment is not enough to absolve the Government of the liability for damages for injury caused by such act ;

(v) When the State pleads immunity against claim for damages resulting from injury caused by negligent act of its servants, the area of employment referable to sovereign powers must be strictly determined. Before such a plea is upheld, the Court must always find that the impugned act was committed in the course of an undertaking or an employment which is referable to the exercise of the delegated sovereign powers ;

(vi) There is a real and marked distinction between the sovereign functions of the Government and those which are not sovereign, and some of the functions that fall in the latter category are those connected with trade, commerce, business and industrial undertakings ;

(vii) Where the employment in the course of which the tortious act is committed is such in which even a private individual can, engage, it cannot be considered to be a sovereign act or an act committed in the course of delegated sovereign functions of the State ;

(viii) The fact that the vehicle, which is involved in an accident, is owned by the Government and driven by its servant does not render the Government immune from liability for its rash and negligent driving. It

must however be proved that at the time the accident occurred, the person driving the vehicle was acting in discharge of the sovereign function of the State, or such delegated authority ;

(ix) Though maintenance of Army is a sovereign function of Union of India, it does not follow that the Union is immune from all liability for any tortious act committed by an army personnel;

(x) In determining whether the claim of immunity should or should not be allowed, the nature of the act, the transaction in the course of which it is committed, the nature of the employment of the person committing it and the occasion for it, have all to be considered.”

18. In view of the above guidelines-(viii) clearly speaks that the Bolero vehicle, which is involved in the accident, is owned by the Police Department and driven by its servant, does not render the Government immune from liability for its rash and negligent driving and what has been discussed hereinabove is proved before the learned tribunal that rashly and negligently, the said Bolero vehicle in question was being driven by the driver. In view of that the principle is clear that a servant is acting within the scope of his employment and in so acting, does something negligent or wrongful, the employer is liable even though the acts done may be the very reverse of that which the servant was actually directed to do. Thus, the accident is proved.

19. It is the law of tort to determine when the law will and will not grant redress for damage suffered. It is a fact that the pillion rider died in the motor vehicle accident. It is also a fact that while the deceased was riding the vehicle, vehicle capsized and thereby the rider of the bike caused the accident and in that accident the deceased

sustained fatal injuries and succumbed to the injuries.

20. Now a days, it is an admitted fact that the motor vehicles are basically dangerous in nature and that is the reason why restrictions and conditions to use the same are introduced by an enactment. Old Act concerning use of motor vehicles was changed by the introduction of Motor Vehicles Act, 1988. When such an article is brought by the deceased, naturally a strict liability is also attached to it. Whenever an accident occurs by such a vehicle, by strict liability principle, the owner will be liable, over and above the vicarious liability, if any.

21. The Motor Vehicles Act now in force projects two other provisions under which a claim for compensation can be made. That are Sections 140, 163 A of the Motor Vehicles Act. Section 140 of the Motor Vehicles Act is the only section founded on no fault theory, i.e. there the claimant will be entitled for compensation irrespective of the fact that his fault or not, caused the accident. The proviso to Section 168 of the Motor Vehicles Act enables claimant to file a composite application under section 166 of the Motor Vehicles Act and under Section 140 of the Motor Vehicles Act.

22. In a death claim, an affliction is therein that the person who sustained injury and death who can put forward the claim if alive is fusing with the claim of the other legal heirs of the deceased after death, i.e. the claim for special damages that can be only put forward by the deceased is also passing over to the legal heirs as if the claim is made by the deceased himself.

23. Section 165 of the Motor Vehicles Act states as follows:-

"165. Claims Tribunals - (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims

Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles or damages to any property of a third party so arising, or both."

24. In light of the above Section, it reveals that a claim for personal injury is not barred by the above said section even by the owner of the vehicle. It is true that by virtue of Section 147 of the Motor Vehicles Act, the statutory liability of the insurance company pertains only to third party claim. But it cannot be said in the light of the said section, the claim of the owner against the insurance company or any other person in respect of death or bodily injury will not lie, though the cause of action arose out of a motor vehicle accident.

25. As back as in the year 1977, the Hon'ble Supreme Court sounded a warning in the case of **Manjusri Raha & Ors. Versus B.L. Gupta**, reported in (1977) 2 SCR 944, stating therein that "With the emergence of an ultra modern age which has led to strides of progress in all spheres of life, we have switched from fast to faster vehicular traffic which has come as a boon to many, though some times in the case of some it has to be proved to be a misfortune---- The time is ripe for serious consideration of creating nofault liability. Having regard to the directive principles of State policy, the poverty of the ordinary run of victims of automobile accidents, the compulsory nature of insurance of motor vehicles, the nationalisation of general insurance companies and the expanding trends towards nationalisation of bus transport, the law of torts based on no-fault needs reform."

26. In the case of **Motor Owners' Insurance Company Limited v. Jadavji Keshavji Modi and Ors.** reported in AIR 1981 (SC) 2059, the Hon'ble Supreme Court has held that "There is a niggardly

recognition of the State's obligation to its people particularly so when the frequency of accidents involving the public transport system has increased beyond believable limits."

27. In light of the above, it is an admitted fact that motor vehicles are dangerous in nature by its speed as well as by its working mechanism. Two wheelers cannot be considered as a luxury now a days. Even small young families travelling upon two wheelers is a common sight on the roads. This single track vehicles are highly prone to accident. Its dynamics of motion is highly complicated. It is the vehicle of the poor as well as the rich, but at the same time risk due to accident attached to the same is very high. Roads are provided by the Government to ply the vehicles. There are different kinds of motor vehicles including the motor bikes, where the owner will be riding the same on the public roads provided by the Government without any personal insurance coverage. Use and allied aspects of a motor vehicle are covered by the Motor Vehicles Act.

28. As per the provision, personal injury coverage is not compulsory. Roads to ply the vehicles are provided and maintained by the Government. Under such a circumstance, there will be a welfare state liability for the Government, which will partially *eclipse the maxim volunti non fit injuria* and fault liability theory. But the Government cannot elude from its limited liability in a case of accident occurring in a public road, where road tax is levied by the Government. Government can either shoulder it by itself or can fasten upon the authorised insurance company by statutorily making the company liable over and above the liability of the insured when they indemnify i.e., at the moment they are entering into an insurance contract as required under Chapter XI of the Motor Vehicles Act, they should be made statutorily liable for the welfare state liability. An appropriate change in

the statute that will make the Government / the insurer liable for a fixed sum, as in the case of Section 140 of the Motor Vehicle Act, payable to the owner in case of injury / death is the need of the day. This aspect needs due attention and the court fervently hope and this court wish that it will gain deserving attention from the concerned department of the Government and the court request to think it over as to how the citizen on the road accident can be compensated being the welfare State.

29. In view of the above, particularly coming to the fact that there is no illegality in the impugned award, both these appeals are dismissed with the above observation.

30. Let a copy of this order be communicated to the Chief Secretary, Government of Jharkhand for consideration in light of the observation made therein.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-

[A.F.R.]