

IN THE COURT OF SENIOR CIVIL JUDGE- 2 AIZAWL DISTRICT: AIZAWL, MIZORAM

CIVIL SUIT NO. 13 OF 2005

Plaintiff:

Smt. Hlunchhungi
D/o Rokawna
Bawngkawn- Aizawl

By Advocates

: 1. Mr. W. Sam Joseph, Adv.
2. Mr. H. Laltanpuia, Adv.
3. Mr. Francis Vanlalzuala, Adv.

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary to the Govt. of Mizoram
Mizoram- Aizawl
2. The Secretary to the Govt. of Mizoram
PHE Department
Mizoram- Aizawl
3. The Chief Engineer
PHE Department
Govt. of Mizoram
Aizawl- Mizoram
4. Director
Land Revenue and Settlement Department
Govt. of Mizoram

By Advocate's

: Mr. R. Lalremruata, AGA

Date of Judgment & Order : 03-06-2011

BEFORE

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 2

JUDGMENT & ORDER

FACTUAL SCENARIO

The plaintiff is the owner of a plot of land under LSC No. Azl. 561 of 1973 located at Bawngkawn, Aizawl and thereby constructed a building type of partly cement concrete and partly Assam type consisted of four floors. The building is divided into different portions and rented by different peoples earning Rs. 6100/- per month as a rent from the said building. The plaintiff and her family members were staying in the said building since 1975 and no damage caused to the said building and land despite heavy rains also occurred in the past. Since during 2003, the said building

developed small cracks and the same was more severe during 2004. On 19th July, 2004, the entire verandah of the said building was cracked and the entire building was damaged and not suitable for human habitation and the tenants in the buildings were vacated, the income of the plaintiff from the said building was completely stopped. The spot verification report submitted to the Deputy Commissioner, Aizawl District by the Block Development Officer, Tlangnuam Rural Development Block under No. A. 38011/2/99-BDO (TN)/124 Dt. 30th July, 2004 also reveals that "The building of the plaintiff was shake towards the gorge and fallen down at around 10 inches. The various portions of the ground level was also cracked at 1 ½ inches as well as the well and the floor. The building was cracked at around 4 ½ inches towards the western side and also affected at 3 ½ inches towards Aizawl. The building was not suitable for human habitation. The causes was that there was disjoint of PHE water pipe of 150 mm in front of the said building at 4 ft level deep under the metal road at 80%. Only 20% appears accessible for flowing water. The said 80% leakage would goes to downside through the building foundation of the plaintiff. The water stream/source at the downside of the building of the plaintiff was also found which never seen before. Another PHE water pipe of 50 mm at 2 ½ deep but no connection is also found and it will cause the said damage with monsoon rains. It appears that the said damaged was occurred due to the carelessness of the PHE, Govt. of Mizoram". Furthermore, the plaintiff annexed a copy of Brief report prepared by Dr. H. Lalenmawia, Joint Director, Geology and Mining Wing, Govt. of Mizoram under No. G. 20011/30 (B)/95/DTE-IND (GM) Dt. 2-11-2004 which says that "The main cause of the development of the crack affecting the house is appeared to be the leakage of water supply pipe in front of the house. The seepage of water from water supply pipe soften and damaged the bidding force of the soil and also increase the weight of the area. It is also learnt from the local people that seepage of water is noted down below Pi Hlunchhungi house, which cause small landslide in the area. This seepages of water was stopped when the water pipe line was repaired". The valuation of the building of the plaintiff was also estimated by Er. Zothansanga, EE, PWD, National Highway Division-1 at Rs. 37 lakhs. The plaintiff further submitted that a Legal Notice u/s 80 of CPC was also served but in vain. A requisite court fees at Rs. 5000/- is paid in full. The plaintiff thereby prays that (i) a decree declaring that the damaged caused o the building of the plaintiff and her land covered under LSC No. Azl. 561 of 1973 was due to the negligence of the PHE Department, Govt. of Mizoram in not controlling/maintaining the leakage of water pipe line and the plaintiff is entitled to get the sum of Rs. 21.99 lakhs (ii) directing the defendants to pay the said Rs. 21.99 lakhs to the plaintiff (iii) directing the defendants to pay interest rate at 9% per annum with quarterly rests with effect from 19th July, 2004 till filing of the suit (iv) cost of the suit and pendente lite interest at 9% per annum in favour of the plaintiff (v) any other relief which the plaintiff is entitled according to justice, equity and good conscience.

The defendants in their written statements contended that the PHE Department is maintaining 150 mm diameter GI pipe which has been laid about 1.00 meter below the ground level and the pipe line is laid from Laipuitlang to Aizawl and is being used to supply water to Zemabawk areas. There was no leakage of the said pipe till 18th July, 2004 as water was smoothly supplied to Zemabawk as usual on that date. Another GI pipe of 40 mm diameter has also been laid at this place for distributing water to the surrounding areas. There was no leakage of the said pipe till 15th July, 2004 as water was smoothly supplied to surrounding areas as usual on that date. If there was leakage of water from that pipe lines, it would be feasible to distribute water at Zemabawk on the 18th July, 2004 and proper

distribution of water at Bawngkawn area could not also have been done but water was successfully supplied at Zemabawk and distributed at Bawngkawn from that GI pipe of 40 mm diameter on those respective dates as usual proving that there was no leakages of water from these pipes. It is further submitted that on 21st July, 2004, the defendants came to know the incident and took initiative to repair the same on 22nd July, 2004 but the plaintiff refused to do so. It is also clarified that the damaged of the building of the plaintiff was caused by heavy rainfall not the cause leakage of the pipe lines of the defendants. They further stated that the spot verification report of the Geology and Mining, Govt. of Mizoram is totally biased and baseless. The defendants annexed a spot verification report prepared by Smt. Helen Rodingliani SDO, PHE, Aizawl North Water Distribution and reiterated by Mr. Lalhmachhuana, Executive Engineer, PHE, Aizawl Water Distribution Division under No. PHEE-84/TB/2001-2002/AWDD/112 Dt. 13th Sept., 2004 which says that a report of occurrence was received from Bawngkawn Section Officer, PHED on 21st July, 2004 and the said Section Officer immediately reached the site and checked the pipe line by opening the water way on the pipe. The water rushed out with great forces proving that the pipe line is damaged, all the damaged pipe line at the landslide site are restored on 24th July, 2001. The pipe line as well as damaged of the building of the plaintiff was caused by heavy rainfall on that time. The plaintiff therefore does not have any cause of action and is therefore pray to dismiss.

ISSUES

The issues were framed on 8/6/2006 and by virtue of O. XIV, R. 5 of the CPC, the issues were amended and the amended form of issues are as follows -

1. Whether the suit is maintainable in its present form and style
2. Whether there was cracking and damaged of the building of the plaintiff before heavy rainfall occurred on 19th July, 2004
3. Whether the pipelines of PHED at the vicinity of the plaintiff was broken/mal-function before 19th July, 2004
4. Whether damaged of the building of the plaintiff was due to negligence on the part of the defendants or not.
5. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Smt. Hlunchhungi D/o Rokawna, Bawngkawn, Aizawl (Hereinafter referred to her as PW-1)
2. Mr. Darkunga S/o Ruma (L), Bawngkawn- Lunglei Road- Aizawl (Hereinafter referred to him as PW-2)
3. Mr. H. Lalbiakkima S/o Thangluaia (L), Durtlang Leitan Veng (Hereinafter referred to him as PW-3)
4. Mr. Zothansanga S/o Veta (L), Zonuam- Aizawl (Hereinafter referred to him as PW-4)

The PW-1 in his examination in chief reiterated the contents of the plaint being the plaintiff herself. She further continued that-

Ext. P- 1 is a copy of LSC No. Azl. 561 of 1973

Ext. P-2 is a copy of Spot Verification report of BDO, Tlangnuam

Ext. P-3 is a copy of letter sent to the Minister PHE etc., Govt. of Mizoram

Ext. P- 3(a) is her true signature

Ext. P-4 is a letter sent to the Chief Engineer, PHE

Ext. P-4(a) is her true signature

Ext. P-5 is a copy of verification report of Geology and Mining Wing, Directorate of Industries

Ext. P-6 is a copy of estimate prepared by EE, PWD, NH Division-1

Ext. P-7 is a copy of Legal Notice with acknowledgement

Ext. P-8 is a copy of house tax payee certificate

Ext. P-9 is electronic document/ CD of the PHE Department repairing the pipeline

Ext. P-10 is a copy of photographs of PHE damaged pipelines in her house site.

During cross examination, she deposed that her building under LSC No. Azl. 561 of 1973 was also occupied by her daughter without paying any house rent to her. Her late husband was also a retired Demonstrator in AH & Vety Department and also running Grocery after his retirement. Her building started cracking since 2003 but no retaining wall was constructed to protect her building. On 19th July, 2004, her building was damaged in the portion of her verandah. Her building is located on the roadside of the main road at Bawngkawn adjacent to the main road. They did not believe that the cause of damaged of her building was due to the leakage of PHE pipe soon after cracks. No reserved of the roadside at least 5 meters was made. So far as her knowledge concerned, being the recipient, they had received water supply from the PHE Department till 19th July, 2004 and no irregularity for water distribution was happened before that and she also heard that the pipeline near her house was used to supply water for Bawngkawn and Zemabawk from Laipuitlang. As July was the period of monsoon, a heavy rain was fallen down during July, 2004. The pipeline fitted near the site of her building was large size of GI pipe and the alleged pipe which destroyed her building was 40 mm size of pipe. Although they had a meeting with the Officials of the PHE Department in the house of their neighbor, no positive outcome for compensation was reached. She had constructed Assam Type building in 1975 and her location was slope and also constructed RCC building behind the said Assam type building. The said RCC building was three storey. She denied that the cause of damaged of her house was not because of PHE pipeline.

The PW-2 deposed in his examination in chief that since 1995, he has been living in Bawngkawn near the building of the plaintiff. Before cracks/landslide took place in the building of the plaintiff, he along with the plaintiff found seepage of water down below the house of the plaintiff and at that time, they do not know the source of that water seepage. In the year 2003, a small crack developed in the building of the plaintiff and on 19th July, 2004, a more severe crack in the verandah of the plaintiff was occurred and her tenants also to be vacated on that disaster. When the said incident took place, they found broken PHE pipelines just below the verandah of the plaintiff which was revealed by the landslide. After two months, another leakage of the pipeline was found on the area of the plaintiff's building on the side of his house. As soon as the PHE had repaired the said broken pipelines, the seepage of water which was found down below the house of the plaintiff was stopped.

In his cross examination, he deposed that in the month of July, 2004, there was a rainfall but not ascertain whether excessively heavy or not but admitted that even in other parts in Aizawl, there was natural calamities caused by rainfall at that time. In 2004, he used to stay adjacent to the house of the plaintiff in the southern side and his house was not affected by either rainfall or PHE pipeline. Although he is not ascertained but presumed that there was leakage of the PHE pipeline which affected the building of the plaintiff.

In his re-examination he further deposed that because of stoppage of seepage below the house of the plaintiff as soon as repairing of PHE pipes, he ascertained that the damaged of the building of the plaintiff was due to leakage of PHE pipelines.

The PW- 3 in his examination in chief deposed that as detailed by the Department of Industries, Geology and Mining Wing, he personally conducted spot verification in the site of the plaintiff for landslide and cracks. He found that there was no much chance of landslide in the area as the top soil is not thick enough to trigger landslide and further the bedrock are intact at that time. In his investigation, the cause of cracks of the building of the plaintiff was due to leakage of PHE pipelines and the seepage of water supply pipe softened and damaged the bidding force of the soil and also increased the weight of the area. As the cracking and tilting on the wall and floor of the house was already developed and several cracks on the house site were noted, the house site is no longer safe for habitation.

Ext. P- 5 is a report of development of cracks at the site of the house of the plaintiff

Ext. P-5(a) is his true signature.

In his cross examination, he deposed that so far as his knowledge concerned, he had conducted spot verification in the month of October, 2004. In the year, 2004, he witnessed that within Aizawl city, there was morethan 25 times occurrence of natural calamities. He denied that the PHE pipelines runs near the house of the plaintiff was caused by landslide.

The PW- 4 in his examination in chief deposed that he is holding the post of Executive Engineer, Aizawl Road South Division under PWD and passed BE (civil) in 1988. As requested by the son of the plaintiff, he had also conducted spot verification and found that due to failure to maintain water supply pipe by the PHE, there was leakage of water near the site of the plaintiff which caused the instant damage. He also prepared estimate for the cost of construction of the building of the plaintiff.

Ext. P- 6 is the cost of construction estimated by him

Ext. P- 6(a) is his true signature

Ext. P- 6(b) is his true signature

Ext. P- 6(c) is his true signature

Ext. P- 6(d) is his true signature

Ext. P- 6(e) is his true signature

Ext. P- 6(f) is his true signature

Ext. P- 6(g) is his true signature

Ext. P- 6(h) is his true signature

Ext. P- 6(i) is his true signature

Ext. P-9 and 10 are a photograph and video taken by him on the site of the plaintiff.

During cross examination, he further deposed that he do not conducted test of the soil of the basement to compare with the upper side of the road. It can be said that the crack of the pipe was due to the landslide. He knows the plaintiff since childhood.

In his re-examination he clarified that he speaks generally that water pipe can be damaged caused by landslide but not specifically says about the instant occurrence.

For the defendants:

The defendants had produced the following witnesses namely-

1. Smt. Helen Rodingliani W/o Aldrin Zosangliana, Dawrpui Vengthar- Aizawl (Hereinafter referred to as DW-1)
2. Mr. Lalhmachhuana S/o Biaksanga (L), Ramhlun North- Aizawl (Hereinafter referred to as DW-2)
3. Mr. Lalrammawia S/o R. Sapbela, Chanmari West- Aizawl (Hereinafter referred to as DW-3)

The DW-1 in her examination in chief deposed that she is holding the post of Executive Engineer, PHE C.E. Office and in the year 2004 when occurrence took place, she was SDO, PHE Aizawl North Water Distribution Sub-Division, Aizawl and she was the Officer in charge of Distribution line in Aizawl North Water Distribution at that time and on receiving a report on 21st July, 2004 from Bawngkawn Section Officer, she alongwith the said Section Officer went to the spot to restore water pipelines on 22nd July, 2004 but they were obstructed by the plaintiff to repair the same accusing that the damaged of her building was due to leakage of PHE pipelines. Thereafter on 24th July, 2004, they had repaired 150 mm diameter GI pipe and 40 mm diameter GI pipe. The said pipelines was properly function even in 18th July, 2004 and successfully distributed water to Zemabawk through that pipeline. The water pressure at Bawngkawn of 150 mm diameter GI pipe which is the Zemabawk T.B. Tlang drawline is very high as the water is flowing from Laipuitlang main Reservoir to deliver water at Zemabawk T.B. Tlang. Even assuming that there was leakage of water in the pipeline, the water jets from the broken pipeline would be of such a high and forceful pressure that it would cause the pipelines to burst. However, in the instant case, the pipe was broken and displaced at the socket joint as a result of it being pulled by the landslide. There was no complaints of damaged pipelines even before the landslide occurred on 19th July, 2004 and that water was drawn at regular intervals towards this area feeding the Zemabawk areas including T.B. Tlang without any shortage. Thus, the said damaged pipelines on that area was purely the result of landslide which is beyond the control of the PHE Department.

Ext. D- 1 is spot verification report of damaged PHE pipeline

Ext. D- 1 (a) is her true signature

Ext. D- 3 is the Detailment register

During her cross examination, she further deposed that she had joined her service in PHE during 1994 and is a civil engineer. She did not know the time for laid of the pipeline near the house of the plaintiff. The pipeline is buried near the site of the plaintiff and cannot be seen from the outside. As it was buried she could not know that whether the pipelines were leakage or not. In her knowledge three pipelines passage the front side of the building of the plaintiff viz. 150 mm, 40 mm and 40 mm respectively. She admitted as a fact that on 18th July, 2004, there was delivery of water

supply at Zemabawk through the pipeline laid near the site of the plaintiff. She denied that damaged occurred in the building of the plaintiff was due to leakage of PHE pipelines.

The DW- 2 deposed in his examination in chief that at the time of the instant incident, he was the Executive Engineer, PHE, Aizawl Water Distribution Division, Aizawl looking after the area of the incident. On receiving a report on 21st July, 2004 from Bawngkawn Section Officer, the SDO, PHE concerned alongwith the said Section Officer went to the spot to restore water pipelines on 22nd July, 2004 but they were obstructed by the plaintiff to repair the same accusing that the damaged of her building was due to leakage of PHE pipelines. Thereafter on 24th July, 2004, they had repaired 150 mm diameter GI pipe and 40 mm diameter GI pipe. The said pipelines was properly function even in 18th July, 2004 and successfully distributed water to Zemabawk through that pipeline. The water pressure at Bawngkawn of 150 mm diameter GI pipe which is the Zemabawk T.B. Tlang drawline is very high as the water is flowing from Laipuitlang main Reservoir to deliver water at Zemabawk T.B. Tlang. Even assuming that there was leakage of water in the pipeline, the water jets from the broken pipeline would be of such a high and forceful pressure that it would cause the pipelines to burst. However, in the instant case, the pipe was broken and displaced at the socket joint as a result of it being pulled by the landslide. There was no complaint of damaged pipelines even before the landslide occurred on 19th July, 2004 and that water was drawn at regular intervals towards this area feeding the Zemabawk areas including T.B. Tlang without any shortage. Thus, the said damaged pipelines on that area was purely the result of landslide which is beyond the control of the PHE Department.

In his cross examination, he deposed that there is also possibility to supply water although small leakage in the pipeline. He did not conduct sport verification in the instant damaged of the house of the plaintiff.

The DW- 3 in his examination in chief deposed that in the year, 2004, he held a post of Section Officer in PHE, Zemabawk under Aizawl North Water Distribution Sub-Division, Aizawl, on 21st July, 2004, a report was received from the Section Officer, Bawngkawn that a landslide occurred at Bawngkawn and there was a chance to damage of the water pipelines and thereby found that water pipeline was damaged due to heavy rainfall. On receiving a report on 21st July, 2004 from Bawngkawn Section Officer, he accompanied the SDO concerned alongwith the said Section Officer and AWDD went to the spot to restore water pipelines on 22nd July, 2004 but they were obstructed by the plaintiff to repair the same accusing that the damaged of her building was due to leakage of PHE pipelines. Thereafter on 24th July, 2004, they had repaired 150 mm diameter GI pipe and 40 mm diameter GI pipe. The said pipelines was properly function even in 18th July, 2004 and successfully distributed water to Zemabawk through that pipeline. The water pressure at Bawngkawn of 150 mm diameter GI pipe which is the Zembawk T.B. Tlang drawline is very high as the water is flowing from Laipuitlang main Reservoir to deliver water at Zembawk T.B. Tlang. Even assuming that there was leakage of water in the pipeline, the water jets from the broken pipeline would be of such a high and forceful pressure that it would cause the pipelines to burst. However, in the instant case, the pipe was broken and displaced at the socket joint as a result of it being pulled by the landslide. There was no complaints of damaged pipelines even before the landslide occurred on 19th July, 2004 and that water was drawn at regular intervals towards this area feeding the Zemabawk areas including T.B. Tlang without any shortage. Thus, the said

damaged pipelines on that area was purely the result of landslide which is beyond the control of the PHE Department.

In his cross examination, he opined that the pipeline laid in front of the house of the plaintiff was done before 10 years past and a chance to rust. He did not know the seepage of water drawn below the house of the plaintiff. There was also possible to small leakage of water supply pipe and no landslide occurred at that time except the site of the plaintiff. He did not agree with the findings of Geologist saying that the damaged of the building of the plaintiff was due to leakage of water supply line. He admitted that he did not conduct spot verification to ascertain the cause of damaged of the building of the plaintiff.

FINDINGS

Issue No. 1

Maintainability of the suit

On meticulously examining the plaint, a requisite court fees is paid by the plaintiff, the plaint is duly supported by verification and affidavit signed and sworn properly by the plaintiff. A legal notice u/s 80 of CPC was also served in due course of time. Thus, I find no irregularities which vitiate the proceedings.

Issue No. 2

Whether there was cracking and damaged of the building of the plaintiff before heavy rainfall occurred on 19th July, 2004

Evidence of the plaintiff as well as reports submitted by the Geology and Mining Wing of the Industries Department, Govt. of Mizoram and as not denied by the defendants, there was cracking and damaged of the building of the plaintiff on 19th July, 2004. Although the plaintiff strongly accused that it was because of leakage of the pipelines of the defendants witnessed by experts from the Geology and Mining Wing, Industries Department, Govt. of Mizoram, on the said 19th July, 2004, evidence also reveals that there was a heavy rainfall which also affected other building in the elakas of Aizawl city. In cross examinations of DWs 2&3, there was a chance to small leakage of PHE pipelines although successfully distributed water supply to the concerned. Meanwhile, the pipelines laid in front of the building of the plaintiff was appears 10 years old as deposed by DW-3 in his cross examination, I find that cracks/damaged of the building of the plaintiff will be mainly because of heavy rainfall during monsoon season occurred on 19th July, 2004. Cogently, although there was in force of the Mizoram Urban and Regional Development Act, 1990 and the rules thereunder, no building in Aizawl city before existence of Aizawl Development Authority cope with the design of experts and in force National Building Code which may cause some hazy self style buildings to crack. As admitted, before 19th July, 2004, there was small cracks of the building of the plaintiff, although the Geology and Mining Wing of Industries Department alleged that the cause of such damaged was leakage of PHE water pipeline, I find that the main cause will be heavy rainfall as well as failure to comply Building Bye Laws in the terrain. In a nutshell, the Architect/Engineer who drawn the buildings to be constructed by the plaintiff and who supervised the said construction only will speaks the structure design as well as the possible cause of damage but which appears lacking in the instant construction.

Pertinently, as admitted in her cross examination as PW-1, the plaintiff herself also fails to reserve the roadside land as required under the

provisions of the then in force Mizoram Urban and Regional Development Act, 1990 and the rules made thereunder.

Issue No. 3

Whether the pipelines of PHED at the vicinity of the plaintiff was broken/mal-function before 19th July, 2004

Although depositions of PWs reveals that there was seepage below the building of the plaintiff before repairing of PHE pipelines. As deposed by DWs 2&3 there was also a chance to small leakage of pipelines in front of the house of the plaintiff although successfully supplied water to the Zemabawk locality till 18th July, 2004 but beyond the knowledge and prudence of the defendants or PHE Department, Govt. of Mizoram.

Issue No. 4

Whether damaged of the building of the plaintiff was due to negligence on the part of the defendants or not.

Before going to facts in the case, I must look into the very concept of negligence, in criminal jurisprudence, the Hon'ble Apex Court took some holistic discussion in the case of **Naresh Giri Vs. State of M.P.** decided on 12/11/2007 and reported in, 2007 (11) SCR 987, 2008 (1) SCC 791, 2007 (13) SCALE 7, 2007 (12) JT 433, the Hon'ble Apex Court held that-

"8. What constitutes negligence has been analysed in Halsbury's Laws of England (4th Edition) Volume 34 paragraph 1 (para 3) as follows:

"Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence, where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger, the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two".

9. In this context the following passage from Kenny's Outlines of Criminal Law, 19th Edition (1966) at page 38 may be usefully noted:

"Yet a man may bring about an event without having adverted to it at all, he may not have foreseen that his actions would have this consequence and it will come to him as a surprise. The event may be harmless or harmful, if harmful, the question rises whether there is legal liability for it. In tort, (at common law) this is decided by considering whether or not a reasonable man in the same circumstances would have realised the prospect of harm and would have stopped or changed his course so as to avoid it. If a reasonable man would not, then there is no liability and the harm must lie where it falls. But if the reasonable man would have avoided the harm then there is liability and the perpetrator of the harm is said to be guilty of negligence. The word 'negligence' denotes, and should be used only to denote, such blameworthy inadvertence, and the man who through his negligence has brought harm upon another is under a legal obligation to make reparation for it to the victim of the injury who may sue him in tort for damages.

But it should now be recognized that at common law there is no criminal liability for harm thus caused by inadvertence. This has been laid down authoritatively for manslaughter again and again. There are only two states of mind which constitute mens rea and they are intention and recklessness. The

difference between recklessness and negligence is the difference between advertence and inadvertence they are opposed and it is a logical fallacy to suggest that recklessness is a degree of negligence. The common habit of lawyers to qualify the word "negligence" with some moral epithet such as 'wicked', 'gross' or 'culpable' has been most unfortunate since it has inevitably led to great confusion of thought and of principle. It is equally misleading to speak of criminal negligence since this is merely to use an expression in order to explain itself."

10. "Negligence", says the Restatement of the law of Torts published by the American Law Institute (1934) Vol. I. Section 28 "is conduct which falls below the standard established for the protection of others against unreasonable risk of harm". It is stated in Law of Torts by Fleming at page 124 (Australian Publication 1957) that this standard of conduct is ordinarily measured by what the reasonable man of ordinary prudence would do under the circumstances. In *Director of Public Prosecutions v. Camplin* (1978) 2 All ER 168 it was observed by Lord Diplock that "the reasonable man" was comparatively late arrival in the laws of provocation. As the law of negligence emerged in the first half of the 19th century it became the anthropomorphic embodiment of the standard of care required by law. In order to objectify the law's abstractions like "care" "reasonableness" or "foreseeability" the man of ordinary prudence was invented as a model of the standard of conduct to which all men are required to conform.

11. In **Syed Akbar v. State of Kamataka**, (1980) 1 SCC 30, it was held that "where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. As pointed out by Lord Atkin in *Andrews v. Director of Public Prosecutions* (1937) (2) All ER 552) simple lack of care such as will constitute civil liability, is not enough; for liability under the criminal law a very high degree of negligence is required to be proved. Probably, of all the epithets that can be applied 'reckless' most nearly covers the case. "

12. According to the dictionary meaning 'reckless' means 'careless', 'regardless' or heedless of the possible harmful consequences of one's acts'. It presupposes that if thought was given to the matter by the doer before the act was done, it would have been apparent to him that there was a real risk of its having the relevant harmful consequences; but, granted this, recklessness covers a whole range of states of mind from failing to give any thought at all to whether or not there is any risk of those harmful consequences, to recognizing the existence of the risk and nevertheless deciding to ignore it. In *R. v. Briggs* (1977) 1 All ER 475 it was observed that a man is reckless in the sense required when he carries out a deliberate act knowing that there is some risk of damage resulting from the act but nevertheless continues in the performance of that act.

13. In *R. v. Caldwell* (1981) 1 All ER 961, it was observed that:-

"Nevertheless, to decide whether someone has been 'reckless', whether harmful consequences of a particular kind will result from his act, as distinguished from his actually intending such harmful consequences to follow, does call for some consideration of how the mind of the ordinary prudent individual would have reacted to a similar situation. If there were nothing in the circumstances that ought to have drawn the attention of an ordinary prudent individual to the possibility of that kind of harmful consequence, the accused would not be described as 'reckless' in the natural meaning of that word for failing to address his mind to the possibility; nor, if the risk of the harmful consequences was so slight that the ordinary prudent individual on due consideration of the risk would not be deterred from treating it as negligible, could the accused be described as reckless in its ordinary sense, if, having considered the risk, he decided to ignore it. (In this connection the gravity of the possible harmful consequences would be an important factor. To endanger life must be one of the most grave). So, to this extent, even if one ascribes to 'reckless' only the restricted meaning adopted by the Court of Appeal in *Stephenson and Briggs*, of foreseeing that a particular kind of harm might happen and yet going on to take the risk of it, it involves a test that would be described in part as 'objective' in current legal jargon. Questions of criminal liability are seldom solved by simply asking whether the test is subjective or objective."

14. The decision of *R. v Caldwell* (Supra) has been cited with approval in *R v. Lawrence* (1981) 1 All ER 974 and it was observed that:

"- Recklessness on the part of the doer of an act does presuppose that there is something in the circumstances that would have drawn the attention of an ordinary prudent individual to the possibility that his act was capable of causing the kind of serious harmful consequences that the section which creates the offence was intended to prevent, and that the risk of those harmful consequences occurring was not so slight that an ordinary prudent individual would feel justified in treating them as negligible. It is only when this is so that the doer of the act is acting 'recklessly' if, before doing the act, he either fails to

give any thought to the possibility of there being any such risk or, having recognized that there was such risk, he nevertheless goes on to do it".

Howsoever, according to the Chambers 21st Century Dictionary edited by Mairi Robinson et al published by the Allied Chambers (India) Ltd. New Delhi in the reprinted 2000, negligence means "*lack of proper attention or care; carelessness; neglect, a breach of a legal duty of care for others*"

In the instant facts, the plaintiff as PW-1 also deposed that even soon after cracks or damaged of her building on 19th July, 2004, she never presumed that there was a leakage of PHE pipelines adjacent to her house, the DWs also clearly deposed that till 18th July, 2004, there was no complaint at all for flowing water supply from Laipuitlang to Zemabawk to distribute to the people. The Officials of the PHE Department as deposed by DWs rushed to the place of occurrence as soon as knowing leakage of their pipelines but the plaintiff rather refused them to repair at the earliest. They after for their first opportunity repaired such leakage. Thus, I find that although there may be some small leakages of the PHE pipeline near the residence of the plaintiff, the PHE as defendant's negligence on such shortfall is not attracted whilst no evidences reveals that the building of the plaintiff was constructed to cope with the then in force Building Bye Law namely- the Mizoram Urban and Regional Development Act, 1990 and the rules thereunder which imposed to follow the entity of the existing National Building Code of India. In otherwords, even if the findings of the spot verification report of the Geology and Mining Wing, Directorate of Industries, Govt. of Mizoram be correct, as such broken or mal function of the pipelines were beyond the knowledge and prudence of the PHE Department, Govt. of Mizoram, it will not be appropriated to term them as negligence on their part.

Issue No. 5

Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

As discussed in the above and as found no negligence on the part of the defendants which is beyond their knowledge and skill, the plaintiff will not be entitled any relief as claimed against the defendants. Pertinently, the assessment of the costs of the building of the plaintiff as Ext. P- 6 is also immaterial in the instant case.

DIRECTIVES

Thus, the inevitable conclusion is to dismiss the suit on merit as not possible to embark liabilities on the defendants on account of failure to proof negligence on the part of the defendants. The suit is therefore dismissed but no order as to costs.

The case shall stand disposed of accordingly.

Give this copy to all concerned.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. CS/13/2005, Sr. CJ (A)/

Dated Aizawl, the 6th June, 2011

Copy to:

1. Smt. Hlunchhungi D/o Rokawna, Bawngkawn- Aizawl through Mr. W. Sam Joseph, Advocate
2. The State of Mizoram Through the Chief Secretary to the Govt. of Mizoram, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, PHE Department, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
4. The Chief Engineer, PHE Department, Govt. of Mizoram, Aizawl- Mizoram through Mr. R. Lalremruata, AGA
5. Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
6. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
7. Case record

PESKAR