

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

**MONEY SUIT NO. 16 OF 2005**

*Plaintiff:*

Union of India  
Represented by the Officer on Commanding  
74 Road Construction Company (GREF)  
C/o 99 APO

*By Advocate's* : Mr. S.N. Meitei, Adv.

*Versus*

*Defendants:*

1. The Branch Manager  
The United Insurance Company Ltd.  
Aizawl- Mizoram
2. Mr. F. Lalngena  
Bethel Veng, Champhai
3. Mr. Thangliana  
S/o Bawihlianthanga  
Champhai- Mizoram

*By Advocate for Deft. No. 1* : Mr. A. Rinliana Malhotra, Adv.

Date of Argument : 10-05-2011

Date of Judgment & Order : 11-05-2011

**BEFORE**

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

**JUDGMENT & ORDER**

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This is a suit for payment of Rs. 3,19,713.00 with interest rate at 15% per annum from the date of filing of the suit till realization filed by Union of India against United India Insurance Company Ltd. Aizawl and others filed on 13/6/2005 stating that the defendant no. 2 is the owner of Truck vehicle Bearing Registration No. MZ-01/A-5985 and the defendant no. 3 is the driver of the said vehicle. The plaintiff further stated that on 24/11/2002, due to the negligent driving of the said vehicle in between Seling to Champhai road, when the vehicle with full load reached the middle portion of 200 ft Double Triple Baily Bridge, the vehicle hit the left side of the panel. As a result of which, the entire bridge along with the vehicle collapsed and fell into the river. Hence the instant suit for compensation.

The defendant no. 1 also filed written statement on 16/1/2006 saying that as the defendants 1&3 resided in Champhai District, this court does

not have a territorial jurisdiction and simply denied of the averments and submissions in the plaint without challenging the subject matter jurisdiction of civil courts.

The following issues were therefore framed on 17/3/2006-

1. Whether the suit is maintainable or not
2. Whether the plaintiff has any cause of action against the defendants
3. Whether the suit is barred by the principles of estoppels, acquiescence and limitation
4. Whether Tuirini Bridge was collapse due to the negligent driving of defendant no. 3
5. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

The plaintiff had produced the following witnesses namely-

- (1) Mr. Narain Mishra S/o Umakant Mishra
- (2) Mr. Raju Sharma
- (3) Mr. P.K. Shukla
- (4) Mr. Parimal Bhowmik
- (5) Mr. Bholanath

The defendant no. 1 had produced only one witness namely- Mr. B.U. Hazari S/o Abdul Jabbar, Khatla Veng, Aizawl.

At the time of arguments, learned counsel for the defendant no. 1 at a very belated stage challenged the subject matter of the suit submitting that this court does not have a subject matter jurisdiction as Motor Accident Claims Tribunal alone have a jurisdiction to try the suit and dispose of and also appreciated evidences. Learned counsel for the plaintiff also simply appreciated evidences.

Instead of dealing of the case with merits on the basis of various issues by appreciating evidences adduced by both parties and adjudication of the case, although taken all evidences of parties, and although the previous court fails to examine the entity of the court under the light of O. VII, R. 11 of the CPC, I must look the legal principles as held in **New India Assurance Co. Ltd. vs Jayshreeben Wd/O. Pratapbhai Thacker and Ors.** decided on 2 March, 2007 and reported in (2007) 2 GLR 1340, the Gujarat High Court after making reliance of a series of the observations of Hon'ble Supreme Court in their judgment has held that-

“28. As indicated above, simply by changing the name, the nature of proceedings or the nature of claim cannot be changed. It remains a claim for compensation arising out of a motor vehicle accident and since the Claims Tribunal is already constituted, the jurisdiction of Civil Court is obviously barred by virtue of Section 175 of the Act. The Civil Court has, therefore, no jurisdiction to entertain the said suit. When the preliminary issue is raised and this Court has directed the Civil Court to decide the said preliminary issue, it is bounden duty on the part

of the learned Civil Judge to decide the said issue in accordance with the provisions of law. Since the learned Civil Judge has made a glaring error of law and assumed the jurisdiction which he is lacking, this Court thinks it just and appropriate to interfere in the said order and since the order is absolutely without jurisdiction, the same is required to be quashed and set aside.”

In this catena, Section 175 of the Motor Vehicles Act, 1988 therefore puts bar on jurisdiction of the Civil Court. It reads as under:

**“175. Bar on jurisdiction of the Civil Courts:**

Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim before compensation shall be granted by the Civil Court.”

Pertinently, it is not disputed that Motor Accident Claims Tribunal existed in the terrain. Before 5<sup>th</sup> Jan., 1996, Motor accident Claims Tribunal(MACT) was taken up by Transport Department and Secretariat administration department, Government of Mizoram, by virtue of rule 3 of the Government of Mizoram (Allocation of Business) Rules,1987, the Government of Mizoram re-allocated the matter to the Law and Judicial Department under No.A.40011/1/94-GAD/Loose-1, the 5<sup>th</sup>January,1996. Thereafter on 3<sup>rd</sup>Jan, 2000, the Government of Mizoram constituted MACT, Lunglei with the court of Additional District Magistrate (Judicial), Lunglei for the districts of Lunglei, Lawngtlai and Saiha the existing Presiding Officer therefore and thenceforth comprised of the districts of Aizawl, Champhai, Serchhip, Kolasib and Mamit. The ADM (J) Lunglei also functions as Presiding Officer in addition to his own duties as notified under Notification No. A.51011/1/96-L&J (CSW), the 3<sup>rd</sup>January, 2000 [Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXIV, 28.1.2000, SE 1921, Issue No.10].

In the era of insulation of judiciary in the state, the Government of Mizoram under Notification No. A. 12011/32/06-LJE, the 30<sup>th</sup> November, 2009 invested the District Judge, Lunglei with all the powers of a Member of the Motor Accident Claims Tribunal to try motor accident claims cases within the jurisdiction of the Lunglei Judicial District covering the administrative districts of Lunglei, Lawngtlai and Saiha whereas the territorial jurisdiction of the Motor Accident Claims Tribunal at Aizawl stands restricted to the Aizawl Judicial District comprised of the Aizawl, Kolasib, Mamit, Champhai and Serchhip administrative districts only. [Vide, the Mizoram Gazette, Extra Ordinary, Vol. XXXVIII, 2.12.2009 Issue No. 542].

Meanwhile, all Judicial Officers in the Grade- I (District Judge Cadre) of the Mizoram Judicial Service were designated as ‘Member’, MACT under MV Act, 1988 Vide, Notification No. A. 12035/1/2008- LJE, Dated Aizawl, the 16<sup>th</sup> December, 2010.

In regards to limitations of civil court’s jurisdictions, another reliance may be taken in the case of **Dhulabhai & Ors. v. State of M.P. & Anr.** reported in 1969 AIR 78=1968 SCR (3) 662, the Constitution Bench of the

Supreme Court reviewed the entire case law on the question of maintainability of civil suit and laid down seven propositions, it reads thus-

“The result of this inquiry into the diverse views expressed in this Court may be stated as follows:-

(1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional. or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund' of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.”

In the case of **Rajasthan SRTC v. Bal Mukund Bairwa** reported in (2009) 4 SCC 299, a three-Judge Bench of the Supreme Court observed:

"There is a presumption that a civil court has jurisdiction. Ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a

case where jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction."

Sincerely apologized to the plaintiff on failing to scrutinize the suit at the threshold by rejecting under O. VII, R. 11 of the CPC by framing preliminary issues as they lost so many years for procuring justice to approach the right forum.

The suit is therefore rejected in the light of O. VII, R. 11 of the CPC due to lack of jurisdiction by this court. The plaintiff is advised to approach the competent forum for justice.

The case shall stand disposed of accordingly. Give this copy to both parties and all concerned.

**Dr. H.T.C. LALRINCHHANA**

Senior Civil Judge- 2  
Aizawl District: Aizawl

Memo No. MS/16/2005, Sr. CJ (A)/

Dated Aizawl, the 11<sup>th</sup> May, 2011

Copy to:

1. Union of India Represented by the Officer on Commanding- 74 Road Construction Company (GREF) C/o 99 APO through Mr. S.N. Meitei, Advocate
2. The Branch Manager, The United Insurance Company Ltd. Aizawl- Mizoram through Mr. A. Rinliana, Malhotra
3. Mr. F. Lalngena, Bethel Veng, Champhai through Mr. A. Rinliana, Malhotra
4. Mr. Thangliana S/o Bawihlianthanga, Champhai- Mizoram through Mr. A. Rinliana, Malhotra
5. P.A. to District & Sessions Judge, Aizawl Judicial District: Aizawl
6. Case Record

PESKAR