IN THE COURT OF SENIOR CIVIL JUDGE- 1
AIZAWL DISTRICT: AIZAWL, MIZORAM

CIVIL SUIT NO. 01 OF 1994

Plaintiff:

Union of India
Through the Commander
HQ - 24 Border Road Task Force
C/o 99 APO

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

Versus

Defendants:

1. Mr. Lalthanmawia
   Ophel House
   Kulikawn, Aizawl
2. Mr. Lalengliana
   Driver of ZRM- 3427
   C/o Lalthanmawia
   Ophel House
   Kulikawn, Aizawl
3. Mr. Dawngliana
   Driver of ZRM- 4757
   C/o Lalthanmawia
   Ophel House
   Kulikawn, Aizawl

By Advocates : 1. Mr. C. Lalramzauva, Sr. Adv.
2. Mr. A. Rinliana Malhotra, Adv.

Date of Arguments : 23-09-2011
Date of Judgment & Order : 03-10-2011

BEFORE
Dr. H.T.C. LALRINCHHANA, Sr. CJ- 1

JUDGMENT & ORDER

INTRODUCTORY

The instant suit was filed in a re-constructed form on 7/4/1995 due to burnt of the records in the month of November, 1994. After dismissal of the suit on merit by the then Court of Assistant to Deputy Commissioner on 7.8.2002, an appeal was filed before the Hon'ble Court of the then Additional District Magistrate (J) [Hereinafter referred to as ADM) (J)], Aizawl as RFA No. 6 of 2002, after the said Hon'ble Court of ADM (J) upheld such dismissal, a second appeal was filed again in the Hon'ble Gauhati High

Court registered as RSA No. 12/2003, C.O. No. 3 of 2005, the Hon'ble Gauhati High Court remanded back the case to the first Appellate Court viz. Hon'ble Court of ADM (J), Aizawl on 23/6/2005. The judgment & order passed by the said ADM (J) dt. 31.5.2006 which remain upheld the decisions of the trial court was again challenged in the Hon'ble Gauhati High Court registered as RSA No. 17/2006, the Hon'ble Gauhati High Court again remanded back the case to the trial court as per the judgment & order delivered on 19.9.2008 by giving liberty to both parties to adduce evidence of both oral and documentary in support of their respective case. Hence, the instant proceedings.

FACTUAL SCENARIO

The plaintiff viz. Union of India had constructed a Triple Single Bailey Bridge at Km 31 on Aizawl- Tuipuibari road over river Dhaleshwari in the year of 1970 and opened the same on the year itself for public utility which has been obviously used as the life line for all the villages and towns nearby. The bridge was constructed at a load capacity of only 18 tons and only one vehicle at a time from either direction was allowed to cross the bridge and for that, caution boards on both ends of the bridge was put cautioning the drivers/users of the bridge to cross the bridge only with one vehicle at a time. The plaintiff's claimed that it was properly maintained but on 6.2.1993, the said bridge was collapsed due to the reckless use of the same by the defendants as it was a result of driving/running two vehicles at a time while crossing the bridge. The plaintiff therefore prayed a decree that (i) declaring the plaintiff organization suffered a loss to the tune of Rs. 51,23,000.00 (Rupees fifty one lakhs twenty three thousand) due to the negligence of the defendants (ii) directing the defendants to make good the loss of Rs. 51,23,000.00 (Rupees fifty one lakhs twenty three thousand) suffered by the plaintiff (iii) cost of the suit and pendente lite interest at the rate of 18% per annum in favour of the plaintiff AND (iv) any other and further relief which the plaintiff is entitled according to justice, equity and good conscience in favour of the plaintiff.

On the other hand, the defendants in their written statements stated that the two truck lorry bearing registration numbers ZRM- 3427 and ZRM-4757 crossed the bridge in one direction and denied that the said two trucks were heavily loaded. No caution boards were made in the vicinity of the bridge. The said two vehicles were not simultenously taken over the bridge as alleged but were one after another. Due to vibration caused and poor maintenance of the bridge, it was collapsed. As having tortuous liability in the event of any accident occurring on account of negligence on the part of the plaintiff and the accident occurred on 6.2.1993 in which the said two truck vehicles belonging to the defendant no. 1 had fallen down to the river along with the collapsed bridged had caused financial loss amounting to Rs. 11,89,000/- (Rupees eleven lakhs, fifty nine thousand) only to the defendant no. 1. The defendant no. 1 also duly served Legal Notice to the plaintiff on 26.3.1993 and their acknowledgement were also annexed in their written statements. By making schedule of claim, counter claim at Rs. 11,89,000/- (Rupees eleven lakhs, fifty nine thousand) only with interest rate at 16% per annum from the date of institution of the suit till realization and other relief (s) which is entitled by the defendant no. 1 for the end of justice is also preferred. By executing power of Attorney dt. 20th April, 1999 by the defendant no. 1, he nominated and appointed Smt. Lalrinkimi D/o Tlangliana (L), Kulikawn, Aizawl for him in his name and on his behalf in the instant suit.

The plaintiff also contested in the said counter claim by filing reply on 15/4/2011 vehemently stating that collapse of the said bridge was due to the negligence and irresponsible behavior of the drivers of the truck vehicles belonging to the defendant no. 1.

ISSUES

The issues were again framed on 27/5/2011 which are as follows -

1. Whether the plaintiff has cause of action against the defendants
2. Whether the plaintiff has locus standi to file the instant suit
3. Whether the suit is bad for non-joinder of necessary parties
4. Whether the said Bailey Bridge located at Aizawl to Tuipuibari road across the river Tlawng (Dhaleshwari) at Km 31 had collapsed due to its poor maintenance by the plaintiff or due to negligence on the part of the defendants 2 and 3
5. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend and from whom
6. Whether the defendant no. 1 is entitled to the relief claimed in his counter claim. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Col. V.P. Singh S/o Dr. Harkinath Singh, Chandigarh (Hereinafter referred to him as PW-1)
2. Mr. K.K. Aravindakshan S/o Krishna Parikur (L), Manali, Himachal Pradesh (Hereinafter referred to him as PW-2)
3. Mr. B.R. Chanana S/o Amir Chand (L), Poonok, Jammu & Kashmir (Hereinafter referred to him as PW-3)
4. Mr. N.R. Parmer S/o Panaram Parnam, 56 RCC, Jammu & Kashmir (Hereinafter referred to him as PW-4)

The **PW-1** in his examination in chief deposed that he was working as Commander of 24 BRTF from May, 1991 till 31st July, 1994. His duties and responsibilities included construction and maintenance of roads and bridges in Mizoram in his jurisdictions. These works were executed through 107 RCC and 74 RCC. On 6.2.1993, while he was at Seling, he heard the instant incident. He alongwith other concerned officers went to the spot and inspected the incident by taking some photographs. In the following day, they reported the matter to the Officer in Charge of Sairang Police Station. For the public necessity urgent step was taken by them for re-construction of the collapsed bridged and completed within 12 days by expending Rs. 51.23 lakhs as emergency basis. They conducted periodical inspection of the bridge, even just before incident took place, his junior official had inspected the same and found as good conditions. The bridge was classified as class 18 which could carry one vehicle at a time and this warning was also put in both sides of the bridge for information of drivers. Whilst, the bridge was constructed in 1970, no accident report was heard from any others like in the instant case. In his opinion, the cause of collapse of the bridge was due to negligence on the part of the truck vehicle drivers by violating caution notice.

During cross examination, he deposed that no quotation was made for the purpose of repairing the instant bridge before incident took place. He

did not know the speed of the mishap two vehicles as he was not present on the spot at the time of incident. He strongly denied of negligence on their part causing the instant incident.

The **PW-2** deposed in his examination in chief that he was posted as Officer in Charge, 107 RCC (GREF). Soon after he knew the incident, he went to the spot for inspection and found that one of the trucks lying in the river and one remain in the bridge. One of the trucks was carrying full load of star chips and the other was carrying sand during inquiry and also learnt that the trucks were also carrying about 20 people as passengers coming from Tuipuibari side towards Aizawl. The bridge was constructed in 1970 and its loads carrying capacity of class 18 which means that maximum capacity of 18 tons at a time. In his opinion, he found that the cause of accident was due to negligence on the part of the defendants. They also displayed caution notice indicating that one vehicle at a time only is permissible in the bridge and also put speed breakers in both sides of the bridge. The matter was also reported to Officer in Charge of Sairang Police Station. By expending Rs. 51.23 lakhs, it was soon repaired.

In his cross examination, he deposed that he was one km away from the place of occurrence at the time of incident and informed to him by other officials. He did not know the exact quantum of cubic metres which carried by the accident truck vehicles. The life span of the said bailey bridge was 30 – 35 years if properly maintained.

The **PW- 3** in his examination in chief deposed that during the incident, he was posted at Phaileng under 107 RCC also looking after the instant bridge. As soon as knowing the incident, he went to the spot and found collapsed bridge. The truck lying in the river carried stone chips and the other truck vehicle carried sand which was lying scattered around the areas. Besides, that the truck vehicle carried about 20 passengers. They found two/three peoples died on the spot and many others sustained injuries and taken into the nearest hospital. As his duty, he did casual inspection of the bridge of various compartments. Once in four to five years, they usually replaced wooden decking of the bridge for safety and strength.

In his cross examination, he deposed that the accident occurred at around 12:15 P.M of the day. He alongwith his party crossed the river at around 11:00 A.M. on the same day. He admitted that if the pins of the bridge might be taken out, it may cause of accident. He did not belief that the bridge was collapsed due to taken out of one of the pins. He opined that the said two truck vehicles entered into the bridge at the same time as he found two truck vehicles on the spot at the time of incident. He vehemently denied that the incident was due to their negligence.

The **PW- 4** in his examination in chief deposed that at the time of incident, he was posted at Sairang working at 28 km Aizawl - Tuipuibari road. The two accident vehicles were in full load, he saw a caution notice like one vehicle at a time in the bridge near the bridge. He reported the matter to the Officer in Charge of Sairang Police Station.

During cross examination, he further deposed that he was working as Buldozer Supervisor and working at Sairang at the time of incident. Soon after receiving report, he went to the spot.

For the defendants:

The defendants had produced the following witnesses namely-

1. Smt. Lalrinkimi W/o Lalthanmawia, Kulikawn, Aizawl (Hereinafter referred to as DW-1)
2. Mr. Lalthlengliana S/o Darthawma, Kawnpui (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 the defendant no. 1 is her husband and authorized to act on his behalf. Ext. D- 1 is Power of Attorney for the same. After depositing barrels of Alkatra (Bitumen), the said two truck vehicles belonging to them carried some sand stone and stone chips meant to prevent the body of such vehicles from over flowing/spilling. She usually went to Kawrthah and other villages on that side and found that the instant bridge was old and heard that it was constructed in 1970 and no proper maintenance was made. Ext. D-2 is a copy of Legal Notice dt. 26/3/1993. No caution notice was made near the bridge by the plaintiff.

During her cross examination, she admitted that at the time of incident, she was not in the place of occurrence.

The **DW- 2** deposed in his examination in chief that he knew the defendants and the defendant no. 2 was the driver of ZRM- 3427 and died on the said incident. The defendant no. 3 was the driver of ZRM-4757. Both the truck vehicles were belonging to the defendant no. 1. At the time of incident, he was employed as handyman in the accident vehicle ZRM-3427. On that day, they carried back around 20 quintals of sand stone, besides him with the driver, they have around three passengers on that day. When reaching the opposite land by the other truck ZRM-4757 driven by Mr. Dawnga, they entered into the bridge as the next but slowly. The bridge thereby collapsed and pulling down both vehicles on the two ends of the bridge. On that accident, the driver and three of their passengers died on the mishap. He never saw any caution notice near the site of the bridge. He also never saw any renovation or repairing work as he regularly visited the site of the bridge. In his opinion, he found that the incident was due to negligence for proper maintenance of the bridge by the plaintiff.

In his cross examination, he deposed that since 1992, he was engaged as handyman till the incident in the accident truck vehicle.

The **DW- 3** in his examination in chief deposed that he knew the defendants and the defendant no. 2 was the driver of ZRM- 3427 and died on the said incident. In 1993, he had already driven the truck belonging to the defendant no. 1 for about 3 years. On the day of accident, being the driver of one of the accident vehicles, he also carried sand/stone chips of three cubic meters. He slowly ran in the bridge. The other truck vehicle driven by Mr. Lalengliana followed him near entry the end by his driven truck. When the truck driven by Mr. Lalengliana started to cross the bridge, it was collapsed and thereby pulling his vehicle down to the river with the collapsed bridge and the other truck vehicle was also pulled down. He carried four passengers but none luckily sustained injury from his driven vehicle. He found that incident was caused due to negligence on the part of the plaintiff due to poor maintenance of the said bridge.

In his cross examination, he further deposed that he did not know the number of passengers carried by the vehicle driven by Mr. Lalengliana but he carried 8 or 9 passengers. The probable weight of his vehicle at that time

was carrying 30 quintals of sand. He denied that the plaintiff put caution board in the sides of the bridge.

ARGUMENTS

Mr. C. Lalramzauva, learned senior counsel for the defendants submitted that the accident was purely happened due to negligence on the part of the plaintiff by poor maintenance and no caution notice was made by taking reliance in the case of **Union of India v. Lt .Col. Bhagat Singh and Ors.**, reported in 2003 (10) S.C.C. 597, wherein, the Supreme Court has confirmed the findings of the Court below and upheld the liability of the Union of India to pay damages/compensation for death, consequent to head injury received by the pillion rider in an accident on account of a damaged road which locked proper repairs and no signs to indicate the danger were displayed so as to caution user of the road. Further having reliance in **M.C. Mehta And Anr vs Union Of India & Ors** decided on 20 December, 1986 and reported in 1987 AIR 1086, 1987 SCR (1) 819 for the purpose of strict liability lies to the plaintiff. More so, the accident speaks itself as 'Res Ipsa Loquitor' as held in **Pushpabai Purshottam Udeshi & Ors vs Ranjit Ginning & Pressing Co. (P) Ltd. & Anr.** decided on 25 March, 1977 and reported in 1977 AIR 1735, 1977 SCR (3) 372. Thus, prayed to award the relief sought in the counter claim.

Learned counsel for the plaintiff simply submitted that monthly checking of the instant bridge was regularly performed by them and always found in good conditions, the accident vehicles were alleged as overloading and caution notice was also put in the both sides of the bridge as one vehicle at a time for crossing the bridge.

FINDINGS

Issue No. 1
Whether the plaintiff has cause of action against the defendants

Admittedly, the instant Bailey bridge was collapsed while crossing by the truck vehicles owned by the plaintiff which require to expend huge amount of money. Obviously, as per the existing Allocation of Business Rules, the matter and work is assigned to the plaintiff. Thus, I find that the plaintiff has cause of action as alleged and in against of the defendants in view of the observations of Hon'ble Supreme Court in **Vellore Citizens Welfare Forum Vs. Union Of India & Ors** decided on 28 August, 1996 reported in 1996 AIR 2715, 1996 (5) Suppl. SCR 241, 1996 (5) SCC 647, 1996 (6) SCALE 194, 1996 (7) JT 375 and in **Indian Council for Environ-Legal Action v. Union of India,** reported in [1996] 3 SCC 212.

Issue No. 2
Whether the plaintiff has locus standi to file the instant suit

As per the already settled crux by the Hon'ble Gauhati High Court in RSA No. 17/2006 dt. 19.9.2008, no diverse findings can be arrived except to decided in favour of the plaintiff.

Issue No. 3
Whether the suit is bad for non-joinder of necessary parties

The law is already settled by the Hon'ble Supreme Court in **U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) By Lrs. & Ors.** decided on

20/10/1994 in connection with Appeal (civil) 7067 of 1994 reported in 1995 AIR 724, 1994 (4) Suppl. SCR 646, 1995 (2) SCC 326, 1994 (4) SCALE 755, 1994 (7) JT 304, it was held that-

> "The law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (See: Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, [1963] Supp. 1 SCR 676, at p. 681."

In this view, I find no laches in the instant suit which can defeat justice due to non-joinder of necessary parties.

Issue No. 4
Whether the said Bailey Bridge located at Aizawl to Tuipuibari road across the river Tlawng (Dhaleshwari) at Km 31 had collapsed due to its poor maintenance by the plaintiff or due to negligence on the part of the defendants 2 and 3

Before going to facts in the case, I must look into the very concept of negligence, in criminal jurisprudence as well as in the civil 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:
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> "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".
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> 9. In this context the following passage from Kenny's Outlines of Criminal Law, 19th Edition (1966) at page 38 may be usefully noted:
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> "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.
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> 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) Litd. 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*"

Howsoever, for the benefits of the needy and for realization of our democratic socialism, the holy decisions of Hon'ble Supreme Court for an epoch making in connection with **State of Himachal Pradesh & Anr. Vs. Umed Ram Sharma & Ors.** reported in 1986 AIR 847, 1986 (1) SCR 251, 1986 (2) SCC 68, 1986 (1) SCALE 182, held *"Right to residents of hilly areas, to access to roads or right to improvement of means of communication*", it runs as-

> "Every person is entitled to life as enjoined in Article 21 of the Constitution. He has the right under Article 19(l)(d) to move freely throughout the territory of India and he has also the right under article 21 to his life and that right under article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. Therefore, there should be road for communication in reasonable conditions in view of constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution..... Read in the background of the Directive Principles as contained in article 38 (2) of the Constitution, access to life should be for the hillman an obligation of the State but it is primarily within the domain of the legislature and the executive to decide the priority as well as to determine the urgency. Judicial review of the administrative action or inaction where there is an obligation for action should be with caution and not in haste. It depends upon the facts and circumstances of each case. Its dimension is never close and must remain flexible..... In this case, as mentioned before, the executive is not oblivious as is evident from the facts stated herein of its obligation. Its sense of priority it has determined, there may have been certain lethargy and inaction. It has been said by Adam Smith in his 'Wealth of Nation' that whenever you see poverty widespread rest assured that either of the two causes must have operated, either energy has not been applied or energy has been misapplied"

If it be the heart and soul of our fundamental rights emanated under Article 21 of the Constitution of India, for a hilly topography like in Mizoram, It will become a matter of right to compensation as held in **Smt. Nilabati Behera Alias Lalit Behera vs State Of Orissa And Ors** decided on 24 March, 1993 reported in 1993 AIR 1960, 1993 SCR (2) 581, wherein, it was dealt that-

> "It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution."

Meanwhile, oral evidences adduced by PWs appears relevant as direct witness soon after incident took place, they found two vehicles fallen down in the bridge also did not deny by oral evidence adduced by the DWs. It

cogently determined that two truck vehicles were crossing the bridge at one time. Although denied by witnesses of the defendants, it can be well presumed that the driver of the two accident vehicles must aware of the caution on one vehicle at a time for crossing the bridge. The DWs were also alert on the same and defence was also taken that both the drivers aimed to wait a time for passing the bridge by one vehicle at a time. Which shows that they well aware of the said caution. It is further the undisputed facts that the two vehicles carried sand stones etc with passengers while passing the said bridge, while the bridge was constructed as a triple single bailey bridge for managing only 18 tons at a time. As corroboratively deposed by the PWs, proper maintenance of the bridge was also made so far as the capabilities of the plaintiff further evident that soon after incident took place, it was reconstructed within a short span of time. Pertinently, as clearly deposed by PWs, the instant Bailey bridge was a type of triple Bailey bridge manageable only 18 tons of weight at a time. Thus, the instant issue is decided in favour of the plaintiff.

Issue No. 5
Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend and from whom

As per the findings under issue No. 4, the plaintiff must have entitled some relief within their prayer but subject to accuracy on the exact damages towards justice, equity and good conscience. The prayer of the plaintiff is again reiterated that (i) declaring the plaintiff organization suffered a loss to the tune of Rs. 51,23,000.00 (Rupees fifty one lakhs twenty three thousand) due to the negligence of the defendants (ii) directing the defendants to make good the loss of Rs. 51,23,000.00 (Rupees fifty one lakhs twenty three thousand) suffered by the plaintiff (iii) cost of the suit and pendente lite interest at the rate of 18% per annum in favour of the plaintiff AND (iv) any other and further relief which the plaintiff is entitled according to justice, equity and good conscience in favour of the plaintiff. Meanwhile, I found that the defendants also suffered for damaged of their two truck vehicles causing death of some persons on that misshaping. More so, as Res Ipsa Liquitor is rather applicable in favour of the plaintiff as admitted facts that two truck vehicles were lying in the damaged bridge as deposed by PWs and also DWs. Which elicited that due to negligence of the driver's of the fallen truck (viz. defendant no. 2 was the driver of ZRM- 3427 who followed the other truck vehicle and before passing the bridge by the other truck, the said truck had started to cross the bridge), such accident was happened. Meanwhile, as serious injury and also causing died of some people with damaged of truck vehicles, the ratio shall be taken by reducing the amount of compensation as it is not monetary relief but may be termed as compensation. Thus, I find that granting of Rs. 15 lakhs (Rupees fifteen lakhs) with 13% interest per annum from the date of filing the suit till realization will meet justice as also seriously suffered by the defendants as undisputed facts.

Issue No. 6
Whether the defendant no. 1 is entitled to the relief claimed in his counter claim. If so, to what extend.

In view of the findings under issues no. 4 and 5, I find that no relief is entitled by the defendants. The reliance taken by the learned senior counsel of the defendants from the observations of the Hon'ble Supreme Court were not much helpful in favour of the defendants.

DIRECTIVES

Thus, the inevitable conclusion is that the defendant no. 1 being the owner of the accident truck vehicles by means of vicarious liability is directed to pay compensation amounting to Rs. 15 lakhs (Rupees fifteen lakhs) with 13% interest per annum with effect from 1994 when institution of the suit till realization to the plaintiff Union of India. Due to the peculiarities of the case, no other costs of the suit.

The case shall stand disposed of accordingly.

Give this copy to all concerned.

Given under my hand and seal of this court on this 3rd October, 2011 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA
Senior Civil Judge- 1
Aizawl District: Aizawl

Memo No. CS/1/1994, Sr. CJ (A)/ Dated Aizawl, the 3rd Oct., 2011

Copy to:

1. Union of India Through the Commander, HQ - 24 Border Road Task Force C/o 99 APO through Mr. S.N. Meitei, Advocate
2. Mr. Lalthanmawia, Ophel House, Kulikawn, Aizawl through Mr. C. Lalramzauva, Sr. Adv.
3. Mr. Lalengliana, Driver of ZRM- 3427 C/o Lalthanmawia, Ophel House, Kulikawn, Aizawl through Mr. C. Lalramzauva, Sr. Adv.
4. Mr. Dawngliana, Driver of ZRM- 4757 C/o Lalthanmawia, Ophel House, Kulikawn, Aizawl through Mr. C. Lalramzauva, Sr. Adv.
5. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
6. Case record

PESKAR