

MOLLIE VAN HOOSER, ADMINISTRATRIX

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APRIL 12, 1926.—Committed to the Committee of the Whole House and ordered to be printed

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MR. UNDERHILL, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 7025]

The Committee on Claims, to whom was referred the bill (H. R. 7025) for the relief of Mollie Van Hooser, administratrix of the estate of Myrtle Van Hooser, deceased, having considered the same, report thereon with a recommendation that it do pass with the following amendment:

In line 5, after the word "appropriated," add "in full settlement against the Government."

In line 8 strike out the figures "\$5,000" and insert in lieu thereof "\$2,500."

STATEMENT OF FACTS

On the 8th day of October, 1920, near Chattanooga, Tenn., Myrtle Van Hooser was killed by the reckless, careless, and unlawful operation of an automobile truck of the United States Army, driven by Corpl. Rudolph Brooks, said Brooks at the time operating under the direct orders of his superior officers and in the line of duty.

It appears that Mollie Van Hooser has duly qualified as administratrix of this estate, as shown by certified copy of said letters of administration which is all filed with the Claims Committee, but need not be copied.

At Fort Oglethorpe, located 9 miles out from Chattanooga, during the World War, the United States troops at Fort Oglethorpe operated certain busses for the transportation of passengers. These busses were used first, for the transportation of the children at the Army post from Fort Oglethorpe to Chattanooga to the various schools; also for the purpose of transporting recruits from the different railroad stations in Chattanooga to the post, and also for the purpose of the entertainment of the soldiers, the busses were used for the purposes of transporting ladies from Chattanooga to the post about once a week to attend entertainments given to the soldiers.

On the night in question, between 11 and 12 o'clock, Corpl. Rudolph Brooks, under orders of the authorities at the post (military orders), was driving a load of ladies and officers from the post after one of these entertainments to their respective homes in Chattanooga, when, after passing through Rossville at or near the point at which the East Lake car line enters Rossville Boulevard from Avenue K, a street car loaded with passengers, a great number of whom had been attending the fair which was going on at Warner Park near Chattanooga were on board. About 12 or 13 of these passengers disembarked at the junction of Forty-eighth Street and Rossville Boulevard and started across to the west side of the boulevard on Forty-eighth Street en route to their homes. The truck driven by Corporal Brooks was headed north on the boulevard and was being driven on the right-hand side of the street, meeting the street car just after these passengers had disembarked. The street car line turned into Rossville Avenue from Avenue K where it constitutes a five points with Forty-eighth Street. The passengers having gotten off of the street car, some at the rear and some in front, went directly across the street to the west side, which was the left-hand side of traffic coming down Rossville Avenue toward Chattanooga. This bus being driven by Brooks, instead of stopping on the right-hand side until the car and people who were being disembarked had gotten out of the way and then proceeding on his right-hand side while being driven at a fearful rate of speed, as stated by some witnesses, as high as 40 miles an hour, turned immediately across in front of the street car to this left-hand side and struck the little Vanhooser child and Mrs. Martin, killing the child instantly, knocking it some 54 feet, and picked Mrs. Martin upon the running board of the truck and carried her from  $1\frac{1}{2}$  to  $2\frac{1}{2}$  miles before the truck was able to stop. She was taken off of the car in an unconscious condition and never gained consciousness, and died soon after.

Brooks was indicted, for violating the traffic laws and killing these people, in the Criminal Court of Hamilton County; was tried and convicted and sentenced to the penitentiary for a period of one to five years, and was later pardoned by the governor.

There was but little conflict in the testimony, and this being principally with reference to the speed at which the truck was being driven at the particular time, and yet this conflict was immaterial since the speed as proven by the Army people themselves shows that the car was being run at from 20 to 25 miles per hour, and the regulation by Statutes of Tennessee prohibited the operation of motor vehicles on public thoroughfares in excess of 20 miles an hour, and there was absolutely no proof to controvert the fact that instead of stopping to allow the street car to let its passengers off and get out of the way on the right-hand side of the street, that he violated the traffic laws by crossing to the left-hand side of the street where the people could not have been struck by the bus except for his having driven the bus in violation of the statute on the left-hand side of the street.

Corpl. Rudolph Brooks was convicted in the Criminal Court of Hamilton County, Tenn., and given the sentence above referred to, and from this decision he appealed to the Supreme Court of Tennessee and the same was affirmed by said court.

Your committee has had access to the bill of exceptions in this case, which shows all the evidence and the facts as quoted above, are taken from that bill of exceptions.

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MARCH 3, 1926.

HON. CHARLES L. UNDERHILL,  
*Chairman Committee on Claims,  
House of Representatives.*

MY DEAR MR. UNDERHILL: Further reference is made to your letters of January 8, 1926, inclosing copies of H. R. 7025 for the relief of Mollie Van Hooser, administratrix of the estate of Myrtle Van Hooser, and H. R. 7026, for the relief of W. T. Murray, administrator of the estate of Florence Martin. The bills propose to appropriate the sum of \$5,000 as compensation for the death of Myrtle Van Hooser in the one case and Florence Martin in the other, caused by the reckless, careless, and unlawful operation of an automobile truck of the United States Army, driven by Corpl. Rudolph Brooks, on the 8th day of October, 1920.

I am unable to advise you definitely as to the circumstances under which this accident occurred other than from the information available it appears that Brooks was driving an Army bus on the night of the accident. The bus was full of young ladies who had attended and were returning from a dance at the gymnasium at Fort Oglethorpe, Ga. According to Brooks's report of the accident, he was running about 20 or 25 miles an hour when he saw several people in the street. He made a quick turn to the left and two of those persons ran in front of his bus and were struck. He says he then lost his head and knew nothing until he found himself in the guardhouse. Nothing appears with reference to any persons having been fatally injured as a result of the accident except the statement that Brooks was tried and convicted of involuntary manslaughter and sentenced to serve five years in the Tennessee State penitentiary. His trial and sentence would indicate that he was criminally negligent in his operation of the truck, but whether he was or not, as the United States is not liable for the wrongful or negligent acts of its agents, where no breach of contract is involved, the relief proposed would be an act of grace, the exercise of which is exclusively within the jurisdiction of Congress. I therefore feel that I should express no opinion on the merits of the bill.

In forwarding for use of the committee photostat copies of all pertinent papers on file in the War Department relating to the claim I also suggest that the criminal court record of Brooks's trial would perhaps afford a full account of the circumstances attending the accident.

Sincerely yours,

DWIGHT F. DAVIS,  
*Secretary of War.*

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Your committee has had regard to the bill of exceptions in this case, which shows errors and omissions in the facts as stated above, and from that bill of exceptions.

MARCH 2, 1850.

The undersigned, being a member of the committee on the bill of exceptions in the above case, and having had the honor to read the same, and to be fully conversant with the facts and circumstances of the case, and the grounds on which the bill of exceptions is founded, do hereby certify that the same is correct and true, and that the errors and omissions therein are such as to require a reversal of the judgment of the court below, and that the same should be granted.

Wm. H. ...

