82D CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 2390

SAMUEL A. WISE

JULY 1, 1952.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1741]

The Committee on the Judiciary, to whom was referred the bill (S. 1741) for the relief of Samuel A. Wise, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to pay the sum of $65.30 to Samuel A. Wise, of Dover, Del., in full satisfaction of his claim against the United States for reimbursement for paying out of his own funds a judgment, together with court costs and attorney's fees, arising out of an accident occurring on February 1, 1950, when the said Samuel A. Wise was operating a Government-owned vehicle as an employee of the Department of Agriculture.

STATEMENT

On February 1, 1950, claimant was employed as an engineering aide by the Soil Conservation Service of the Department of Agriculture, at Dover, Del. While operating a Government-owned vehicle on that date, within the scope of his employment, claimant was proceeding in a southerly direction in the right-hand lane on Delaware State Highway No. 113A. Near the intersection of State Highways 113A and 13, claimant began moving his vehicle into the left lane of traffic in order to pass a slower moving Chevrolet panel truck, privately owned and operated by one Cecil B. Foss, which was ahead of claimant's vehicle. As he did so Foss suddenly slowed his vehicle and started a left turn into a private driveway, allegedly without giving a hand signal. Claimant applied the brakes on his vehicle but was unable to avoid a collision; the front bumper of the Government vehicle operated by claimant collided with the left rear part of the private vehicle operated by Foss.

Subsequently, on February 9, 1950, Foss filed a brief statement of injury against claimant in the office of a justice of the peace of the State of Delaware, in Kent County, Del. This statement, appearing in the judicial record of the case appended hereto, related the fact of the collision (with no allegation of negligence on the part of Wise), and asserted damage to the plaintiff's vehicle in the sum of $100.

Under the circumstances Foss could have proceeded against the Government under the Federal Tort Claims Act. However, as indicated above, he elected instead to proceed with an action against the Government employee involved. In such event the only assistance available from the Government to the employee is by way of furnishing him with counsel. Here the employee did not avail himself of such assistance, either because of the short time factor involved or because he was unaware and was not apprised that such assistance was available.

The private suit of Foss against Wise proceeded to trial on February 23, 1950, according to the appended record of the proceedings, and on March 2, 1950, the justice of the peace rendered judgment in favor of the plaintiff (Foss) in the sum of $45, together with the sum of $10.30 representing cost of suit, against the defendant (Wise). The sum of $10 was expended by Wise as counsel for representation by a private attorney in the proceeding, and the judgment and court costs were paid by him out of his personal funds.

The Assistant Secretary of the Department of Agriculture, in a letter to the Vice President dated June 14, 1951, requesting introduction of a bill for the relief of claimant, stated that the Department of Agriculture is convinced there was no willful negligence in this case on the part of Wise.

The committee has met this situation previously. The committee has observed that while it is not in order to review a finding of negligence against a Government employee in such a case as this, nevertheless it will undertake in certain instances to examine the equities involved. This was done with reference to a substantially similar case pursuant to consideration of H. R. 2078, Eighty-first Congress, first session. In the committee report on that bill, which was later enacted as Private Law 129, Eighty-first Congress, first session, it was stated (S. Rept. 458, 81st Cong., 1st sess., at p. 3):

> Here the claimant, unfortunately for him, was sued directly and successfully. The merits of his claim would perhaps be weakened fatally if it were not for the insurance element. The Government does not insure its vehicles nor do its employees. Thus, the employees in cases where they are sued directly are not protected and cannot protect themselves; they are actually in a weaker position than a private citizen.

In view of all the circumstances, the committee is of the opinion that claimant should be reimbursed for his out-of-pocket expenses in this matter and recommends favorable consideration of the bill (S. 1741).

Appended hereto are (1) the afore-mentioned letter of the Assistant Secretary of Agriculture to the Vice President dated June 14, 1951; and (2) the record of proceedings before the justice of the peace, referred to hereinabove.

DEPARTMENT OF AGRICULTURE,
Washington, June 14, 1951.

The honorable the VICE PRESIDENT,
United States Senate.

DEAR MR. VICE PRESIDENT: Enclosed for the consideration of the Congress is a draft of a proposed bill for the relief of Samuel A. Wise, an employee of this Department, for amount of judgment together with court costs entered against him because of certain actions on his part while performing his official duties. Mr. Wise, at the time of the accident, was employed as an engineering aide by the Soil Conservation Service at Dover, Del.

On February 1, 1950, Mr. Wise, while operating a Government-owned vehicle, had a collision with a private vehicle owned and operated by a Mr. Cecil B. Foss. The accident occurred at the intersection of Routes 113A and 13 south of Dover, Del. The driver of the Government vehicle was trying to get into the left lane of traffic in order to pass a slower moving private vehicle. The operator of the private vehicle suddenly applied the brakes and started a left turn into a private driveway without giving a hand signal. The operator of the Government vehicle applied his brakes, the wheels skidded and the front bumper of the Government car collided with the rear door of the private vehicle. Although this action could have been brought under the Federal Tort Claims Act, the injured party elected to hold the Government employee personally liable and he brought a civil action against Mr. Wise in the amount of $100. A judgment in the amount of $45 with interest from March 2, 1950, was obtained, and the sum of $10.30 was allowed for court costs. The sum of $10 was expended by Mr. Wise for attorney fees. A copy of the original judgment with evidence of satisfaction in full is enclosed. There is also enclosed a copy of a receipt showing the sum of $10 as having been paid by Mr. Wise for attorney fees.

The Department is convinced that there was no willful negligence in this case. Mr. Wise was acting within the scope of his employment at the time of this mishap. Since, generally, private claimants proceed against the Government in accordance with the tort claims law and since the act (28 U. S. C. 2672) provides that the liability of the employee is discharged by the acceptance by the claimant of any award, compromise, or settlement by the Government, it is believed to be unfortunate that Mr. Wise should stand the loss. The Department, therefore, recommends that legislation be passed for the relief of Mr. Wise.

The Budget Bureau advises there is no objection to the submission of this proposed bill.

Sincerely yours.

K. T. HUTCHINSON,
Assistant Secretary.

The following case remains of record now in the office of John H. Conrad, a justice of the peace of the State of Delaware in and for Kent County.

CECIL B. FOSS VERSUS SAMUEL WISE

Trespass. Statement of injury. Demand $100.
February 9, 1950. $2 deposit

STATEMENT FILED BY THE PLAINTIFF, CECIL B. FOSS, BEFORE JOHN H. CONRAD, JUSTICE OF THE PEACE IN AND FOR KENT COUNTY, STATE OF DELAWARE

That on the 1st day of February A. D. 1950 the plaintiff was lawfully driving in a southerly direction on the State Highway Alternate Route No. 113 just south of the city limits of the city of Dover, Kent County, Del., and attempting to make a left-hand turn into the home of J. Gordon Smith and at the time and place aforesaid the defendant proceeding in a southerly direction on said State highway and drove the motor vehicle (to wit) a truck, that he was operating into, upon, and against the rear of plaintiff's Chevrolet panel truck, as a result of which the said plaintiff's truck was damaged in the sum of $100 and that no part of said damages have been paid to the plaintiff by the defendant.

Summons issued to Charles F. Hirsch, constable, returnable February 23, 1950, 2 p. m.

Summons served on within-named defendant personally so returns Charles F. Hirsch, constable, February 9, 1950.

Now this 23d day of February 1950 both parties appear and ready for trial after having heard the allegations and proofs of the plaintiff and defendant and

their witnesses. Decision is reserved until March 2, 1950, 2 p. m. Now this 2d day of March 1950 having maturely considered all the facts judgment is hereby rendered and entered in favor of the plaintiff, Cecil B. Foss, and against the defendant, Samuel Wise, for the sum of $45. Judgment debt with interest from March 2, 1950, and the sum of $10.30 cost of suit.

The defendant was notified of his rights to appeal to the superior court in and for Kent County, State of Delaware. Appeal and bond to be given within 15 days as required by law.

JOHN H. CONRAD,
Justice of the Peace.

This judgment fully paid and satisfied March 18, 1950.

E. WILLIAM STOREY,
Attorney for Plaintiff.

STATE OF DELAWARE,
County of Kent, ss:

I, John H. Conrad, a justice of the peace for the State of Delaware, in and for Kent County, do hereby certify the foregoing to be a true transcript of all the docket entries in the above stated case, as the same appears of record now in my office.

Witness my hand and seal this 20th day of October A. D. 1950.

[SEAL] JOHN H. CONRAD,
Justice of the Peace.

O