

State Highway Commission—Damages—Liability—Negligence—Employees—Claims.

Claims for personal damage sustained by individuals through negligence of state highway employees cannot be considered by the state highway commission but claimants must look to the legislature for any relief against the state to which they feel they are entitled.

November 28, 1928.

State Highway Commission,
Helena, Montana.

Gentlemen:

You have submitted to me a claim of Mr. Daussault for damages to his automobile which he claims to have sustained in a collision with the highway commission truck and also claim of J. H. Gillis for personal injuries and injury to his automobile which occurred through his running into a barrier placed by the highway commission employees across the highway near Meaderville, and have requested my opinion as to what action, if any, should be taken by your board on claims of this character.

It is elementary that a state cannot be sued without its consent or be compelled against its will to discharge any obligation. (*Mills v. Stewart*, 76 Mont. 429, and authorities therein cited).

We have no constitutional or legislative enactment whereby the state has waived immunity or assumed liability for injury to an individual by reason of negligence of its officers or agents, and it necessarily follows that the above mentioned claimants have no claim for damages which can be enforced against the state.

Melvin v. State (Cal.) 170 Pac. 416;
Alameda County v. Chambers (Cal.) 170 Pac. 650;
State v. Sharp (Ariz.) 189 Pac. 631;
State v. Hill, 54 Ala. 67;
See also notes 12 Am. Dec. 517;
44 L. R. A. (N. S.) 195;
8 L. R. A. 399.

The situation presented by claims of this character is aptly discussed by the court in the case of *Murdock Parlor Grate Co. v. Commonwealth of Mass.*, 8 L. R. A. 3999 as follows:

“Where wrongs are done to individuals by those who are the servants of the government, those injured are not remediless, as such persons may be sued as may be other citizens for the torts which they commit. There may be cases also where it would be entirely just that a remedy should be extended by the public to an individual for the injury he had sustained by the negligence of a public servant, but cases of this character the legislature yet reserves for its own determination.”

It is therefore my opinion that claims of this character cannot be considered by the state highway commission but that the claimants must look to the legislature for any relief to which they feel they are entitled.

Very truly yours,

L. A. FOOT,
Attorney General.