

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

WILLIE WILLIAMS	)	
Plaintiff	)	CIVIL NO. 121/1982
	)	
v.	)	
	)	
GOVERNMENT OF THE VIRGIN	)	
ISLANDS AND ELMO ROEBUCK	)	
Defendant	)	
	)	

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FEUERZEIG, Judge

MEMORANDUM OPINION AND ORDER
(April , 1982)

Defendant, Elmo Roebuck, has filed a motion to dismiss plaintiff's complaint, which alleges that while acting within the scope of his employment as a Senator of the Virgin Islands, Roebuck negligently operated a Government vehicle and struck the plaintiff causing injury. Roebuck claims that the Virgin Islands Tort Claims Act, 33 V.I.C. §3408 et seq, does not waive the immunity of Government employees that was granted by Section 2(b) of the Revised Organic Act of 1954.

Defendant relies on Simon v. Lovgren, 10 V.I. 302 (D.V.I. 1973), and Spisso v. Tonkin, No. 109/1972 (D.V.I. September 7, 1973). The defendant is correct that Simon and Spisso dictate that the defendant's motion to dismiss should be granted. The only difficulty with defendant's position is that Spisso and Simon no longer are the law of this jurisdiction. They were overruled, by Mathurin v. Government of the Virgin Islands, 12 V.I. 23, 398 F.Supp. 110 (D.V.I. 1975); Dennis v. College of the Virgin Islands, 12 V.I. 117, 398 F.Supp. 1307 (D.V.I. 1975), and

Kalloo v. Englerth, 433 F.Supp. 504 (D.V.I.) 1970, and were definitely laid to rest by Davis v. Knud Hansen Memorial Hospital, 635 F.2d 179 (3rd Cir. 1980). In Davis the Third Circuit stated:

/W/e hold that section 2(b) of the Revised Organic Act does not provide any immunity to Government officers or employees sued in their individual capacities.

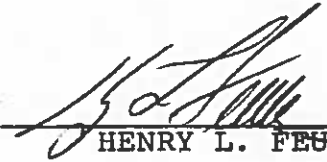
Id. at 186.

The rejection by Davis of blanket immunity for government employees did not, however, obliterate the common law immunity for government officials who are involved in the exercise of discretionary duties. Id. at 186. There can be no question, though, that defendant as the alleged operator of an automobile is no different then the proverbial sanitation truck driver, who it has been said is not clothed with immunity. Mathurin v. Government of the Virgin Islands, supra, 12 V.I. at 30, 398 F.Supp. at 114, and Kalloo v. Englerth, supra, 433 F.Supp at 512.

Accordingly, it is

ORDERED that defendant Roebuck's motion to dismiss is denied.

DATED: April 19, 1982


HENRY L. FEUERZEIG
JUDGE