

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. COMMON LAW 1997/G016

BETWEEN	MAURICE GORDON	PLAINTIFF
AND	PRAISE TOURS & AUTO RENTALS LTD.	1 ST DEFENDANT
AND	DOMVILLE LAWRENCE	2 ND DEFENDANT
AND	ANDREW GREEN	3 RD DEFENDANT
AND	MARK	4 TH DEFENDANT

Mr. Manderson- Jones for Plaintiff

Mr. J. Mordecai for the 2nd and 3rd Defendants

ASSESSMENT OF DAMAGES

Heard January 7,8,9; April 24,1998

HARRISON J.

Let me apologize first of all, for the delay in handing down this judgment.

The pleadings reveal that on November 5, 1996 the Plaintiff was involved in a motor vehicle accident with the second defendant along Merion Road, St. Andrew. Liability is not in issue and the assessment of damages is against the 2nd and 3rd Defendants only.

The Plaintiff's case

Maurice Gordon testified that he is a musician and music teacher and is the owner of a 1979 Volkswagen motor car. At the time of the accident his vehicle was insured National Employers Mutual Insurance Company but he made no claim on them.

He further testified that the 2nd defendant had acknowledged responsibility for repairing his motor car. He undertook to supply parts and he was told the price of labour by Mr. Braithwaite who had repaired the car. Lawrence had supplied a fender and door but the fender was not suitable for use. The plaintiff kept in touch with him but he failed to honour his agreement.

In early January 1997 the plaintiff received a telephone call concerning his motor car from a Mr. Bailey and he thereafter instructed his lawyer to file suit.

No repairs were done to the vehicle up to the time he received this call but he subsequently instructed Mr. Braithwaite to effect the repairs. These repairs were done and in September of 1997 and he was billed for a sum of \$136,540. Of that sum he paid the garage \$110,000.00. He was only billed in respect of the labour cost for fitting the door supplied by the second defendant.

The evidence revealed that the plaintiff was also the owner of another motor car and that he used that car and the Volkswagen interchangeably. There was no need for him therefore to rent a motor car.

Cross-examination of the plaintiff revealed that up to January 1997 the repairs were not effected but he had received the estimate of repairs. He maintained that he was having difficulties with Mr. Lawrence hence this is the reason why the repairs could not be done. It was not until in or about May 1997 that he had instructed Mr. Braithwaite to carry out repairs to the car.

It was suggested to him that the market value of the Volkswagen motor car was \$50,000.00 but he maintained that he had no knowledge of this. He agreed that the damages were not assessed by an assessor after the accident. He said further under cross-examination that the car appeared to have been significantly damaged but he did not consider at the time of the accident whether it was worth the while to have it repaired. He did not estimate the length of time the repairs would have taken. He disagreed that it was because he had the Datsun car why he had not given instructions earlier for the repairs to be done.

He did not seek a second opinion as to cost of repairs because he had expected the car to be repaired as Mr. Lawrence agreed that he would repair the car. He disagreed that he would have repaired the car at whatever the cost. He still held the belief that Lawrence would honour his agreement even after he had contacted his lawyer. After the writ was filed however, he made no further contact with him.

He did not make any efforts to replace his motor vehicle as his Datsun motor car was of great assistance to him in getting around. He did not pay much attention to the market for used vehicles and he made no enquiry about obtaining a used car to replace the Volkswagen motor car.

It was suggested to him that he had suffered no loss of use of the car. He responded that he did in fact suffer the loss of use as the car was not available to him for use. He maintained that in December 1996 when his friends from abroad visited him they were not able to use the car and they had to use Taxis. He agreed that other from this occasion, there was no other financial loss.

Carlette Swaby who is a sales representative from Island Car Rentals testified that the rate of renting small cars in 1997 ranged between US\$67, \$73 and \$108 respectively. She had received

no request from the plaintiff for the rental of a car.

Denzil Braithwaite who is an auto-mechanic for over 30 years testified that he had repaired the Plaintiff's motor car. He said that the plaintiff was his customer for approximately twelve (12) years and that the Volkswagen motor car was previously in good condition. According to him, it was "smashed up" after the accident. The car was taken to his garage and a tall man who was seen at the scene of the accident followed him to the garage and accepted responsibility to fix the car. He told him that labour would range between \$60,000 - \$70,000 and the man had decided to supply the parts. The parts which were needed were: side panel, front fender, beam, upper and lower control arm, running board, tie rod end and tie rod, blinker lamp, fender webbing, bolts and nuts, spare wheel tyre and a few more items. This gentleman had supplied a door and a rotten fender but the latter was rejected. All other items were provided by the garage. Repairs commenced in May 1997 and the job was completed in July, 1997. The plaintiff was billed for the work done.

Under cross-examination Mr. Braithwaite was unable to say whether the car valued between \$65,000 - \$55,000. He maintained that he was not a valuator nor an assessor and he did not advise the plaintiff on the advantages or disadvantages of repairing or replacing the motor vehicle. Work had started in latter May so it took about two months to effect repairs.

Case for the Defendants

Ricardo Lewis testified that he is a motor insurance adjuster and proprietor of Jamaica Motor Assessment Ltd. He has been an adjuster over the last ten years but he also does motor vehicle valuation. He further testified that he had contacted one L. Bainbridge and checked previous records

in his office up to 1996 in order to ascertain the value of a 1979 Volkswagen motor car. He went back to 1994 in relation to values and checked the average market values at that time. Having checked his records he is of the opinion that a 1979 V.W Bug would value \$70,000 in November 1996 if there were no modifications to the engine or body and if it had no accessories. It was also his view that in January 1998 that said V. W car would value approximately \$60,000.00. He said the reduction in value would be due to the vast importation of Japanese vehicles as well as the fall in demand for European vehicles.

Under cross-examination Mr. Lewis told the court that he kept an average market value of motor vehicles for a particular year in his records and that these values were determined by car dealers as well as persons advertising in the media. He also said that he did not inspect the plaintiff's vehicle but in arriving at a valuation of a particular vehicle he would consider the replacement cost, depreciation, as well as comparison of the vehicles on the market. The condition of the vehicle, the mileage and wear of tyres were factors to be taken into consideration when the valuation process was done. He would look at the vehicle, inspect it, drive it and then form his view as to its condition and road worthiness. It was not in all circumstances that he examined the motor vehicle. He would look to see if there were a few on the market and compare the prices they were selling for. He did not have the factory price of a 1979 V.W motor car and neither did he have the landed price for that model car.

Submissions

Mr Manderson Jones submitted that the Court would have to decide whether the plaintiff should be awarded damages for repairs done to the vehicle having regard to what the defendants'

witness suggested as the replacement value of the motor car. He contended that the evidence presented on behalf of the defendants regarding the replacement cost, should be rejected for two reasons, viz:

- (1) The evidence as to the value was unreliable and was not based on any direct knowledge of the vehicle.
- (2) The issue of replacement did not really arise because the defendant Lawrence had undertaken to repair the vehicle and that he had also contacted the repairer and supplied parts. The defendants would in those circumstances be estopped from carrying out their undertaking.

Furthermore, he submitted that there was no challenge of the repairer's bill and in those circumstances the plaintiff would be fully entitled to the sum claimed as the cost for repairs.

As to loss of use, he submitted that even though the plaintiff had not specifically proved that item of special damages he should nevertheless be awarded a substantial sum under general damages where he loses the use of his motor car. He said the court should rely on the evidence of the Plaintiff's witness in relation to the cost of renting a motor car for the period in which the plaintiff was deprived of the use. He submitted that the period should be from the 5th November, 1996 up to and including the 31st July, 1997(269 days).

Mr. Mordecai submitted on the other hand, that the plaintiff did not seek the assistance of an

Assessor and neither did he seek to replace the unit having regard to the extent of the damages and the cost of repairs. It was therefore the plaintiff's duty to act reasonably and he suggested that the Court should make an award of \$70,000.00 as the replacement value.

He further submitted that if the court were minded to make an award for loss of use, the period of loss of use should be restricted to four (4) months, that is, two months from the date of the accident to the middle of January, 1997 (the latter being the period when he decided to see his Attorney) and from some point in time during May, 1997 up to and inclusive of July, 1997 (the period that the repairer said was taken to effect the repairs).

He also submitted that the plaintiff cannot recover the full sum for the cost of repairs as he failed to mitigate his loss. Finally, he submitted that there is no evidential basis for an award of loss of use as an item of special damages and none should be made for it under general damages.

Findings

Let me deal firstly with the claim for repairs to the vehicle. I have considered the evidence and the submissions carefully and have assessed the credit worthiness of the witnesses. I have also given due consideration to the authorities cited.

At the end of the day I must say that I was most impressed with the plaintiff. I accept his evidence that the second defendant had undertaken to repair the vehicle; he had supplied parts (albeit that the fender was useless) and that he had failed to fully honour his undertaking.

I do agree that in these matters a plaintiff has to act reasonably, so when all matters are taken into consideration on the evidence presented, it could not be said that the plaintiff had acted unreasonably to have the vehicle repaired. I also accept Mr. Braithwaite's evidence that a man (the

probabilities are it was the second defendant) had accepted responsibility to stand the cost of repairs and to supply parts and that he Mr. Braithwaite had carried out these repairs on the undertaking given by this defendant. There was no contest as to the cost of parts or labour so in all probabilities it is my considered view, that the figure contained in Exhibit 1 was reasonable.

On the other hand, I must say that I was least impressed with the evidence of Mr. Lewis on his method of valuation and the replacement cost of the Volkswagen motor car. His valuation of the motor car without a physical inspection was most un-orthodox in approach.

I now turn to the issue of loss of use. I have given due consideration to the cases cited to me by both sides as well as the submissions of Counsel.

The plaintiff did testify that he used his two vehicles interchangeably. His musical equipment fitted easily in the Datsun motor car and even though he did not have the use of the Volkswagen for some time, it did not affect the movement of his equipment from place to place and neither was he put to the expense of hiring another motor car. He testified however, that he had suffered some financial loss because, in December 1996 his friends from abroad were unable to have the use of the Volkswagen and had to take Taxis. No evidence was given however, as to amount of money that he lost. He also said that there was no other occasion that he suffered a financial loss.

I find this particular head of the claim under special damages not proven. The authorities mandate that special damages must be specifically alleged and proven. The loss of use has been alleged but no proper proof has been forthcoming. I am not convinced with the submissions of Mr. Manderson-Jones that even though the plaintiff has not proved the loss under special damages he is still entitled to an award under the head of general damages. If this were so, then it could be said that

there is no need for pleading in this Court.

Award

Damages are therefore assessed as follows:

Special damages

The sum of \$136,540.00 (being the cost of repairs to motor car) with interest thereon at the rate of 3% per annum from the 5th day of November, 1996 up to today.

There shall be costs to the plaintiff to be taxed if not agreed.