January 26, 1962

Cole J.

ALLIE M. JAWARD . . . . . *Plaintiff*

v.

J. T. CHANRAI & CO. (SIERRA LEONE) LTD. . . . . *Defendants*

[C.C. 275/61]

Tort—Damages—Quantum of damages—Motor car total loss.

On March 2, 1960, plaintiff purchased a motor car. He had the car insured on May 16, 1960. On the proposal form for the insurance, plaintiff gave the purchase price of the car as £860, and he estimated its value on May 16 at £600. On July 1, 1961, the car was damaged in an accident caused by the negligent driving of defendants' servant. On August 22, plaintiff sold the car in its damaged condition for £140, and he purchased another car about November 15.

Plaintiff brought an action for damages against defendants. At the trial, defendants did not deny that their servant had been negligent, and the only issue was the quantum of damages. The judge found that the market value of the car immediately before the accident was £400.

Held, for the plaintiff, (1) in an action arising out of an accident in which a motor car is so damaged as to be a constructive total loss, the quantum of damages is arrived at by taking the difference between the market value of the car immediately before the accident and the scrap value of the damaged car and adding the cost of hiring a substitute car until another car can reasonably be procured.

(2) Plaintiff could reasonably have been expected to purchase another motor vehicle within a period of about ten to fourteen days after selling his car.

Case referred to: *Pomphrey* v. *James A. Cuthbertson Ltd.*, 1951 S.C. 147.

Berthan Macaulay for the plaintiff.
Zinenool L. Khan for the defendants.

C. O. E. COLE J. The plaintiff, in this action, claims damages, general and special, for damage done to his motor car, registered No. C.1736, due to the negligent driving of their motor lorry, registered No. W.423, by the defendants' servant or agent along Dambara Road, Bo, on or about July 1, 1961.

Although by their defence the defendants denied all liability, yet when the hearing began before me on December 28 last, learned counsel for the defendants informed me that his instructions were that the defendants were not disputing negligence. Both sides appear to agree that the car in question was constructively a total loss. The main issue before me, therefore, is to determine what damages, if any, and the quantum thereof, the plaintiff is entitled to. In determining this question, in a case of this nature, the principle of law I have to apply is that enunciated in the case of *Pomphrey* v. *James A. Cuthbertson Ltd.*, 1951 S.C. 147, where it was held that where a motor car was so damaged as to be a constructive total loss, the measure of damages was the market value of the car at the date of the loss and the cost of hiring a substitute until a new car could reasonably be procured, less the scrap value of the damaged car.

The first question I have to determine is what was the market value of plaintiff's car immediately before the date of accident, that is, July 1, 1961. Before determining this question I am in duty bound to draw attention to a very striking portion of the plaintiff's evidence. According to him he bought the car in question on March 2, 1960, for £900 and produced a receipt (Exh. "A") in support. He had the car insured in his name on May 16, 1960, for a year against third party, fire and theft risks—Exh. "D" refers. On the proposal form for the insurance of the car in question (Exh. "E") which was signed by the plaintiff and produced in evidence by the defendants the plaintiff gave the purchase price as £860. I have carefully examined Exh. "A," the receipt, and I am satisfied that it was not a genuine receipt but fabricated for the purposes of this case. The postage stamp thereon (which is purported to have been stamped and dated on March 2, 1960) is a "Sierra Leone Independence 1961" stamp. This clearly supports my view. I totally reject the receipt. The less said about this portion of the plaintiff's evidence, the better. Suffice it to say that I find it rather distressing to note that such an astute lawyer as Mr. Berthan Macaulay, counsel for the plaintiff, could be a party to the production of such a piece of evidence, the whole purpose of which was deliberately to mislead the court. I would prefer the purchase price stated on Exh. "E" which is £860. As regards the value of the car in question on May 16, 1960, Exh. "E" shows that the plaintiff himself estimated its value on that date at £600. Plaintiff gave me the impression that his reason for giving that estimate to the insurance company was because he wanted to pay a low premium. I regard such a reason as too fanciful to be accepted, and I do not accept it. In the declaration at the foot of the proposal form Exh. "E," which is signed by the plaintiff, he warranted that all the statements and particulars given by him on that proposal form were true. The "proposer's estimate of present value of vehicle" is one of such particulars. How can he now be heard to say that he told lies then? There was no reason that I could find for the plaintiff to have then declared anything untrue. I find that on May 16, 1960, £600 was the market value which plaintiff himself thought he could get for the car in question after due inquiry and I therefore fix that amount as the market value of the car on May 16, 1960. The plaintiff's estimated value of the car at £600 is understandable when one takes into consideration the evidence of the plaintiff that he was at the material time, and still is, a trader and licensed diamond dealer and that he used the car in question on the roads in the Provinces in the course of his business. Furthermore, although the plaintiff in the course of his evidence said he bought the car brand new, yet the receipt produced by him (Exh. "A") shows that the car was bought at least second hand. The relevant portion of the receipt reads—"I have sold my car Borgward No. C.1736 to Mr. A. M. Jaward, Boima Road."

With regard to the market value of the car immediately before July 1, 1961—the date of the accident—I do not accept the evidence of Mr. Michael, plaintiff's third witness. Taking into consideration the plaintiff's own estimated value of the car on May 16, 1960, at £600, I do feel that this witness grossly exaggerated when he put the pre-accident value of the car at £700. How this witness arrived at that figure is not stated except for his rather vague statement that he knew the car before the damage. How long before the damage is not stated. After careful consideration of the evidence as a whole, I do feel that £400 would be a very reasonable and fair market value of the car immediately before the accident, and I accordingly fix its market value at that figure. I

accept plaintiff's evidence that he sold the car in its damaged condition for £140 and this I fix as the scrap value of the car. In the circumstances I award the plaintiff general damages of £260.

As regards special damages the plaintiff in his evidence in examination-in-chief deposed that he sold the car on August 22, 1961, and did not repair it before selling it. Under cross-examination he further deposed that he sold the car because of no parts being available to repair the car. It is, therefore, reasonable to say that at the very least he knew on August 22, 1961, that he was going to dispose of the car because of the reason he gave. In those circumstances I consider it unreasonable on his part for him to have waited for "about a month and two weeks" before the date he gave evidence before me, December 28, 1961, before purchasing another car. It should also be considered that, according to him, plaintiff had two weeks before the date of the accident sold the only other car he used in the course of his business. Plaintiff explained that he had no money to buy another vehicle; but according to him he was spending roughly £52 10s. 0d. a week on the hire of a car and purchase of petrol for a period of about 18 to 20 weeks before he purchased another car. This explanation I therefore do not accept. I consider the period of about 10 to 14 days after plaintiff sold the damaged car a reasonable period within which plaintiff could have bought another motor vehicle. I therefore award him as regards hiring of car £35 a week for 10 weeks from July 1, 1961. This works out at £350. I also allow plaintiff the amount spent for the examination report and estimate of cost of repairs which is £5 5s. 0d.

In the final result I award the plaintiff—

General damages		£260 0s. 0d.
Hiring of car		£350 0s. 0d.
Cost of report		£5 5s. 0d.
	Total ...	£615 5s. 0d.

There will, therefore, be judgment for the plaintiff for £615 5s. 0d. and, most reluctantly, his costs—such costs to be taxed.

[SUPREME COURT]

Freetown
March 9,
1962

Benka-Coker
C.J.

REGINA

v.

MEMBERS OF KHOLIFA CHIEFDOM NATIVE COURT . *Respondents*
EX PARTE ABU LAKOH . . . . . *Applicant*

[Misc.App. 34/61]

Procedure—Certiorari—Review of Native Court proceedings by Supreme Court—New judge substituted in middle of proceedings.

On April 14, 1961, Abu Lakoh was arrested, taken before the Kholifa Chiefdom Native Court and charged with taking part in convening a secret meeting without the consent and knowledge of the Paramount Chief contrary to customary law. The hearing of the charge was commenced the same day.