IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Civil Appeal No. 9 of 1961

Between:

DEWA RATHNAM s/o MUTHAN Appellant

v.

1. USMAN s/o UMRAO
2. ABDUL KHALIK s/o JAFFAR ALI Respondents

Measure of damages—replacement of damaged motor parts by new—whether allowance to be made for enhanced value.

This was a claim for damages to a motor car sustained through the appellant's negligence. The appellant contended, upon appeal from the Magistrate's award, that damages for the part of the motor car which had to be replaced should have been assessed not on the basis of the cost of new parts but on the basis of the cost of second-hand parts; since the replacement of worn parts by new had enhanced the overall value, a deduction should have been made in favour of the appellant upon this account.

Held.—(1) The respondent was entitled to reimbursement for the whole of the cost of the new parts, irrespective of the fact that the value of the vehicle might be enhanced.

(2) Since it was the duty of the respondent to minimise his loss, if a second-hand part were available, and the installation of such a second-hand part would suffice to put the vehicle back into the same road-worthy condition as it was before the accident, then the second-hand part should be used. There was no evidence of this here.

Appeal dismissed.

Cases cited:

Vance v. Forster (1841) 2 Cir. Rep. Ir. (Crawford and Dix) 118 p. 128.

Moss v. Christchurch R.D.C. 1925 2 K.B. 750.

Hutchison v. Davidson (1945) S.C. 395.

Henderson v. R. M'Alister Ltd. (1948) 98 L. Jo 469 (Ct. of Sess.)

The Bernina (1886) 55 L.T. 781.

The Pactolus (1856) Sw. 173.

H. K. Nair for the Appellant.

K. A. Stuart for the Respondents.

KNOX-MAWER, Ag. J. (16th June, 1961).

The appellant appeals against the judgment of the Magistrate's Court of the First Class, Ba, in which he was declared wholly liable in tort for a collision between his own and the respondent's motor vehicle on 23rd October, 1955. The learned magistrate awarded the respondent damages totalling £296 10s. 9d.

The first, second, third, fourth and tenth grounds of appeal are, in substance, concerned with the finding that the entire responsibility for the accident, (when the appellant's motor car collided into the back of the respondent's vehicle), lay with the appellant. In my view there was evidence upon which the learned trial magistrate could justifiably declare, as he did in his judgment: " In these circumstances (the) court has no doubt that the whole fault was with the defendant ". This was essentially a finding of fact, with which this court is not, in this instance, prepared to interfere.

Grounds of appeal five to nine are concerned with the assessment of damages flowing from the appellant's act of negligence. Examination of the record of the proceedings in the lower court indicates that the defence did not really challenge the fact that after the accident, work to the value of £221 10s. 9d. was carried out upon the respondent's motor car by Messrs. Burns Philp. It was however contended that more work was done on the vehicle than was necessarily occasioned by the collision. The trial magistrate did not accept this. I do not think his conclusion on this issue was unreasonable. This court is certainly not here prepared to substitute any other conclusions of its own.

The only issue of substance in regard to damages is that raised in the additional ground of appeal which reads:

> " 5A. In the alternative, the learned trial Magistrate erred in not holding that damages for parts of the car injured should have been assessed not on the basis of replacement cost but on the basis of the value of the said second hand parts only."

In support of his argument on this ground, Mr. Ramrakha, counsel for the appellant, has cited firstly the following direction given to the jury in *Vance v. Forster* (1841) 2 Cir. Rep. Ir. (*Crawford and Dix*) 118 p. 128. The case report is not available to me, but the direction given therein is set out in *Mazengarb*, " *Negligence on the Highway* ", Third Edition, p. 243. The facts were that the plaintiff's mill had been set on fire and valuable machinery rendered wholly unusable, through the defendant's negligence. The relevant portion of the direction is as follows:

> " . . . the amount is to be ascertained by estimating the cost of restoring the premises to the state they were in at the time of the fire by which they were destroyed. It may be difficult to ascertain the cost of restoring the mill exactly to its former state; but I think it might fairly be done by estimating the amount of the sum which it would cost to set up new machinery in the plaintiff's mill, and then deducting from that sum the difference in value between such new machinery when erected and the old machinery when destroyed. In this manner I think that the actual loss sustained by the plaintiff could be ascertained; but there is no particular standard or rule by which the difference in value between old and new machinery is to be estimated. You are to estimate the loss actually sustained by the plaintiff, and although I have suggested one way in which, as I think, this loss may be estimated, yet other ways of estimating it may occur to your minds; at the same time it is to be borne in mind that, in point of law, the plaintiff is entitled to be indemnified for his actual loss only."

Mr. Ramrakha has also cited *Moss v. Christchurch* R.D.C. 1925 2 K.B. 750. In that case the owner of a cottage recovered damages from the defendants who were found liable in tort for the almost complete destruction of his cottage by fire. The Official Referee assessed the damages as the fair cost of reinstatement and rebuilding the house, or such part of it as was destroyed or injured, and making it as good and habitable as before. On appeal, it was held that that was not the correct measure of damages: the true measure of damages was the difference between the money value of the owner's interest before and after the fire.

In *Bingham on Motor Claims Cases*, Third Edition, p. 272, it is noted that the case of *Moss v. Christchurch* R.D.C. was considered in *Hutchison v. Davidson* (1945) S.C. 395. This report is also not available to me. However, according to *Bingham* (*supra*), the cost of replacement was awarded in this case. Upon the same page in *Bingham* (*supra*), another case is cited, *Henderson v. R. M'Alister Ltd.* (1948) 98 L. Jo 469 (Ct. of Sess.). The facts noted in this case were that the defendants, ship repairers, had negligently allowed a yacht to become submerged. The owner was held entitled to the improved value of the restored ship without making any rebate to the repairers: citing *Marsden on Collision at Sea*, 9th Edition, p. 112. The report of *Henderson v. R. M'Alister* Ltd. is not available in the Library.

Mazengarb (*supra* at p. 243/4) points out that the basis of assessment, where damage has been done to vehicles, presents some perplexing problems. In itemising the heads of damage recoverable where a vehicle is damaged but repairable, (p. 244) *Mazengarb* lists firstly " the cost of repairs ", and makes no reference to any allowance for the enhanced value, if any, of the vehicle after repair.

Halsbury's Laws of England, Third Edition, Volume 28, p. 98, para. 105, reads—

> " Where a chattel has been injured owing to a negligent act, *the cost of repairing it*, the difference in value between the former worth and that of the chattel when repaired, and the damage sustained owing to the loss of use of the chattel while being repaired, are all recoverable."

Again in Volume 11 of *Halsbury's Laws of England*, Third Edition, at p. 263, para 437, it is stated—

> " Where a chattel has been damaged by negligence the owner of the chattel . . . . may recover the cost of repairing it (*The Bernina* (1886) 55 L.T. 781) . . . thus where the plaintiff's motor vehicle is damaged by negligence so that he is temporarily deprived of its use, he may recover the cost of the necessary repairs (*The Pactolus* (1856) Sw. 173)."

In *The Bernina* (*supra*), Sir James Hannen stated in his judgment at page 782—

> " I think the principle upon which the cost of repairs ought to be estimated is exceedingly simple. It is clear that a person who has had an injury done to his property is entitled to have it restored to him so that it may be used by him as effectually as it would have been if it had not had damage done to it. I entirely assent to the proposition that Mr. Barnes has urged, that because the string of repairs which have been rendered necessary by the collision procures an advantage to the owner of the damaged property, it is not to be taken into account by way of diminishing the amount which the wrong-doer has to pay in respect of that which is necessary to put the damaged property in the condition it was in before."

In *The Pactolus* (*supra*), it was held that the owners of a ship damaged by collision are entitled to the full expenses of repairing her and fitting her for sea though such repairs may make her more valuable than she was before the collision. *Dr. Lushington* stated in the judgment, at p. 174, " the parties are entitled to *restitutio in integrum*, to a complete repair of all the damage done notwithstanding that the result may be to render the ship more valuable than she was prior to the collision . . . In cases of insurance, one-third of the value of the material is deducted, because the new material is more valuable than the old, but it is not so where repairs are done in consequence of collision ".

Although the authorities are not perhaps entirely clear on the point, I am not persuaded by Mr. Ramrakha's argument upon the additional ground of appeal. The magistrate found that repairs totalling £221 10s. 9d. were necessary in order to put this car back on the road, in good order. This is an expense to which the respondent has been put by reason of the appellants' negligence. I think the respondent is entitled to reimbursement for the whole of that expense, irrespective of the fact that the value of his vehicle may be enhanced. It is, of course, the duty of the respondent to minimise his loss. Thus if a second-hand part were available and the installation of such a second-hand part would suffice to put the vehicle back into the same road-worthy condition as it was before the accident, then the second-hand part should be used. There is no evidence of this in the present case.

In the outcome therefore the appeal is dismissed.