ANDERESY A. AND SAKA M., Plaintiffs
v.
OBDEN OPUANGI, Defendant

Civil Action No. 537

Trial Division of the High Court

Truk District

February 16, 1972

Action to recover damages caused by damage to taxi. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that damages are to be computed by determining the difference in value immediately before and immediately after the damage to the vehicle and no damages would be allowed for loss of use where such amount could not be determined with reasonable certainty.

1. **Motor Vehicles—Damages—Commercial Vehicles**

   Loss of profits or earnings as the result of damage to a commercial vehicle may be considered as an element of damages only if they can be computed with reasonable certainty and cannot be recovered where such loss is speculative and problematical.

2. **Motor Vehicles—Damages—Commercial Vehicles**

   Evidence in case was inadequate to justify recovery of lost profits because of damage to plaintiffs' taxi, and plaintiffs' failure to repair or replace the vehicle, thereby minimizing loss, prevented any recovery for loss of use.

3. **Motor Vehicles—Damages—Generally**

   The amount of damage to an auto resulting from an accident is the difference in value immediately before and immediately after the damage to the vehicle.

Assessor:	F. SOUKICHI, *District Court Presiding Judge*
Interpreter:	ROKURO BERDON
Reporter:	NANCY K. HATTORI
Counsel for Plaintiffs:	KINTOKI J.
Counsel for Defendant:	FUJITA PETER

TURNER, *Associate Justice*

Defendant was employed as driver of a Datsun taxi owned by plaintiffs. Defendant was employed, that is, until one day he was driving the vehicle while intoxicated and ran into a coconut tree on the side of the road. That was the end of plaintiffs' taxi business and defendant's employment.

The Datsun had been used as a taxi for two months and had been purchased three months prior to its being wrecked for the new price of one thousand six hundred ninety-five dollars ($1,695.00). The speedometer showed 7,548.7 miles after the wreck. The car has not been repaired nor have the plaintiffs attempted to sell it to recover its salvage value.

The only evidence of vehicle life expectancy on Moen Island, Truk, was the testimony of plaintiffs' engineer-mechanic witness that he believed it to be three years for a taxicab and four years for a private vehicle.

Counsel in the present action also were counsel in a very similar case, *Neton v. Ywelelong*, 5 T.T.R. 300. Counsel recognized that the measure of damages explained in the *Neton* case and applicable to the present action was the difference in value immediately before and immediately after the accident. But plaintiffs' counsel added an additional claim by seeking recovery for loss of use of the commercial vehicle. Plaintiffs claimed the sum of $2.50 per day as the expected net revenue or profit from the time the car was put out of operation until at least the time of entry of judgment.

The problem confronting plaintiffs in making this claim was that both the facts and the law barred recovery. From a factual standpoint, plaintiffs were unable to show by any evidence or testimony that the income, after paying operating expenses, was $2.50 per day. The figure was at best the plaintiffs' estimate.

More important to denial of the claim than the failure of proof is that the claimed recovery is not permissible under the law.

A New York decision, *Universal Taximeter Cab Co. v. Blumenthal*, 143 N.Y.Supp. 1056, annotated at 4 A.L.R. 1362, illustrates the rule of law that the damages for loss of use of a commercial vehicle is measured by the cost of a rental vehicle while repairs are being made and in the absence of such proof, the evidence of the profits derived by plaintiff from the use of his machine was incompetent.

Although some cases have allowed loss of prospective profits as an element of damage, the majority of the decisions, according to 169 A.L.R. 1097, have held the loss of expected profits cannot be recovered.

[1] Also see 8 Am.Jur.2d, Automobiles, § 1050, which concludes: "In any event, loss of profits or earnings may be considered as an element of damages only if they can be computed with reasonable certainty, and cannot be recovered where such loss is speculative and problematical."

[2] The evidence was inadequate in this case to justify recovery of lost profits and plaintiffs' failure to repair or replace the vehicle, thereby minimizing their loss, prevents any recovery for loss of use. 4 A.L.R. 1350. 55 A.L.R.2d 941.

[3] If plaintiffs are to recover any judgment, it can only be on the basis of the law set forth in *Neton*, supra. We depend entirely upon plaintiffs' evidence to determine the difference in value immediately before and immediately

after the damage to the vehicle. The new cost was $1,695.00. A three-year life expectancy with mileage of 7,548 during the first three months requires a depreciation of one-third from cost new—in the absence of any evidence on the precise point.

The court concludes the depreciated value at the time of damage was not in excess of $1,200.00. After the accident, according to plaintiffs' witness, the value was "between $800.00 and $900.00." This figure was not contested by defendant and the court accepts the value at $850.00. The before and after difference is $350.00.

Because the damage must pertain to the vehicle and not such additional business costs as taxi license, as explained in *Neton*, supra, recovery is limited to the single item of loss, even though plaintiffs by different conduct (repairing or replacing the vehicle) might have shown entitlement to recovery for loss of use.

Ordered, adjudged, and decreed:—

That plaintiffs have and recover from defendant the sum of three hundred fifty dollars ($350.00), together with interest at the rate of six percent (6%) per annum from date of entry of judgment until it is paid.