

IN THE SUPERIOR COURT OF JUDICATURE IN THE COMMERCIAL DIVISION
(COURT 1) OF THE HIGH COURT OF JUSTICE ACCRA, HELD THURSDAY THE
13TH DAY OF MARCH, 2025 BEFORE
HER LADYSHIP JUSTICE SHEILA MINTA

SUIT NO. CM/BDC/0204/2022

DSP/MR. STEPHEN BILLY ADDOM - PLAINTIFF

VRS.

1. SAMUEL YEBOAH - DEFENDANTS
2. ROOFING AND STEEL GH. LTD.

JUDGMENT

INTRODUCTION

The vehicle of the Plaintiff, a Police Officer was involved in an accident with 2nd Defendant's vehicle driven by the 1st Defendant in Accra on 16th August, 2021 causing damage to the Plaintiff's Toyota Tundra Truck. The Plaintiff also a barrister at law, was then stationed at the Regional Police Headquarters at Sekondi-Takoradi in the Western Region. By the Plaintiff's case the accident was as a result of the negligence of the 1st Defendant and according to the Defendants it was as a result a mechanical fault which was unavoidable. The Plaintiff averred that the Defendants having subsequently paid for the damage caused to his truck entitled him to damages for loss of use of same from 17th August, 2021 to 11th March 2022. The Plaintiff averred that he rented another vehicle for US\$100.00 per day and paid for it and is consequently claiming from the Defendants the sum of US\$20,700.00 as cost incurred for renting an alternative vehicle for his duties and other rounds.

It appears the parties attempted to resolve this matter amicably and the Defendants paid to the Plaintiff GHS18,300.00 being the cost of repairing his vehicle but the issue of loss of use was left unresolved and it is what the Plaintiff claims to be the sum for loss of use that is vehemently being opposed to by the Defendants.

BRIEF SUMMARY OF PLAINTIFF'S CASE

The Plaintiff, a barrister at law at the time of the accident was also a Police Officer and stationed in Takoradi. While driving his Toyota Tundra Truck in Accra on 16th August, 2021 it got hit by a vehicle driven by 1st Defendant and employee of 2nd Defendant Company. It is the case of the Plaintiff that as a result of the negligence of the 1st Defendant, various parts of his vehicle was damaged and the matter was reported at a police station and both vehicles were impounded for investigation. According to the Plaintiff his vehicle became unmotorable and same had to be towed to a garage for repairs. Meanwhile the Plaintiff's case is that, the Defendants subsequently accepted liability and agreed to pay for the cost of repairs. It is the further contention of the Plaintiff that he rented a Toyota Land Cruiser from Apostos Car Rentals for his daily activities at the cost of US\$100.00 per day and claims from the Defendants the sum of US\$20,700.00 as money paid by him for the car rental by way of special damages.

On 16th March, 2022, the Plaintiff issued an Amended Writ of Summons and a Statement of Claim against the Defendants for the following reliefs:-

- a) An order compelling the Defendants, jointly and severally, to pay to the Plaintiff the sums of GHS18,300.00 being invoiced cost of repairs and retrofitting of parts of Plaintiff's Toyota Tundra vehicle with registration number VR 7000-20.
- b) An order compelling the Defendants jointly and severally to pay to the Plaintiff the sum of USD20,700.00 being loss of use of Plaintiff's Toyota Tundra Vehicle with registration number VR 7000-20 from 17th August, 2021 to 11th March, 2022 at a daily rate of USD 100.
- c) General damages for loss of use.

- d) Costs of bringing this action on full recovery basis including Plaintiff's solicitor's legal fees assessed at the Ghana Bar Association's approved scale of fees.
- e) Any other order(s) the Honorable Court deems fit to make.

While the suit was pending the Defendants paid to the Plaintiff the cost of repairs of his vehicle being GHS18,300.00 so this whole trial is in respect of reliefs (b) to (e).

In support of the Plaintiff's case the following documents were tendered in evidence:-

1. **Exhibit "A"** – Invoice from Apostos Car Rental dated 17th August, 2021 for US\$100.
2. **Exhibit "B"** – Receipt dated 12th March, 2022 for US\$20,700 by Apostos Car Rentals to Plaintiff.
3. **Exhibit "C" Series** - Apostos Car Rental Incorporation documents

BRIEF SUMMARY OF DEFENDANTS' CASE

The Defendants' case is that this matter arose from a motor accident which occurred on 16th August, 2021 which involved the Plaintiff's Toyota Tundra, 2nd Defendants Renault Duster Space Wagon then being driven by 1st Defendant in the course of his duties as an employee of the 2nd Defendant Company. According to the Defendants the accident occurred as a result of the unforeseeable mechanical defect of 2nd Defendant's vehicle which rendered same uncontrollable which resulted in the unavoidable accident that caused damage to Plaintiff's vehicle. That the accident was not due to any negligence on the part of the 1st Defendant and therefore the Defendants ought not be held liable to have negligently caused damaged to Plaintiff's vehicle.

The Defendants further posited that the Plaintiff used his position as a Police officer into coercing Defendants into admitting liability and paid the sum of GHS18,300.00 when the 2nd Defendant's insured could have taken up that liability. Defendants therefore counterclaimed against the Plaintiff as followings:-

- a. An order of the Honourable Court for Accounts.
- b. An order compelling the Plaintiff to refund with interest at the highest rate of the Commercial Banks all payments he admits receiving from the Defendants or

deposit same in Court until the final determination of this suit as same was paid under coercion and without lawful basis.

- c. Damages.
- d. Cost including Solicitor's cost.

From the address of the Defendants it appears these reliefs in the counterclaim have been abandoned. The Defendants averred that the Plaintiff is not entitled to his claim as alleged in respect of loss of use as he ought to have mitigated his losses and has also not provided enough evidence in support of its claim for loss of use in the said sum.

In support of the Defendants' case the following documents were tendered in evidence:-

1. **Exhibit "1"** - Police Accident Report dated 13th September, 2021.
2. **Exhibit "2"** - Notice of Claim Letter of Plaintiff's solicitor dated 22nd September, 2021 "*Without Prejudice*".
3. **Exhibit "3 Series"** – documents covering the acquisition of 2nd Defendant's vehicle.
4. **Exhibit "4"** - Picture of the affected tire of the Plaintiff's vehicle.
5. **Exhibit "5"** – cheques issued to Plaintiff and another person.
6. **Exhibit "6"** – evidence of payment of GHS18,300 to Plaintiff by 2nd Defendant.

At the close of pleadings, and settlement having broken down, the following issues were set down for trial:-

1. Whether or not the 1st Defendant operated the Renault Duster Space Wagon with Registration No. GN-458-21 at excessive rate of speed on 16th August, 2021 when he crashed into Plaintiff's Toyota Tundra with Registration No. VR-7000-20.
2. Whether or not the 1st Defendant failed to reduce speed to avoid collision.
3. Whether or not the 1st Defendant failed to observe due care and precaution to maintain proper and adequate control of the motor vehicle on the said date.
4. Whether or not the 2nd Defendant as employer of 1st Defendant is vicariously liable for 1st Defendant's act on the said date.

5. Whether or not the Plaintiff used his position as a Senior Police Officer at the National Police Headquarters to intimidate and coerce Defendants into paying monies far in excess of what was due him.
6. Whether or not the Plaintiff failed to mitigate his losses in all circumstances of the matter.
7. Whether or not having regards to all the circumstances of the case the Plaintiff is entitled to any reliefs arising from negligence.
8. Whether or not the Plaintiff is entitled to account for the monies paid to him by the Defendants.
9. Whether or not the Defendant is entitled to recover all monies paid to the Plaintiff in excess if any.

ANALYSIS

The Plaintiff's case is that the Defendants having paid for the damage caused to his vehicle after instituting this action meant that the only substantive relief for the determination of the Court is his claim for loss of use of his vehicle which he claimed was US\$100 per day from 17th August, 2021 to 11th March, 2022. In Defendants' address it also appears they have abandoned their counterclaim. In my view no useful purpose will be served discussing issues 1, 2, 3, 4, 7, 8, and 9. The Defendants by themselves having stated that the Plaintiff coerced the Defendants into paying the cost of repairs to his vehicle but in their submission averred that issue 5 has been abandoned so same need not be discussed.

By the decision of Georgina Woode JSC (as she then was) in the case of *Fatal vrs. Wolley [2013-14]2 SCGLR 1070* and *Fidelity Investment Advisors vrs. Aboagye Atta [2003-2004]2 GLR 188*, where the Court held that what issues are relevant and essential was a matter of law entirely for the judge to determine the case. The real issue in controversy therefore is; **WHETHER THE PLAINTIFF IS ENTITLED TO HIS CLAIM FOR LOSS OF USE.**

It is the Plaintiff's claim that subsequent to the accident that occurred, he had to arrange for alternative means of transport and he did so by renting a Toyota Land Cruiser at a daily cost of US\$100.00 for a number of days to enable him perform his daily chores which included his official duties as a Police Officer and a Private Legal Practitioner. He stated that the Defendants' promised to repair his truck and also pay for half of the cost of renting an alternative means of transport.

The Plaintiff's claim for loss of use was couched in reliefs (b) and (c) on his endorsement. By the said reliefs, the loss of use was being claimed as Special damages in one breath and general damages in another. The current position of the law on special damages in Ghana has now move from the 3Ps; i.e. to be PLEADED, PARTICULARISED AND PROVED strictly. See **ASSESSMENT OF DAMAGED** by **Yaw Apau J.A.** (as he then was) in a paper presented to the JTI. The current position is that it ought to be strictly proved but where a Plaintiff fails in meeting that threshold but succeeds somehow that some loss was suffered, the Court ought to treat it as general damaged and grant such general damages. See *Maersk Ghana Limited vrs. BTL Limited [2021]DLSC10687*.

According to the Plaintiff he rented the said vehicle from 17th August, 2021 to 11th March, 2022 and paid to Apostos Car Rentals the total sum of US\$20,700.00. In support of this claim he tendered **Exhibit "A"** (Apostos Car Rental invoice dated 17th August, 2021) being cost of rental of Toyota Land Cruiser for US\$100.00 per day and **Exhibit "B"** (Official Receipt for the sum of US\$20,700.00 issued by Apostos Car Rental to Plaintiff dated 12th March, 2022 without any indication of the purpose for the said payment and if for car rental, what type of car. The Plaintiff also called Emmanuel Tetteh a director of Apostos Car Rentals to corroborate his story of the car rental as well as payment by Plaintiff. The Plaintiff submits that having been deprived of the use of his car for over four (4) months entitles him to damages for loss of use. In support of this assertion Plaintiff referred the Court to **M. A. Jones's** book; **Textbook on Torts (8th Ed.) Oxford University Press** where the author stated thus:- "*Damages for loss of use may include the cost of hiring a substitute where it is reasonable to do so ...*", cited by the Supreme Court in the case of *Ankomah vrs.*

City Investment Company Ltd. [2012] GHASC 30 dated 30th May, 2012. The question then is, is it reasonable for Plaintiff to rent a Toyota Land Cruiser vehicle for US\$100.00 per day for over four (4) months especially when there is no evidence that the Defendants have consented to bear such cost for such a period? This question will be answered in my subsequent discussions.

The Plaintiff again stated that the Defendants had agreed to pay for the cost of rental of an alternative vehicle but subsequently reneged on this promise. There however no proof in support of this assertion. The Court have always stated that a person does not prove his case by merely going into the witness box and repeating an averment on oath but must produce other evidence of fact and circumstances that would enable it come to a conclusion that that averment is true. In *Delman Oil Company Ltd vrs. HFC Bank Ghana Ltd [2016] 92 GMJ at pg. 4* the Court stated thus:

“...The law is that a person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. He does not discharge his burden unless he leads admissible and credible evidence from which the fact or facts he asserts can be properly and safely inferred; failure of which the assertion is not true.

The Defendants submitted that the Plaintiff has failed to adduce sufficient evidence in support of his allegation that they agreed to pay for loss of use for which he rented a vehicle for 207 days at a total cost of US\$20,700.00. The Defendant further averred that lack of proper documentation between the Plaintiff and his witness, Emmanuel Tetteh, the Director of Apostos Car rental raises credibility issues in respect of that transaction. There is **Exhibit “A”** which is an invoice dated 17th August, 2021 for US\$100.00 per day with invoice No. 116/21 and then **Exhibit “B”** which is a receipt dated 12th March, 2022 with Receipt No.0000214 which did not have an invoice number stated thereon.

On 21st November 2024, when Counsel for the Defendants was cross-examining the Plaintiff, the following were recorded: -

Q: *I suggest to you that your so-called cost of renting an alternative vehicle for over 200 days following the accident in question was not only unreasonable but also fraudulent.*

A: *It was reasonable, even the vehicle I rented was far below mine in terms of standard. My vehicle is a 2016 Toyota Tundra, customized and at the time of the accident a similar Toyota Tundra as mine was being rented at the cost of US\$200.00 per day, at that time the dollar was about 6.01 per dollar. After the first week of renting an alternative vehicle, I got in touch with the 2nd Defendant through its officers and told them that I have rented a vehicle for I will continue to use a rented vehicle. The specific officer of 2nd Defendant at the time was called W. O. Rtd Acquah, who was the Security Coordinator of the 2nd Defendant Company. He kept promising that they will fix my car but they never came until I brought them to Court.*

Q: *From your account, nowhere did the said W. O. Rtd Acquah assure you that 2nd Defendant was going to pay for the cost of renting your Toyota Land Cruiser V8.*

A: *My Lady, I never said the 2nd Defendant promised to pay for my daily rental before I commenced this action. The promise came after I brought them to Court in the office of their first lawyer.*

Q: *You will still agree with me that no written agreement to that effect is before this Court.*

A: *Yes, but I have told the Court why it is so.*

...

Q: *I suggest to you that if you had the means of paying US\$4700.00 every week you would have maintained your own car which cost was only a few thousand cedis.*

A: *My Lady, I had the means and still have the means. The fact that I have the means does not mean I should waste my hard-earned income on the negligence of the 1st Defendant.*

Q: *Do you use your vehicle that was involved in the accident for any commercial purpose other than personal use?*

A: *I don't use my vehicle for commercial purpose, but I use it for the performance of my official duties as a Police Officer, for my practice as a lawyer, I use it during the weekends for my social gatherings, travels as well as farming activities in Nsawam.*

The following were also recorded on 26th November 2024 during cross examination of the Plaintiff's witness by Counsel for Defendants: -

Q: *The Plaintiff paid the US\$700.00 weekly without fail, is that correct?*

A: *Yes.*

Q: *Were you issuing receipts to Plaintiff any time he made weekly payments?*

A: *No, My Lady.*

Q: *Can you tell the Court why you did not issue receipts?*

A: *He did not request for receipts on a weekly basis. When he was done using the car, he requested for a receipt for all the days he used the car.*

Counsel for the Defendants submitted that considering the fact that the Plaintiff was capable and willing to pay as much as US\$700 per week for over four months, a reasonable man would have proceeded to fix his broken vehicle within a reasonable time and certainly not the 207 days. The Defendants contend that the Plaintiff could have mitigated the loss by using a car rental for a week and fixing the car as he has clearly shown he has the means. The principle of mitigation of damages applies to general damages but does not extend to special damages. I am therefore unable to agree with the Defendants' contention on this point.

I am however not persuaded by the Plaintiff's proof of special damages as regards his loss of use. **Exhibit "A"** as an Invoice has details that are absent in **Exhibit "B"**. I am therefore not convinced that the receipt **Exhibit "B"** was issued for rental of the same vehicle as that of **Exhibit "A"**. In view of the doubts I harbor about **Exhibit "B"**, I am also unable to accept that the Plaintiff rented a vehicle for 207 days (29 weeks). I hold that the Plaintiff could not strictly prove his special damages beyond **Exhibit "A"** as required of him under Section 17) (1) and (2) of the Evidence Act, 1095 (NRCD 323).

This leads me to treating the damages of loss of use as general damages. In the realm of general damages, the Plaintiff had a duty of mitigation. The GHS18,300.00 that was used to fix the car was about US\$3,000 in 2022. As on his own showing he could afford US\$700 per week, the US\$3,000 was an amount the Plaintiff could afford in less than five (5) weeks. This means had he tried to mitigate damages he would not have rented alternative transport for twenty-nine (29) weeks. Five (5) weeks of repair would have saved twenty-four (24) weeks of loss of use. Consequently, I would give seven (7) weeks of loss of use at US\$100 per day. This results in general damages of US\$4,900 or its cedi equivalent.

So, in answer to the earlier question posed, it is the clear thinking of the Court that it is unreasonable to rent a Toyota Land Cruiser for 207 days at US\$100 per day and pass same on to the Defendants as the Plaintiff could have mitigated his loss.

CONCLUSION

From the discussions above the relevant issue for determination between the parties is whether the Plaintiff is entitled to damages for loss of use of his vehicle in the sum of US\$20,700.00 claimed as the cost of rental of alternative vehicle from a car rental company for 207 days? I have answered the question in the negative.

General damages is therefore awarded in favour of the Plaintiff against the Defendants in the sum of Four Thousand Nine Hundred United States Dollars (US\$4,900.00) or its cedi equivalent at the time of judgment for loss of use.

Cost of Ten Thousand Ghana Cedis (GHS10,000.00) awarded in favour of the Plaintiff against the Defendants jointly and severally.

(SGD.)

SHEILA MINTA, J.

JUSTICE OF THE HIGH COURT

REPRESENTATIONS

PARTIES:

PLAINTIFF – PRESENT

DEFENDANT – ABSENT

COUNSEL:

EDEM SHEPHERD TEFÉ, ESQ., HOLDING BRIEF FOR KOFI BURAH
ASOMANING, ESQ., FOR THE PLAINTIFF – PRESENT

VITUS GBANG, ESQ., FOR DEFENDANTS – PRESENT

AUTHORITIES

1. *FATAL VRS. WOLLEY [2013-14]2 SCGLR 1070*
2. *FIDELITY INVESTMENT ADVISORS VRS. ABOAGYE ATTA [2003-2004] 2 GLR 188,*
3. *MAERSK GHANA LIMITED VRS. BTL LIMITED [2021] DLSC10687.*
4. *ANKOMAH VRS. CITY INVESTMENT COMPANY LTD. [2012] GHASC 30
DATED 30TH MAY, 2012*

5. **DELMAN OIL COMPANY LTD VRS. HFC BANK GHANA LTD [2016] 92 GMJ
AT PG. 4**

6. **ASSESSMENT OF DAMAGED BY YAW APAU J.A.**

7. **M. A. JONES'S BOOK; TEXTBOOK ON TORTS (8TH ED.) OXFORD
UNIVERSITY PRESS**