



FOR PUBLICATION

By Order of the Court, Judge KENNETH L. GOVENDO

IN THE SUPERIOR COURT FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ARMANDO BAIT,) Civil Action No. 18-0166
)
Plaintiff,)
)
vs.)
)
ASM KASIER AHMED and DO HYUN)
KIM,)
)
Defendants.)

**OPINION AND ORDER GRANTING
PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT**

On July 8, 2019, this Court conducted a hearing on Armando Bait's ("Plaintiff") Motion for Default Judgment. Bruce Berline was present representing Plaintiff, but neither Asm Kasier Ahmed ("Ahmed") nor Do Hyun Kim ("Kim," and collectively "Defendants") was present.

For the reasons stated below, the Court **GRANTS** Plaintiff's Motion for Default Judgment against Defendants and enters judgment against each as follows.

BACKGROUND

In 2018, Plaintiff was involved in an auto accident with Ahmed. As a result, Plaintiff filed a complaint against Ahmed with this Court. On August 10, 2018, Plaintiff amended his Complaint to include Kim, the owner of the vehicle Ahmed was driving when he collided with Plaintiff, as a defendant to the underlying action. Three days later, Plaintiff served Defendants with the Summons and First Amended Complaint.

1 Defendants, however, did not appear, plead, or file any motion with this Court.
2 Accordingly, Plaintiff filed motions to enter default, which the Clerk of Court granted against Kim
3 on September 19, 2018 and against Ahmed on February 22, 2019. On May 17, 2019, Plaintiff
4 filed the current Motion for Default Judgment against Defendants pursuant to NMI R. Civ. P.
5 55(b)(2).
6

7 LEGAL STANDARD

8 A court may enter a default judgment where the clerk, under NMI R. Civ. P. 55(a), has
9 previously entered a party's default based on a failure to plead or otherwise defend the action.
10 NMI R. Civ. P. 55(b)(2); *DR JKL Ltd. v. HPC IT Educ. Ctr.*, 749 F. Supp. 2d 1038, 1046 (N.D.
11 Cal. 2010)¹.
12

13 Once a court enters a default judgment, "the factual allegations of the complaint, except
14 those relating to the amount of damages, will be taken as true." *Comdyne I, Inc. v. Corbin*, 908
15 F.2d 1142, 1149 (3rd Cir. 1990) (quoting 10 C. Wright, A. Miller, & M. Kane, *Federal Practice*
16 *and Procedure*, § 2688 at 444 (2d ed. 1983)); *see also TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d
17 915, 917 (9th Cir. 1987). Plaintiff is still required to prove all damages sought in the complaint.
18 *Bd. of Trs. v. Skelly, Inc.*, 389 F. Supp. 2d 1222, 1226 (N.D. Cal. 2005).
19

20 Plaintiff's burden in "proving up" damages is relatively lenient. If proximate cause is
21 properly alleged in the complaint, it is admitted upon default. *Greyhound Exhibitgroup v. E.L.U.L.*
22 *Realty Corp.*, 973 F.2d 155, 159 (2nd Cir. 1992). Once proximate cause is admitted, injury is
23 established, and plaintiff must prove only that the compensation sought relates to the damages that
24 naturally flow from the injuries pled. *See id.* at 158. In determining damages, a court may rely on
25 the declarations submitted by the plaintiff, or it may order an evidentiary hearing. *See Bd. of Trs.*,
26

27
28 ¹ *DR JKL Ltd.* interpreted Federal Rule of Civil Procedure 55(b)(2). However, NMI R. Civ. P. 55(b)(2) is modeled after the federal rules, so the Court considers federal case law in interpreting NMI Rules of Civil Procedure. *Ada v. K. Sadwani's Inc.*, 3 N.M.I. 303 n.3 (1992).

1 389 F. Supp. 2d at 1226; NMI R. Civ. P. 55(b)(2). Although there is no per se hearing
2 requirement, a court should ordinarily hold a hearing to assist it in determining damages. *See*
3 *Frazier v. Absolute Collection Serv.*, 767 F. Supp. 2d 1354, 1365 (N.D. Ga. 2011).

4 **FACTS**

5 For purposes of Plaintiff's Motion for Default Judgment, the following factual allegations
6 contained in Plaintiff's First Amended Complaint; Plaintiff's Declaration in Support of Motion for
7 Default Judgment; and Plaintiff's testimony taken at the default judgment hearing are taken as true:
8

- 9 1. On May 19, 2018, Plaintiff was sitting inside his parked 1992 Isuzu pickup truck, which
10 had a trailer attached to it, on the shoulder of the northbound lane of Chalan Monsignor
11 Martinez road.
- 12 2. Plaintiff's truck and the attached trailer were parked off the roadway.
- 13 3. At the same time, Ahmed was driving a 2013 Chevrolet Express van ("Van") northeast on
14 the northbound lane of Chalan Monsignor Martinez road.
- 15 4. Ahmed fell asleep while driving the Van, causing him to drive off the roadway and collide
16 with Plaintiff's truck.
- 17 5. Kim was the owner of the Van at the time of the collision.
- 18 6. The Van collided with the front driver side of Plaintiff's truck, and the force of the impact
19 moved the truck about 30 feet from where it was parked.
- 20 7. Kim allowed Ahmed to drive the Van on the day of the collision.
- 21 8. The Van was uninsured when Ahmed collided with Plaintiff's truck.
- 22 9. Plaintiff suffered injury to the left side of his head, his left ribs, and his left foot as a result
23 of the collision.
- 24 10. For approximately 30 days, Plaintiff experienced pain and suffering from his injuries.
- 25
- 26
- 27
- 28

1 11. The collision severely damaged Plaintiff's truck, rendering it a total loss.

2 12. Before the collision, Plaintiff's truck was in good condition and mechanically sound.

3 13. Plaintiff, an automobile mechanic, estimated that his 1992 Isuzu pickup truck was worth
4 approximately \$2,500 at the time of the collision.

5 14. As a result of the collision, Plaintiff lost income due to his missing four days of work, and
6 he incurred medical bills.

7
8 a. Ahmed's Liability

9 Plaintiff contends that Ahmed is liable to him under a theory of negligence and negligence
10 per se. Plaintiff has sufficiently established that Ahmed was driving the Van when he fell asleep.
11 As a result of Ahmed's falling asleep, the Van left the roadway and collided with Plaintiff's truck
12 parked along the roadway.

13
14 The Court finds Ahmed negligent in driving the Van while fatigued and in allowing the
15 Van to leave the roadway and collide with Plaintiff's pickup truck. Ahmed owed Plaintiff a duty to
16 exercise reasonable care in operating the Van and in keeping a proper and safe lookout for people
17 and vehicles on or near the roadway. Ahmed also owed Plaintiff a duty to not operate the Van
18 while fatigued.

19
20 Ahmed breached his duties to Plaintiff. As a direct result of such breach, the Van he was
21 driving collided with Plaintiff's truck causing Plaintiff bodily injury, along with pain and suffering,
22 property damage, medical bills, and lost wages.

23
24 b. Kim's Liability

25 Plaintiff asserts that Kim is responsible to him for damages based on a novel theory of
26 liability under the CNMI Mandatory Liability Insurance Act ("Act"). Kim, the owner of the Van
27
28

1 that struck Plaintiff, allowed Ahmed to drive the Van without it being covered by a liability
2 insurance policy, in contravention with the Act. *See* 9 CMC § 8203.

3 The Act requires all vehicles operating on CNMI roadways to be covered by a liability
4 insurance policy. *Id.* Such liability insurance policy must provide "not less than the following
5 coverage: \$15,000 for bodily injury or death of any one person in any one accident; \$30,000 for
6 the bodily injuries or deaths of all persons involved in any one accident; \$15,000 for injury,
7 damage or destruction of property in any one accident." 9 CMC § 8205(a).

9 In passing the Act, the CNMI Legislature recognized the serious problem with uninsured
10 motor vehicles being operated on the CNMI's roadways. When these uninsured motorists cause an
11 automobile accident, innocent victims often suffer serious financial hardship. *See* Act, PL 11-55,
12 Findings and Purpose, Section 2. The Legislature also recognized the reality of what often occurs
13 with uninsured motorists, stating that "[t]he unfortunate and unjust result of this problem is that
14 innocent victims of motor vehicle accidents are often burdened with damages that are never paid
15 by the uninsured motorist that caused such injuries." *Id.*

17 The Legislature also found "that a person who suffers damages as a result of a motor
18 vehicle accident caused by another should not have to bear such financial burden, rather, the party
19 most at fault should bear such burden." *Id.* Moreover, the Legislature recognized that owning and
20 operating a vehicle on the CNMI roadways is a privilege. *Id.* However, such privilege is limited
21 and comes with the responsibility of owners and operators of such vehicles "to recompense others
22 for injury to person or property caused by the operation of a motor vehicle." *Id.*

24 Accordingly, the CNMI Legislature required vehicles operated on CNMI roadways to have
25 a minimum liability insurance policy. The policy alleviates the financial hardship caused by
26 uninsured motorists, and it provides a pathway to allow victims of automobile accidents to recover
27
28

1 at least a part of their monetary loss. A minimum liability insurance policy must provide coverage
2 for "not only the owner of the vehicle so insured," "but also, any other person who operates such
3 vehicle . . . with the owner's permission, whether such permission is given explicitly, impliedly or
4 implicitly, orally or in writing." 9 CMC § 8205(b). In short, the Act is intended to ensure that
5 innocent victims of automobile accidents are not left without recourse by requiring owners to
6 purchase a liability insurance policy prior to registering and driving a vehicle on CNMI's public
7 roads.
8

9 Here, the factual allegations set forth in Plaintiff's First Amended Complaint, which are
10 taken as true at this stage, substantiate that: 1) Kim was the owner of the Van that collided with
11 Plaintiff's truck; 2) Kim allowed Ahmed to drive the Van on the day of the accident; and 3) the
12 Van was uninsured when Ahmed collided with Plaintiff's truck.
13

14 Given the broad purpose of the Act and the intent of the CNMI Legislature, the Court finds
15 that Kim's violation of the Act's compulsory provisions makes him directly liable to Plaintiff for
16 Plaintiff's damages incurred as a result of Ahmed's negligence.
17

18 c. Damages

19 Based on the above, the Court finds that Plaintiff incurred the following damages as a
20 result of the collision:

- 21 1. \$10,000 for Plaintiff's personal injury and his pain and suffering, because Plaintiff suffered
22 injury to the left side of his head, his left ribs, and his left foot, which resulted in Plaintiff's
23 pain and discomfort for approximately one month;
- 24 2. \$2,500 for the estimated damage to Plaintiff's 1992 Isuzu pickup truck, as well as
25 compensation for the loss of its use;
- 26 3. \$2,076.60 for Plaintiff's medical costs;
- 27
- 28

4. \$160 for Plaintiff's lost wages; and
5. \$433 for Plaintiff's costs in prosecuting this matter.

CONCLUSION

Based upon the foregoing, the Court **GRANTS** Plaintiff's Motion for Default Judgment, and concludes that the entry of a default judgment against Ahmed and Kim, jointly and severally, in the amount of \$15,169.60 is appropriate.

IT IS ORDERED:

1. Plaintiff's Motion for Default Judgment is granted; and
2. Default judgment is entered in favor of Plaintiff and against Defendants in the amount of \$15,169.60.

/s/

Ordered this 25th day of July 2019.

KENNETH L. GOVENDO
Associate Judge