

**TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff**

v.

**EONA SIMON, Defendant**

**Civil Action No. 429**

**Trial Division of the High Court**

**Marshall Islands District**

**November 16, 1971**

Action against defendant for recovery of damages to government vehicle. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where defendant had previously pleaded guilty to charges of driving while intoxicated and reckless driving, it was unnecessary for the government to offer evidence in proof of defendant's liability.

**1. Evidence—Stipulations and Admissions**

Judicial admissions are admissible in another civil or criminal proceeding involving the same issue.

**2. Evidence—Stipulations and Admissions**

In action by government to recover from defendant for damage to government vehicle it was unnecessary for the government to offer evidence in proof of defendant's liability in view of defendant's prior pleas of guilty to charges of driving while intoxicated and reckless driving.

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

The measure of damages arising from a tort under the common law is basically the value of the automobile immediately before and immediately after the accident.

**4. Motor Vehicles—Damages—Salvage**

Where use has been made of undamaged parts of a damaged automobile, the measure of the loss is the value immediately prior to the accident less the salvage value of the undamaged parts and the value prior to the accident depends upon the delivered cost new, less depreciation from date of acquisition to date of destruction.

*Assessor:*

KABUA KABUA, *Presiding Judge of the District Court*

*Interpreter:*

OKTAN DAMON

*Reporter:*

NANCY K. HATTORI

*Counsel for Plaintiff:*

RUSSELL W. WALKER, ESQUIRE,  
*District Attorney, and*

BEIA LALEJ, *District Prosecutor*

*Counsel for Defendant:*

ANIBAR TIMOTHY, *Public Defender's Representative*

TURNER, *Associate Justice*

This is an action against the defendant for recovery of damages to a government pick-up truck. Defendant, a government employee, was driving the government vehicle when it collided with a privately owned and operated vehicle.

Four criminal charges were brought against defendant as a result of the accident. He plead guilty and his sentence included restitution of the damage to the private vehicle which has been paid. The sentence also required restitution to the Trust Territory Government for the damage to its vehicle. Because the prosecution failed to submit any evidence as to the government loss, the District Court was unable to fix the amount of restitution to be made. In a review by this court, it was held the order for restitution was invalid for uncertainty and that the government should establish the amount of its claim in a civil proceeding. The present case was the outgrowth of that order.

The first question of law arising at the trial was whether the government was required to prove liability in view of the defendant's pleas of guilty to the charges of driving while intoxicated (83 T.T.C. 552) and reckless driving (83 T.T.C. 551).

[1, 2] Judicial notice of a criminal record has been taken by this court and the record also has been held to be admissible as a judicial admission. Judicial notice in a civil action of the record of a prior criminal case was taken by this court in *Mongami v. Melekeok Municipality*, 4 T.T.R. 217. The general rule is that judicial admissions are admissible in another civil or criminal proceeding involving the same issue. 29 Am. Jur. 2d, Evidence, Sec. 616. In the Federal courts, judicial notice is taken and affect given to the record in another but related case. *National Fire Ins. v. Thompson*, 281 U.S. 331, 50 S.Ct. 288 and cases

cited. *United States v. Greater N.Y. Live Poultry C. of C.*, 53 F.2d 518. Under the circumstances of the criminal proceeding and the law applicable to its use in the present case, it became unnecessary for the government to offer evidence in proof of the defendant's liability.

[3] The remaining question was the measure of damages. The law on this question was considered at length in *Neton v. Ywelelong*, 5 T.T.R. 300. The general rule of the common law (neither Micronesian custom nor statute pertain to the question) is set forth in *Neton* as:—

“The measure of damages arising from a tort under the common law is basically the value of the automobile immediately before and immediately after the accident.”

In the present case, determination of the amount of damages is a matter of calculation upon the government's testimony because the defendant offered no evidence on the point. The government established it would have been unreasonable to have attempted to repair the vehicle, particularly in view of the use it made of the undamaged parts.

[4] The measure, therefore, of the loss was the value immediately prior to the accident less the salvage value of the undamaged parts. The value prior to the accident depends upon the delivered cost new, less depreciation from date of acquisition to date of the destruction based on a three-to-four-year life expectancy of a vehicle in Majuro.

Based upon an acquisition cost of two thousand seven hundred sixty-five dollars (\$2,765.00) depreciated by one-third, the value at the time of the accident was one thousand eight hundred forty-four dollars (\$1,844.00). The salvage value after the accident presents a more difficult problem because the court has a variety of figures to rely upon including the resale value of the damaged truck at

\$250.00 to \$500.00 "depending upon the needs of the people", i.e., the market.

Defendant's counsel elicited the information that the value of the undamaged parts used by the government in its repair and maintenance shop should be the measure of value. The government witness estimated the new price of the usable parts at one thousand one hundred eighty dollars (\$1,180.00). He also added, however, that second-hand parts were worth fifty percent of the cost of new parts.

From this testimony, a value of five hundred ninety dollars (\$590.00) for usable parts was reasonable and was comparable with the top estimate for the resale value of the truck. The resulting calculation shows the difference between the value before and after the accident, which was the measure of the loss, to be one thousand two hundred dollars (\$1,200.00).

The court recognizes the financial circumstances of the defendant and his inability to pay any judgment amount immediately. Therefore, to avoid future hearing on a motion for order in aid of judgment, the manner of payment of the judgment will be included. In this respect, the record shows defendant's salary as a government employee is \$48.60 each two-week pay period and from this amount there is deducted, upon defendant's authorization, \$25.00 each pay period for retirement of a credit union loan, the present balance of which is \$529.99.

Ordered, adjudged, and decreed:—

1. That the plaintiff Trust Territory Government shall have judgment against the defendant in the amount of one thousand two hundred dollars (\$1,200.00).

2. That payment of this judgment shall commence upon the retirement of the balance of the debt to the credit union in the amount of five hundred twenty-nine dollars and ninety-nine cents (\$529.99), payable at the rate of

\$25.00 each pay period, and that payment on the judgment in behalf of the government shall be at the rate of \$25.00 per pay period, subject to further order of this court upon hearing upon application of either party for amendment.