

held Neson as his individual land, with full title; on his death it was inherited by his children, represented here by the defendant Ite.

It is, therefore, ordered, adjudged, and decreed:—

1. As between these parties and all those persons claiming under them, the land Neson, Mochon Village, Uman Island, Truk District, is owned by the children of Nito, represented in this action by his son Ite.

2. Defendant is awarded costs provided he files an itemized statement within thirty days.

TITUS NETON, Appellant

v.

ROY YWELELONG, Appellee

Civil Action No. 572

Trial Division of the High Court
Truk District

January 27, 1971

Appeal from judgment awarding damages for property loss resulting from an automobile collision. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that plaintiff's award for damages was proper and that plaintiff's theory of recovery, that he should recover all purchase costs and that upon payment the plaintiff would be entitled to the auto, was not in accord with the common law.

Judgment affirmed.

1. Motor Vehicles—Damages—Law Governing

Liability for damages arising out of an automobile accident is not covered by local custom in Micronesia and is governed by common law.

2. Motor Vehicles—Damages—Commercial Vehicles

Where the injury done to a commercial vehicle by another's negligent or other wrongful act can reasonably be repaired, the basic rule for compensatory damages is the difference between the market value of the vehicle immediately before and immediately after the injury or the reasonable cost of the repairs required to restore it to the condition it was in immediately prior to the injury.

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3. Motor Vehicles—Damages—Generally

The wrongdoer in an automobile accident is not obliged to repair the damaged vehicle nor to pay its original cost; his only obligation is to pay the plaintiff-owner the amount of his loss.

4. Motor Vehicles—Damages—Generally

The amount of damage to an auto resulting from an automobile accident is the difference between the value of it immediately before the accident, rather than the cost new, and the value after the accident and this is measured by the cost of repairs when they can reasonably be made.

5. Motor Vehicles—Damages—Generally

If the vehicle involved in an accident is destroyed beyond repair, that is, the repairs would exceed the cost of a replacement, even then the value immediately before the accident is reduced by the salvage value of the wreck.

6. Motor Vehicles—Damages—Loss of Use

Loss of use of an auto involved in an accident, if proven, is recoverable for the period reasonably required for repairs.

7. Motor Vehicles—Damages—Loss of Use

If a vehicle cannot be restored to use, loss of use may not be included in the damages recoverable as a result of an accident.

Counsel for Appellant:

F. PETER

Counsel for Appellee:

KINTOKI

Interpreter:

SABASTIAN FRANK

TURNER, *Associate Justice*

This is an appeal from a decision of Truk District Court Presiding Judge F. Soukichi awarding Five Hundred Fifteen Dollars (\$515.00) damages to the appellant, who was the plaintiff in the District Court, for property loss resulting from a collision between plaintiff's and defendant's automobiles.

The sole issue on appeal is the proper measure of damages sustained by plaintiff. The defendant's liability because of his negligence was practically conceded at the trial and was not raised on appeal. After the accident, defendant was convicted and fined in a District Court criminal proceeding for negligent driving.

[1] Although he received a judgment in his favor, plaintiff appealed because he believed he should be awarded the full amount of the cost of his practically new automobile, together with the vehicle registration fee and the thirty-dollar (\$30.00) license for operation of a taxi, a total of One Thousand Eight Hundred Fourteen Dollars and Seventy-five cents (\$1,814.75). His theory of recovery, asserted in his complaint, was that he should be allowed recovery of all purchase costs and that upon payment the defendant would be entitled to the automobile. This theory of "forced sale" to the wrongdoer is not found in the law nor under the custom in Truk or elsewhere in Micronesia. This court said in *Ychitaro v. Lotius*, 3 T.T.R. 3 at 13:—

"This court has already held in *Etpison v. Indalecio*, 2 T.T.R. 186, that the question of liability for damages arising out of an automobile accident in the Palau Islands involved new elements introduced by outsiders and not covered by local custom, and was therefore, in accordance with Section 22 of the Trust Territory Code governed by the rules of the common law."

[2] 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. The basic rule, with supporting cases, is set forth in the annotation at 16 A.L.R. 1074, "Measure of damages for destruction of or injury to commercial vehicles." The text writer says at 16 A.L.R. 1075, 1076:—

"Where the injury done to a commercial vehicle by another's negligent or other wrongful act can reasonably be repaired, the basic rule for measuring compensatory damages is the difference between the market value of the vehicle immediately before and immediately after the injury or the reasonable cost of the repairs required to restore it to the condition it was in immediately prior to the injury. In addition . . . recovery also may be had for the value of the loss of use or the rental value of the car while it is being

repaired. Other items of recovery include interest, expenses incidental to removal of the damaged vehicle and storage charges incurred while awaiting repairs and miscellaneous items of expense or loss directly resulting from the accident."

The trial evidence in the District Court produced by plaintiff's witness, who for fifteen years has been a mechanic and is in charge of the district hospital garage, was that the cost of replacement was Three Hundred Ninety-five Dollars (\$395.00) and the cost of repair labor, One Hundred Twenty Dollars (\$120.00). This total of Five Hundred Fifteen Dollars (\$515.00) is the precise amount of the District Court judgment. There was no error in this finding and judgment amount.

[3, 4] The plaintiff on appeal made some argument the vehicle could not be repaired, presumably because there was no one available on Moen Island capable of making repairs. The evidence did not support this theory. The damaged vehicle was owned by the plaintiff and he was obliged to make a reasonable and diligent effort to repair it. He did not do this, presumably because he believed the defendant should have the vehicle and he, the plaintiff, should receive the amount of its new cost. The defendant, the wrongdoer was not obliged to repair the vehicle nor to pay its original cost. His only obligation was to pay the plaintiff-owner the amount of his loss—the difference between the value immediately before the accident, rather than the cost new, and the value immediately after the accident. This is measured by the cost of repairs when they can reasonably be made.

[5] If the vehicle is destroyed beyond reasonable repair, that is, the repairs would exceed the cost of a replacement, even then the value immediately before the accident is reduced by the salvage value of the wreck.

[6, 7] The damages pertain to the vehicle, not the amount of business expenses such as the cost of a taxi

license. However, loss of use, if proven, is recoverable for the period reasonably required for repairs. If the vehicle cannot be restored to use, loss of use may not be included.

There being no error in awarding damages in the amount of the estimated cost of repairs, the judgment of the District Court is affirmed.

KARUO, Appellant

v.

CHOCHY, Appellee

Civil Action No. 576

Trial Division of the High Court

Truk District

February 12, 1971

Appeal from conviction of failure to work or pay alternative tax in lieu of work. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that while the enactment of an "Island Work Day" law is a proper exercise of municipal authority, when the statute is so ambiguous and uncertain that it is meaningless, then it cannot be enforced.

Judgment reversed.

1. Appeal and Error—Generally

An appeal from a Community Court is a right granted by the Trust Territory Code and may not be denied.

2. Judgments—Stay of Execution

Staying execution of judgment involves the exercise of reasonable discretion.

3. Statutes—Construction—Legislative Intent

A court may not speculate as to the probable legislative intent, that is the court must consider not what the legislative body intended to do but what it actually enacted.

4. Statutes—Construction—Strict Construction

Where the meaning of a statute cannot be judicially ascertained, the courts are not at liberty to supply the deficiency or undertake to make the statute definite and certain.

5. Constitutional Law—Equal Protection

Questions of discrimination and equal protection of laws arise from classification of subjects of legislation and while improper or unfair classification violates the protection afforded by Code Section 7, reasonable classification may be made by the legislature. (T.T.C., Sec. 7)