J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CIVIL APPEAL NO. 75/72

Before: The Hon. Mr. Justice Smith, J.A., (Presiding)
The Hon. Mr. Justice Edun, J.A.
The Hon. Mr. Justice Robinson, Ag.

B E T W E E N GERSHAM LODGE - Plaintiff/Appellant

A N D STANLEY BROWN - Defendant/Respondent

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D. Scharachmidt for Plaintiff/Appellant

Clinton Hines for Defendant/Respondent

1st June, 1973

SMITH, J.A.

In this action the plaintiff claimed damages for negligence against the defendant. Liability was admitted but the damages claimed were in dispute, so the trial was merely on the question of the damages to which the plaintiff was entitled. The plaintiff claimed Eight Hundred Dollars which was the pre-accident value of his Hillman motor car which he alleged was damaged beyond repairs. It emerged from his evidence that as a result of the accident the chassis of the Hillman was bent, the front right door was damaged, the front wheel was damaged; so was the right headlamp, the left rear light, the accelerator and the radiator. In addition he said the front cross member, the bonnet, the boot, the right fender, the front bumper and the right front wheel were also damaged. The plaintiff said he did not have his motor car repaired because he and his mechanic went to Kingston with the damaged parts to try and replace them. They tried about four different places and were unable to obtain parts for the car. There was no evidence given that any further efforts were made to obtain parts for the car. It was a 1963 model. It was bought new for $1,920. The plaintiff

said it was in good condition before it was damaged in the accident on the 24th of July 1971. He placed a pre-accident value of $800 on the car.

The defendant, who said he is a mechanic and has some experience with motor vehicles, denied that the Hillman was a total wreck. He claimed that it could have been repaired at a cost of somewhere between $50 and $100. The defendant estimated the pre-accident value of the Hillman at $650 and the post accident value at $550.

The learned Resident Magistrate gave judgment for the plaintiff for $650, accepting the defendant's estimate of pre-accident value of the motor car. He found, as the plaintiff contended, that the car was a total wreck. In my view this seemed to be a generous finding in favour of the plaintiff. However, the defendant has not appealed against this finding of the learned Resident Magistrate that the plaintiff's car was a total wreck. The complaint made on appeal is that the learned Resident Magistrate erred in assessing the damages in the case as the correct basis in the case of a total or complete loss of a motor vehicle is the market value of the damaged car immediately before the accident less the scrap value. There was no evidence at the trial of the scrap value of the motor car nor did the plaintiff say it was of no value. Indeed from his evidence it appeared to have been a motor car which, though eight years old at the time of the accident, was in good condition. The learned Resident Magistrate did not accept the evidence of the defendant that the post-accident value of the car was $550. He found that this was too high a figure. In his reasons for judgment the learned Resident Matistrate admitted that he was in a quandary what damages to award, accepting $650 as the pre-accident value. In paragraph 10 of his reasons for judgment he said: "But the wreck should have some value, even

as scrap or junk, and as stated above, no evidence was given either by or on behalf of the plaintiff as to its scrap value. I toyed with the idea of applying the principle that equity is equality and arriving at a value exactly half way between $550 and nothing, to wit, $275. I, however, rejected this as I felt that, having regard to (a) the extent of the damage which the car had sustained and (b) its pre-accident value of $650, $275 was too high a figure." He justified his judgment awarding the plaintiff the full pre-accident value of the car in this way. He said: "The car is in fact a wreck and the wreck is of no value to the plaintiff. The plaintiff has made no effort to dispose of it as scrap. The defendant himself in his evidence said that he passes the plaintiff's premises regularly and that the car in its post-accident condition is still there. Over a year has elapsed since the accident. The plaintiff has obviously abandaoned the wreck and as a result of its exposure to the elements everyday its value as scrap decreases. It could of course be urged that a duty is imposed on the plaintiff to cut his losses and reduce damages by selling the wreck as scrap. There is, however, no evidence that anybody offered to buy the wreck. In its exposed position it can be seen by passers by. It must also be presumed that if the plaintiff could have obtained sale for the wreck he would have sold it. No rational person passes up a chance of obtaining a few dollars of ready money. I therefore subtracted nothing from the pre-accident value of $650 and gave judgment accordingly.

In my view it does not necessarily follow that the reason why the wreck was not sold as scrap is that nobody offered to buy it and that there is a presumption that if the plaintiff could have obtained sale for the wreck he would have sold it. The plaintiff may well have taken up the attitude: "well, my car was damaged by the defendant, let him pay me for my car." In my opinion the

Resident Magistrate was not justified in his conclusion that the wreck was of no value at all. This is what his findings amount to. In my judgment, a plaintiff who claims for a total wreck of his motor car must prove that the car was in fact a total wreck and if he claims for the full pre-accident value of the car he must also prove that the wreck was of no value. It is not sufficient in my view for him merely to come to court and say: "my car is a wreck pay me for it," thus placing some burden on the defendant to prove the value of the wreck. It is for him to prove his true financial loss.

In the circumstances of this case, prima facie the wreck was of some value. As I have indicated, the plaintiff did not say it had no value. In the circumstances the plaintiff did not establish a true loss as he was obliged to do on his claim. I would allow the appeal and remit the matter to the learned Resident Magistrate for assessment to be made of the value of the wreck at the time of the accident and for allowance to be made against the damages awarded of the cost of the wreck.

EDUN, J. A., I agree.

ROBINSON, J.A.,(Ag.), I agree.

SMITH, J.A. The order is then that the appeal is allowed; matter remitted to the same Resident Magistrate for assessment of the value of the wreck immediately after the accident in the absence of agreement between the parties and for allowance to be made against the amount awarded. Cost $40 to the defendant/appellant.