JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 99/90

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE PATTERSON, J.A. (Ag.)

BETWEEN	NOEL GRAVESANDY	DEFENDANT/APPELLANT
A N D	JAMAICA AUTO & CYCLE COMPANY	PLAINTIFF/RESPONDENT

Orrin Tonsingh for appellant

Miss Minette Palmer, instructed by
Myers, Fletcher & Gordon, for respondent

March 24 and April 26, 1993

PATTERSON, J.A. (Ag.):

The respondent company supplied one of its employees, a sales representative, with a Toyota Crown station wagon motor vehicle for use in its work. This vehicle was damaged in a collision with a motor car owned and driven by the appellant, and as a result the respondent company claimed against the appellant for loss and expense it had sustained. The court awarded the respondent company special damages amounting to $16,857 and it is against that award that the appellant appealed. We dismissed the appeal and in keeping with our promise we now give our reasons for so doing.

The respondent company particularised and pleaded the following items of special damages:

"Cost of repairs -	$13,687.09
Excess	750.00
Assessor's Fee	170.00
Loss of use	3,000.00
	$17,607.09."

The learned judge allowed the amount of $13,687.09 - "on a total loss basis", the $170 paid to the assessor to assess the damage to the vehicle, $750 per week for four weeks for the rental of a replacement vehicle and he disallowed the $750 claimed for excess.

The award of damages was made on the basis of the evidence given by two witnesses for the respondent company. The employee of the respondent company said that the company's vehicle sustained damage to the bumper, radiator, bonnet, right fender and both headlamps. The damage was assessed by St. Andrew's Garage. However, the assessor did not give evidence. The assistant manager and member of the Board of Directors of the respondent company said he visited the scene of the accident and saw the vehicle on the day of the collision. It was extensively damaged to the front and side of the fenders. He said he had worked with Barbar Motors and also with Watson's Garage, though he was not a motor vehicle assessor, nor a repairman. He knew of an estimate of repairs prepared by St. Andrew's Garage at a cost of $170 and he said that the repairs to his company's vehicle would have cost about $15,000. The pre-accident value of the vehicle was put at $25,000 by the employee, and at between $23,000 to $24,000 by the assistant manager. The vehicle was not repaired by the company, apparently because of the model, but instead it was sold to the employee for $4,000 and he had it repaired. The employee was paid $750 per week for four weeks for the use of his own vehicle, while the company was without the services of its vehicle. The appellant, although he gave evidence, did not seek to contradict in any way the evidence given on behalf of the respondent company with regard to the question of damages.

It was argued before us that the evidence was insufficient to support the global award or alternatively, the award should have been limited to a nominal sum only. It was said that as regards the award of $13,687.09, "on a total loss basis", there was no ground to support such an award since what was pleaded

was the costs of repairs and the learned judge found "on a total loss basis", which was not pleaded or proved. It was contended further, that in any event, the evidence as to the estimated costs of repairs or for a total loss is opinion evidence which must come from an expert with specialised knowledge, and consequently, the evidence of the respondent company witnesses, who made no pretence of being experts, ought not to have been accepted.

We did not agree with the arguments put forward by counsel for the appellant. We shared the view that special damages must be pleaded and proved before one can recover any such sum in an action. Evidence of damages done to a motor vehicle in a collision and the estimated cost of repairs is usually supplied by an expert. However, expert evidence may be given by anyone who has some experience and who has gained skill or knowledge from experience in a particular field. The court has always exercised a wide discretion in deciding whether or not the evidence of a witness should be admitted as expert evidence, but once that discretion has been exercised, then, the only issue that arises is the weight to be attached to such evidence. The judge is in the best position to assess its weight, and this court will not interfere unless it can be shown that he was palpably wrong in deciding as he did.

In the instant case, the learned judge had evidence of the physical damage done to the vehicle and he also had evidence from one who had worked in the motor vehicle industry prior to his present position in the business of the respondent company. His evidence as to the value of the motor car before the collision and the costs of the repairs that would be necessary after the collision, went unchallenged. However, the amount pleaded for repairs fell short of the amount proved, and the court could not, therefore, allow more than the amount pleaded without an amendment to the pleadings. The amount awarded is the amount pleaded. Although the repairs to the vehicle were not undertaken by the respondent company, it is nevertheless entitled

to recover that amount. The learned judge in his judgment said he awarded that amount of $13,687.09 "on a total loss basis". Damages awarded for the total loss of a vehicle is determined by a simple deduction of the value of the wreck from the pre-accident value of the vehicle. It is obvious, therefore, that the amount awarded is for the cost of the repairs and as the evidence emerged, the reference to a "total loss basis", must be referable to the fact that the vehicle was sold by the respondent company without being repaired. We were quite unable to say that the evidence did not support the award.

The other two amounts awarded were for loss of use and the assessor's fees. There was ample evidence to support the amounts awarded. It is quite clear that the learned judge found the amounts pleaded and proved to be fair and reasonable. There was no challenge to these amounts in the court below and we saw no reason why we should interfere with the award.

FORTE, J.A.:

I agree.

DOWNER, J.A.:

I agree.