IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. W.132/88

BETWEEN	ADRIAN WHITE	PLAINTIFF
AND	ALCAN JAMAICA COMPANY LIMITED	FIRST DEFENDANT
AND	LANFORD WILLIS	SECOND DEFENDANT

Mr. Lawton Heywood for Plaintiff

Mr. Patrick Brooks of Nunes Scholefield, DeLeon and Company for both defendants.

May 11, 1990

LANGRIN, J.

This is an assessment of damages wherein the plaintiff claims damages for loss suffered to his 1969 Cortina Motor car (1600 cc) which he owned since 1976.

On 23rd January, 1988 the defendant's motor vehicle collided with the plaintiff's motor car causing it to overturn and sustain damage to its right rear section, fender, chassis, rear light bumper, rim, rear rim and two tyres.

The defendants admitted negligence and contested the case solely on the question of the proper measure of damages.

It took the plaintiff 4½ months to repair his motor car because he was under financial constraints and had difficulty to repay all the repair cost at once.

The plaintiff testified that he could only replace the car at a cost of between $35,000 to $40,000 and it was cheaper to repair the car than to buy one on the market. He said the damage to his motor car was assessed and the assessor advised him to repair the vehicle.

When a car is negligently damaged resulting in a partial loss, the normal measure of compensation is the cost of repairing and such consequential loss as the reasonable cost of hiring another vehicle while repairs are being effected. However, there

is an exception if it can be proved that the cost of repairs greatly exceeds the value in the market of the damaged vehicle. This arises out of the plaintiff's duty to minimise his damages.

Mr. Brooks, Counsel for the defendants submitted that the plaintiff was under an obligation to mitigate his loss and since the vehicle was valued at $5,000 it was not in the circumstances reasonable for the plaintiff to repair the vehicle and recover from the defendants.

He cited the cases of Derbyshire v. Warren (1963) 3 AER 310 and O'Brady v. Westminister Scaffolding, Limited, 1962 2 Lloyds Report p. 238 to support his submission.

The assessors report which was admitted in evidence by consent gives the value of the vehicle at date of accident as $5,000. Supposedly, this is the value of the car in the market and here again an assumption is made that there is a market in which the car can be bought. If there is none then the costs of repairs may still be claimed.

When there is a market for the particular car being dealt with it is undoubtedly the position that the plaintiff is bound to diminish the damages by going into the market and buying the car in the market so as to put himself in the position in which he would have been if he had not suffered any wrong. Quite apart from the evidence in this case which I have accepted that plaintiff was unable to find a similar car albeit at the assessed value, the Court is mindful of the inflationary prices of motor vehicles caused by the lack of supply in the market place.

The question as to what is reasonable for a plaintiff to do in mitigation of this damages is not a question of law but one of fact in the circumstances of each particular case, the burden of proof being upon the defendants.

The defendants have not shown that the plaintiff has as unreasonably failed to take advantage of the opportunity given

him by the defendants to minimize his loss.

It is against the background of the evidence that I ask myself whether the plaintiff appears to have acted reasonably in incurring when he did the cost of repairs and hiring charges which are claimed.

I am not satisfied that the plaintiff acted unreasonably in repairing the motor car. Accordingly I award him in full the claim which as amended, is as follows:-

Cost of Repairs	$15,888.22
Wrecking Fee	500.00
Loss of Use - 4 months	2,000.00
	$18,388.27

Judgment was entered for plaintiff against both defendants in the sum of $18,388.27 with interest at 3% from 23/1/88 to 11/5/90 with costs to be agreed or taxed.