Indiana Law Journal

Volume 22 | Issue 3 Article 9

Spring 1947

Recovery for Loss of Use of Destroyed Automobile

RECOVERY FOR LOSS OF USE OF DESTROYED AUTOMOBILE

Plaintiff's truck was destroyed and due to postwar shortages, he could not obtain another for eight months. In a suit for damages for the negligent destruction of the truck, an additional sum was asked to compensate for lost use. Held: Motion to strike allegation of damages for lost use from the complaint sustained. *Magnolia Petroleum Co. v. Harrell,* 66 F. Supp. 559 (W.D. Okla. 1946).

That damages cannot be recovered for loss of use of a destroyed chattel is clearly the general rule.[1] But the rule is based upon the normal availability of replacements and the plaintiff's duty to replace the property. In 1945, with abnormal conditions prevailing because of the war, the plaintiff was unable to fulfill his duty of replacement.

The court based its decision not only on the rule of damages stated above, but on the further point that defendant's

---

4. Ind. Const. Art. I, §14: "No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself."

5. "The appellant sought to follow the procedure for quashing a search warrant and suppressing the evidence procured thereunder, which is not an appropriate practice in case of confessions." Kokenes v. State, 213 Ind. 476,481, 13 N.E. (2d) 524,526 (1938).

1. Barnes v. United Rys. and Elec. Co. of Baltimore, 140 Md. 14, 116 Atl. 855 (1922); German v. Centaur Lime Co., 295 S.W. 475 (St. Louis C.A. 1927) (relied on heavily in decision of instant case); Adams v. Bell Motors Inc., 9 La. App. 441, 121 So. 345 (1928); Colonial Motor Coach Corp. v. New York Cent. R.R., 131 Misc. 891, 228 N.Y.S. 508 (S. Ct. 1928); Johnson v. Thompson, 35 Ohio App. 91, 172 N.E. 298 (1929). See 6 Blashfield, "Cyclopedia of Automobile Law and Practice" (Perm. ed. 1945)41: "Where an automobile is practically destroyed, or so completely destroyed as not to be susceptible of repair, the mesure of damages is its reasonable market value immediately before the accident, without any additional allowance for hiring another car." Damages have been disallowed for lost use when the automobile, although it could be partially repaired, could not be restored to as good a condition as before the accident. Helin v. Egger, 121 Neb. 727, 238 N.W. 364 (1931).

negligence was not the proximate cause of this injury.[2] By taking judicial notice of the scarcity of motor vehicles,[3] the court attempted to establish that circumstance as an "intervening cause." To be an intervening cause, the scarcity of trucks would have to arise immediately after the accident and before plaintiff could look for another truck.[4] To carry the court's reasoning to its logical conclusion, the scarcity of repair parts would be an intervening cause in calculating lost use for a damaged chattel.[5] The result would be to compensate a plaintiff only for the time actually spent in repairing the chattel.[6] Such an argument, however, ignores the accepted doctrine that the natural and probable result of a negligent act or omission is in law held to have been contem-

2. See principal case at 561.
3. Judicial notice has recently been taken of various economic phenomena caused by the late war. Bowles v. Munsingwear, Inc., 63 F.Supp. 933 (D. Minn. 1945) (material shortages, increased labor costs, and higher prices predicted in all civilian consumer goods after the outbreak of World War II); Wilkins v. San Bernardino, 162 P.(2d) 711 (Cal. App. 1945) (housing shortage existed in San Bernardino and in many other places in California); In re Beall's Will, 184 Misc. 881, 54 N.Y.S.(2d) 869 (Surr. Ct. 1945) (war-time conditions, non-manufacture of autos for civilian use, and comparatively high prices for used cars.)
4. Cf. Ruffin Coal and Tr. Co. v. Rich, 214 Ala. 633, 108 So. 596 (1926), (D's truck negligently knocked P's auto into path of approaching street car, the resulting collision causing injury. The court rejected defense theory that street car was an intervening cause, reasoning that D's negligence placed P's auto in a position where presence of the street car only aggravated the damage already done by D.) It is submitted that the existence of the truck shortage in the Magnolia case can be likened to the presence of the street car in the Ruffin case, supra, in that they both aggravated the damage caused by the negligence of the respective defendants.
5. Wagon injured in collision, P recovered reasonable cost of repairs, expenses incurred in moving wagon from street and storing it pending repairs, and reasonable value of its use while being repaired. Moore v. Metropolitan St. Ry., 84 App. Div. 613, 82 N.Y.S. 778 (2d Dept. 1903). This rule applies to automobiles, Hawkins v. Garford Trucking Co., Inc., 96 Conn. 337, 114 Atl. 94 (1921); Bergstrom v. Mellen, 57 Utah 42, 192 Pac. 679 (1920); Stubbs v. Molberget, 108 Wash. 89, 182 Pac. 936 (1919); Meyers v. Bradford, 54 Cal. App. 157, 201 Pac. 471 (1921).
6. Contra: Lyle v. Seller, 70 Cal. App. 300, 233 Pac. 345 (1924) P's car, damaged by D's negligence, was fully repaired. The court, in allowing damages for full period during which auto was immobilized, including time lost while necessary parts were being ordered and shipped from distant city, reasoned that just as it was no fault of the P's that the accident occurred, so it was not her fault that parts were not readily available.

plated by the negligent party.[7] It is submitted that if the fact that an auomobile could no be immediaely replaced was of such common knowledge as to be the subject of judicial notice, a person could reasonably anticipate a period of lost use if he negligently destroyed a truck.

EVIDENCE

RELEVANCY OF PLAINTIFF'S WAR RECORD IN PERSONAL INJURY ACTION

In a personal injury action, plaintiff was permitted to testify, over objection, that he was in battle three times; handled heavy projectiles; and although wounded once he had fully recovered before the automobile accident. Held: Admissible to show the strength and health of the plaintiff at the time of the accident, and to meet any possible contention that his condition afterward was the result of his military service. *In re New England Transp. Co. et al.*, 69 N.E.(2d) 479 (Mass. 1946).

The principal case can be defended under the general proposition that the question of relevancy of testimony is largely within the discretion of the trial judge.[1] Ordinarily, on the question of damages, the plaintiff in a personal injury suit may show the state of his health prior to the injury.[2] However, evidence of prior military service, in the absence of any contention that it contributed to P's injuries, or that he was already disabled at that time seems unjustifiable.[3]

---

7. Teis v. Smuggler Min. Co. 158 Fed. 260 (C.C.A. 8th, 1907); Benedict Pineapple Co. v. Atlantic C.L.R.R., 55 Fla. 514, 46 So. 732 (1908).

1. Western Produce Co., Inc. v. Folliard, 93 F.(2d) 588 (C.C.A. 5th, 1937); New England Trust Co. v. Farr, 57 F.(2d) 103 (C.C.A. 1932), cert. denied, 287 U.S. 612 (1932); Pacific S.S. Co. v. Holt, 77 F.(2d) 192 (C.C.A. 9th, 1935); Feichter v. Swift, 77 Ind. App. 427,430, 132 N.E. 662,663 (1921) (by implication).

2. Davis v. Smitherman, 209 Ala. 244, 96 So. 208 (1923); Louisville, N.A. & C. Ry. v. Wood, 113 Ind. 544,551, 14 N.E. 572,577 (1887) (by implication); Bush v. Kansas City Public Service Co., 350 Mo. 876, 169 S.W.(2d) 331 (1943); Shackleford v. Commercial Motor Freight, Inc. 65 N.E.(2d) 879 (Ohio 1945).

3. Where such charges are made, of course, the question properly is placed in issue, and the material may be introduced in rebuttal. E.G., Western Produce Co., Inc. v. Folliard, 93 F.(2d) 588 (C.C.A. 5th, 1937).
For other cases holding comparable evidence to be objectionable see Vicksburg, S. & P. Ry. v. Godwin, 14 F.(2d) 114 (C.C.A. 5th, 1926) (plaintiff's honorable discharge held improper to show