

1954

Present : Pulle J. and Swan J.

GENERAL INSURANCE CO., Appellant, and C. SOMASUNDERAM,
Respondent

*S. C. 390—D. C. Colombo, 3,992**Motor Car—Accident—Vehicle damaged beyond repair—Basis of valuation.*

Where a motor car is damaged beyond repair as the result of an accident, the value of the car at the time of loss is to be calculated, apart from special factors, upon a basis of depreciation depending on the theoretical life of the car.

APPPEAL from a judgment of the District Court, Colombo.

S. J. Kadirgamar, for the defendant appellant.

P. Somatilakam, for the plaintiff respondent.

Cur. adv. vult.

February 25, 1954. SWAN J.—

The appellant was sued by the respondent on two causes of action for the recovery of (1) Rs. 6,000 alleged to be the value of motor car CL 2435 which was damaged beyond repair as the result of an accident that occurred on 6.2.1950, and (2) Rs. 1,275 for bodily injuries sustained. There was no dispute regarding the latter claim. The case went to trial on only one issue, namely:—"What was the value of the car on 6th February, 1950?" The learned District Judge held that the car was reasonably worth Rs. 5,750 at the relevant date; and judgment was entered accordingly in favour of the respondent for Rs. 5,750 on the first cause of action and Rs. 1,275 on the second cause of action together with costs.

The only point argued before us was that the basis of valuation of the car was wrong. It was a Ford Prefect which at that time could be purchased new for Rs. 6,500. The respondent had bought it second-hand for Rs. 6,000. The car had then done 12,000 miles. Between that date and the date of the accident it had done a further 7,000 miles. The respondent estimated the depreciation of the car during the period he owned it at Rs. 250 and this figure was accepted by the learned District Judge as reasonable. Upon what basis this amount was arrived at one cannot say. The learned District Judge has stated in his judgment that it was "well known that in 1950, the importation of cars was allowed only on a licence" and that therefore the value of second-hand cars had gone up. The only evidence in the case was a statement by the witness called by the appellant that in 1942 there was a scarcity of cars. Mr. Somatilakam who appeared for the respondent admitted that he could not support the learned District Judge's statement that in 1950 cars could not be imported except on a licence. So that the learned District Judge has clearly misinformed or misdirected himself on an important question of fact.

For the appellant one D. J. Wijesiriwardene gave evidence. He said that he was the Foreman of the Ford Motor Company, Colombo, and counted 17 years of service. His evidence was that in the trade the depreciation of a car was calculated on a mileage basis—10 cents per mile on the first 10,000 miles and 15 cents per mile on the second 10,000. He was not asked, nor did he volunteer to say what the rate of depreciation would be for the third 10,000 miles and thereafter. For the purposes of this case that information was unnecessary.

The learned District Judge seemed to think that the calculation of the depreciation of the car on this basis was arbitrary. I take the contrary view. Depreciation calculated on the theoretical life of a car has been accepted in England and I see no reason why it should not be adopted here. *Shawcross* in his treatise on *Motor Insurance* at page 509 refers to a judgment of the Official Referee in *Edney v. de Rougemont*¹ in which the following principles were laid down (I should mention that the report of this case is not available here).

- (1) "The value of the car at the time of loss is to be calculated upon a basis of depreciation ;
- (2) The rate of depreciation is to be ascertained by finding upon the evidence in each case what was the theoretical life of the car ;
- (3) The depreciation for the first year will be the rate per cent so found plus something in respect of the dealer's commission on the car ;
- (4) The depreciation for the last year will be the rate so found less the scrap value of the car at the end of its life ;
- (5) The rate of depreciation is to be applied from year to year to the car's value at the beginning of each year, and not yearly to its original cost."

Of course special factors in each case must be considered, for example the use to which the car has been subjected during its actual life, whether it had been recently repaired or renovated, and the value of any special accessories destroyed or lost with it.

In this case the basis of depreciation although not strictly calculated in accordance with the principles laid down in *Edney v. de Rougemont* (supra) is nevertheless based upon the theoretical life of a car, namely the number of miles it can reasonably be expected to run before it depreciates to mere scrap value. In the absence of any better evidence I would accept the basis of depreciation given by Wijesiriwardene and fix the value of the car at Rs. 4,100 at the time of the accident. In the result judgment will be entered for the respondent for Rs. 4,100 plus Rs. 1,275 and costs of action. The respondent will, however, pay to the appellant the costs of appeal.

PULLE J.—I agree.

Appeal partly allowed.