



[2015] JMSC Civ. 218

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION
CLAIM NO. 2013HCV1442**

BETWEEN LOVELL GREEN CLAIMANT

AND SPECIAL CORPORAL OWEN PORTER 1ST DEFENDANT

AND HON. ATTORNEY GENERAL OF JAMAICA 2ND DEFENDANT

Mr. Garth Lyttle for the Claimant

The Defendants were unrepresented

Assessment of Damages – Seizure and detention on motor vehicle – Vehicle never returned – Loss of earnings as a result of detention and conversion – Certainty of damages – Mitigation of damages – Exercise of discretion where no documentary evidence available.

Heard: October 14th, 2015 and November 10th, 2015

Bertram Linton, J (Ag.)

[1] Lovell Green, up to December 1, 2007, drove his 1990 Toyota Corsa motor car all over the corporate area and to the coronation market where he purchased his fruit and vegetable; he would convert these items into juices and sell them. That day Special Corporal Porter who was stationed at the Darling Street police station seized his vehicle. He was never charged with any offence or ticketed in relation to the seizure, and despite making several enquiries he never saw it again.

[2] Liability is not in issue, the defendant agreed to judgment being entered for the claimant but they did not participate in the assessment of damages. As a consequence the sole issue before this court is to assess damages for the loss of the motor vehicle to Mr. Green. His estimate of the value of the motor vehicle at the time it was seized was \$200,000.00. There was no valuation report as the salvage was never available to be assessed.

[3] In the witness box Mr. Green described himself as businessman, and sought to encapsulate his costs and profits in the running of his business in which his motor vehicle played a pivotal role. He struck the court as a small unsophisticated businessman, and said from the outset that he had not kept any books in relation to his business which was his only source of income. He said,

“I understand what I was doing, so don’t need to write it down, I had been doing it for about 15years”

[4] The witness gave account of his weekly purchase of fruit, vegetable bags and bottles costing some \$5000.00 per day. When he had converted these to juices he froze them and travelled around in his car six days, (Monday to Saturday) per week selling them. He made approximately \$5,000.00 per day on week days and on Friday and Saturday he spoke of increased sales of \$6000.00 for those days, as there were more shoppers on the streets and his patrons were the persons who he encountered while he drove around advertising his juices for sale. He says without the car he could do no business and urged compensation for the 1885 days which had elapsed from the date of seizure of the vehicle to the date of the hearing.

[5] The claimant’s attorney Mr. Garth Lyttle submitted that he should be compensated in respect of the value of his motor vehicle as well as his lost profits at a rate of \$5,000.00 per day. This he said was to be reckoned as follows:

Estimated Value of the motor car	\$ 200, 000.00
Loss of earnings 1885 days@\$5000 per day	<u>\$9,425,000.00</u>
Total	\$9,625,000.00

Discussion and analysis

[6] The case of **Workers Savings and Loan Bank v Howard Wright, Anthony Magnus and Horace Shields SCCA (JA) No. 113/98** was submitted for consideration as to the principles to be utilized for the award of damages in such cases. In that case, the respondent, as owner of the front end loader, was deprived of its use, from the date of seizure on May 5, 1995, while it was actually in operation at Leas Flat, until sometime in June 1989, when it was returned. The court allowed for the measure of damages in detinue to be looked at as, the market value of the goods or their return. It said, (at pg 10) that in conversion it is to be calculated as, *“the market value of the goods converted plus any consequential loss incurred by the plaintiff having been deprived of its use, which loss is not too remote.”*

Similarly the learned authors **Mayne and McGregor on Damages, 12th ed.** said at paragraph 715:

“The normal measure of damages is made up of two parts. First, it is the market value of the goods where they are not ordered to be returned to the plaintiff. Secondly, whether the goods are or are not returned it is such sum as represents the normal loss through the detention of the goods, which sum should be the market rate at which the goods could have been hired during the period of detention.”

[7] In the instant case the car was never returned and the owner was deprived of its use because of his inability to employ it in his business and personal affairs .It seems to me then that the damages recoverable in the instant case is the estimated value of the motor vehicle and the additional loss due to the claimant inability to use his income bearing chattel.

[8] There are no receipts for purchases, or books relating to the juice business before the court, neither is the evidence of the valuation for the vehicle supported by documentary evidence. A claimant who wants damages must prove his case. He must satisfy the court both on the fact of the loss and as to its amount, if he does neither, his action will fail or he may be awarded nominal damages where a right has been infringed. However where it is clear that substantial loss has been incurred, the fact that an assessment is difficult because of the nature of the case is no reason for awarding no damages or just nominal damages. In the leading case on certainty, **Chaplin v Hicks [1911] 2 KB 786 Vaughan Williams L.J. said,**

“The fact that damages cannot be assessed with certainty does not relieve the wrongdoer of the necessity of paying damages”

[9] If absolute certainty were required as to the precise amount of loss that the plaintiff suffered, no damages would be recovered in a great number of cases. Where there is precise evidence certainly the court expects it to be presented but where it is not the court must do the best it can. This is applicable in this case where the claimant speaks of loss of earnings between the time of the seizure and the time of the trial. The profit he claims were dependent upon the chance or contingency of other parties coming to buy his juices, so as to bring him profits.

[10] The Claimant describes himself as a businessman, indicating that he is gainfully employed and ostensibly earning an income. This may well be the business of making juices that he was engaged in for 15 years before the seizure or some other activity that he has employed to make a living. In any event the loss must be looked at in that light.

[11] The meaning of the term ‘mitigation’ simply deals with the particular items that go to show that the damage is not as great as prima facie would appear. The fact that the claimant is conducting business shows that he did not lose all his profits when the car was seized. He may well have found the carrying on of his business more difficult as he could not cover the same ground he would have on foot as with a car. The quantity of

goods he would be able to buy may well have been less, and so as well, the quantity of juices he could carry out for sale. Pearson L.J gave an analysis of a similar situation in **Darbishire v Warren [1963] 1 WLR1067 when he said,**

“The true meaning is that the plaintiff is not entitled to charge the defendant by way of damages with any greater sum than that which he reasonably needs to expend for the purpose of making good the loss.”

[12] I find that it is reasonable to presume that he may well have lost up to 50% of his profit as a result of the seizure, detention and disappearance of his vehicle of his vehicle .taking into account the figures submitted by the claimant, I therefore assess damages against the 2nd defendant as follows;

General damages

Estimated Value of the motor Car	\$200,000.00
Loss of earning at \$2,500 per day for 1885 From the date of seizure to the date of judgment (December 1, 2007 - November 10, 2015)	
Approximately 1885 days	<u>\$4, 712,500.00</u>
Total	\$4,912,500.00

Interest is awarded at the rate of 3%per annum from the date of seizure to the date of judgment.

Costs are awarded to the claimant_to be agreed or taxed.