REPUBLIC OF NAMIBIA

NOT REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGEMENT

Case no: I 1185/2011

In the matter between:

LEONARD KAMBWALE **PLAINTIFF**

and

PG GLASS NAMIBIA (PTY) LTD **1st DEFENDANT**

DELBERT WESLEY GROBLER **2nd DEFENDANT**

Neutral citation: *Kambwale v PG Glass Namibia (Pty) Ltd & Another (I 1185/2011) [2013] NAHCMD 161 (12 June 2013)*

Coram: SMUTS, J

Heard: 3 June 2013

Delivered: 12 June 2013

Flynote:

ORDER

That the plaintiff's claim is dismissed with costs.

JUDGMENT

SMUTS, J [1] In this motor vehicle collision damages action, the defendants conceded the merits at the outset of the trial. Mr Erasmus, who appeared for them, stated that the defendants only placed in issue the plaintiff's quantum of damages.

[2] The plaintiff claimed damages in the sum of N$65 000 in respect of the damage he had sustained as a result of his Mazda pick-up having been in a collision with the first defendant's motor vehicle driven by the second defendant, acting within the course and scope of his employment with the first defendant.

[3] The plaintiff, represented by Mr Elago, only called an expert witness, Mr T. Amwaama, to prove the extent of the plaintiff's damages. Mr Amwaama testified that he is an estimator in the services of Salina Panel Beating and Body Repairs situated on the Ondangwa/Ogwediva road in northern Namibia. He further testified that he has more than seven years of experience in assessing damages to motor vehicles involved in collisions, including extensive experience in assessing and inspecting motor vehicle damage and also in assessing whether it would be economical to repair vehicles and assessing the extent of damage to vehicles and quantifying it. He also testified that he well acquainted with and experienced in assessing the value of second hand motor vehicles and their replacement value.

[4] Mr Amwaama gave evidence that he had inspected the plaintiff's motor vehicle and handed in photographs taken which depicted the damage to it. He said that it was a 1989 Mazda pick-up model. Due to the extensive damage to the chassis, he had concluded it would not be economically feasible or viable to repair the vehicle. He then determined the book value of the motor vehicle with reference to the accepted and established method of doing so within motor industry by making use of a book used within the trade which sets out the

values of motor vehicles with reference to their model and year of registration. The book also sets out in tabular form the new list price for each vehicle and then provides a trade and retail value for each vehicle.

[5] Mr Amwaama testified that the retail value of the plaintiff's motor vehicle was N$12 900 with reference to the tables set out in the book containing such values. He however indicated in his assessment that the actual value of the motor vehicle was N$95 000 because the motor vehicle had a number of extras which had been fitted onto it. These included a front bull bar which he said would cost N$5 500 to manufacture and fit. He further stated that this were running boards fitted to the vehicle which would cost N$8 000 to manufacture and fit. He also stated that there was a roll bar in the loading box which had a cost of N$4 500 to fit. He also stated that the plaintiff's pick-up had a full tow bar fitted on to it which would cost N$6 000 to manufacture and fit on to the vehicle. He also stated that the tyres on the vehicle were not the standard tyres and rims provided on the vehicle at its purchase. He estimated that the cost of the tyres was N$6 000 and that the rims would cost N$5 000. He also stated that all of the amounts which he provided in respect of the extras excluded value-added tax. He then arrived at the value of the motor vehicle of N$95 000 by adding the extras to the book value. He further gave evidence as the value of the wreck, stating that it was approximately N$30 000 in value and that the plaintiff's total damages amounted to N$65 000.

[6] In cross-examination, Mr Erasmus put it to him that the generally accepted value of a used motor vehicle is determined by taking the average of the trade and retail values set out in the publication he relied upon. Mr Amwaama initially accepted this. He further accepted that he had initially stated that the vehicle was a 1990 model but subsequently referred to it as 1989 model because, according to the book he relied upon, the vehicle had not been brought out in 1990. He also testified that he had not taken the odometer reading even though this should have been done to assess the quantum of damages respect of the vehicle. He also accepted that the new list price of the plaintiff's motor vehicle in 1989 was N$29 570. He also accepted that the value he had stated in respect of the extras reflected the current purchase price for

such items even though the items on the plaintiff's pick-up truck had been of a second hand or used nature as they had been utilised on the vehicle for some time. He also accepted that the bull bar would be capable of being repaired as would certain of the other extras. He was not sure whether the plaintiff had kept the wreck as he had made his assessment at the police station sometime after the motor vehicle collision. Although he said that the tyres on the vehicle were not standard for the make in question, he was not able to say what type of tyres were originally fitted to the vehicle. He denied that the roll bar in the loading box was standard with the vehicle. He also stated that it had been affected by the collision but that it could be repaired.

[7] In an answer to a question put by the court, Mr Amwaama stated that he was not in a position to state that, if the vehicle had been auctioned shortly before the collision, it would fetch a sum in the vicinity of N$95 000. He was unable to state that that would reasonably occur.

[8] After Mr Amwaama had testified, Mr Elago closed the case for the plaintiff. Mr Erasmus closed the defendants' case without calling any witness. Mr Elago submitted that the plaintiff had established a damage as claimed in the sum of N$65 000 as representing the fair and reasonable value of the vehicle less the value of the wreck. He submitted that this figure was justified by virtue of the number of extras which had been fitted to the vehicle.

[9] Mr Erasmus on the other hand submitted that the plaintiff had not discharged the onus upon him to establish the damages in the amount in question. He further submitted that the summary provided by the plaintiff did not meet the standard required by rule 36 (9)(b). This was because there were no reasons contained in the opinion and no breakdown in respect of the amounts arrived at. In this regard he referred to *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft Fur Schadlingsbekampfumg MBH.*[1] This leading authority on expert summaries makes it plain that the main purpose of a summary in terms of rule 30(9)(b) is to "require the party intending to call a

[1] 1976(3) SA 352 (A).

witness to give expert evidence to give the other party such information about his evidence as will remove the element of surprise". . . [2] The summary should not merely be "a bald statement of (the experts') opinion" but rather "a reasoned conclusion based upon certain facts or data. . ." and a "proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert".[3] I asked Mr Erasmus why there had not been an objection raised to the summary in case management and only on the morning of the trial. I did not understand him to object to the calling of the witness but rather to point out a lack of compliance with rule 36(a)(b). As there was not an objection to calling the witness, I permitted his evidence to proceed even though the summary fell short of what I would consider should be contained in an expert summary based upon the above sound authority. In view of the conclusion I reach on the evidence of Mr Amwaama, nothing further turns on this issue, save to point out that objections to expert summaries – and to the calling of the identified witness – should preferably be raised in the course of case management.

[10] Mr Erasmus further stated that the defendant accepted that the evidence established a value of the motor vehicle in the sum of N$11 175 in accordance with the manner in which values are determined in the motor vehicle industry, by taking the average between the wholesale and retail values. He submitted that the value of N$95 000 was entirely untenable and had not been established by the plaintiff. He argued that it did not have any regard to the market place which is the benchmark for determining values of a vehicle written off. He further submitted that the value of the wreck, estimated by Mr Amwaama to be in the sum of N$30 000 exceeded the book value accepted within the industry by a considerable margin.

[11] Mr Erasmus submitted that the plaintiff had not established his damages and that the dismissal of his claim should result. He conceded that this outcome

---

[2] Supra at 371D.

[3] Supra at 371 G-H.

would be unfair to the plaintiff in view of the fact that he had sustained damage but, so he submitted, it was incumbent upon a plaintiff to establish his damages with reference to admissible evidence and that the plaintiff had not succeeded in doing so.

[12] In reply, Mr Elago submitted that the book value accepted within the motor vehicle industry did not include extras fitted to motor vehicles and that this should be taken into account in assessing the overall value of a vehicle.

[13] If is of course incumbent upon plaintiffs in delictual claims for damages to establish the extent of their damages. The onus is upon them to do so on a balance of probabilities.

[14] It would appear to me that the plaintiff has in this matter been unable to establish his damages in the sum of N$65 000 as claimed and has failed to establish that this sum reflected the fair and reasonable value of the vehicle at the time less the value for the wreck. This sum was arrived at by taking the value of N$95 000 and subtracting the assessed value of the wreck. But the evidence of Mr Amwaama did not support either component of this calculation. In respect of the figure of N$95 000, he referred to a book value of N$12 900 to which the value of extras was to be added. Quite apart from the issue that the value was for the extras was in my view incorrectly assessed upon the current cost as new items and not with reference to their value as second hand items and not taking into account the wear and tear (and the value of the fitted tyres), the total amount of the extras he provided for came to N$35 000 excluding VAT. When added to N$12 900, this fell dismally short of the value of N$95 000. Mr Amwaama's evidence that the value of the wreck was in the sum of N$30 000. This exceeded the accepted book value of the vehicle of N$11 175 by almost three times. This was also not properly explained. It would seem to me that the plaintiff has not even established damages in the sum of the book value, given the evidence that the value of the wreck may exceeded it. Nor has the plaintiff established damages in any other sum.

[15] Whilst it is clear that the plaintiff has suffered damage as a consequence

of the motor vehicle collision by reason of the fact that his vehicle had been damaged beyond economical repair, the plaintiff has however not discharged the onus of establishing the extent of his damages upon the evidence before me. The plaintiff must accordingly fail in his action. The order I therefore make is: The plaintiff's claim is dismissed with costs.

_____

SMUTS, J

Judge

APPEARANCES

PLAINTIFF:	S. Elago Tjombe-Elago Law Firm
DEFENDANTS:	F. Erasmus Francois Erasmus & Partners