

P.J. McDONALD

Plaintiff

- and -

GEORGE CONSTANTINOU

Defendant

J U D G M E N T.

The claim in this case arises out of a collision on 2nd January, 1959 between the Plaintiff's Chevrolet truck and the Defendant's International truck.

The Defendant admitted liability to the amount of £389.12.9. and paid this sum into Court to satisfy the Plaintiff's claim. This sum is made up of £370. for the loss of the vehicle and £19.12.9. for hire.

The Plaintiff is claiming for hire of a vehicle to replace the truck destroyed in the sum of £248.10.0. The Defendant says that the sum of £19.12.9. is enough to cover this claim. The dispute between the parties is therefore only with regard to the sum of £248.10.0. There is no dispute that the sum of £248.10.0. was expended. The question is whether it was reasonable expenditure and whether also the Plaintiff did all he could to minimise the damage.

The Plaintiff's vehicle was a total wreck, and for the work in his business of a Planter it was necessary for him to replace the vehicle lost by reason of the collision. The Plaintiff is entitled to be put in the same position as he had been before the collision as far as is possible by money payment.

As soon as he became aware that his truck was a complete write-off he sought another suitable vehicle to replace it. He went to several premises where second-hand trucks were likely to be on sale but he found none offering. He then decided to repair an old vehicle, a truck which would

be suitable for the work to which the destroyed vehicle had been put to. This was within three days of the collision. I do not know to what lengths he was expected to go in an endeavour to find another vehicle suitable. On the facts, he made reasonable enquiries in the circumstances. I do not see that he failed to minimise the damages by repairing the truck he had. From the 2nd January to 11th February does not appear to me to be an inordinate time to take to repair the old vehicle, to do which required the obtaining of parts in Australia.

It is claimed for the defence that the Plaintiff can not make a profit out of the accident. As far as I can see the profit he is supposed to be making is the saving to him of £7. a day running expenses. While the hiring is going on he does not have to pay that amount, but is not that amount caught by the hiring charges, and he is paying it just the same. I would be surprised to learn that the running costs are not calculated in the charges for hiring.

In my view, the Plaintiff is entitled to recover the full amount of the hiring charges, which amount to the sum of £248.10.0.

J.

10.30 a.m. 21/4/61.