

FILED

MAY 04 2010

**Maryann L. Nergaard
J.S.C.**


PREPARED BY THE COURT

Forrest M. Pritchett, Jr.	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff	:	LAW DIVISION – MORRIS COUNTY
	:	SPECIAL CIVIL PART
v.	:	DOCKET NO.: DC-6353-09
	:	
James Kardaras and	:	
Barbara Kardaras	:	CIVIL ACTION
Defendants	:	ORDER

THIS MATTER having come before the Court for trial on December 22, 2009; and plaintiff being represented by the firm of Prince & Portnoi, P.C. (Mitchell H. Portnoi, Esq. appearing) and defendants being represented by Rebenack, Aronow & Mascolo, L.L.P. (Ryan D. Loxam, Esq. appearing); and the Court having heard the arguments of counsel for the parties and for good cause showing;

IT IS ON THIS 4th day of May, 2010 ORDERED that final judgment in the total amount of \$8,362.00 be entered in favor of plaintiff Forrest M. Pritchett, Jr. and against defendants James Kardaras and Barbara Kardaras for the reasons set forth on the attached Statement of Reasons ; and it is

FURTHER ORDERED that a copy of this Order shall be served upon all parties within 7 days of today's date.



Maryann L. Nergaard, J.S.C.

See Statement of Reasons, attached

PRITCHETT V. KARDARAS
Dkt. No. DC 6353-09

This matter concerns plaintiff's demand for recovery of the alleged loss of value of a motor vehicle as a result of an accident caused by defendant on January 12, 2009. At trial, defendant testified that she was driving behind the plaintiff on Martin Luther King Avenue in Morris Township. As both cars approached Hanover Avenue, she saw plaintiff's car move to the left and assumed he was turning onto Hanover Avenue; however, he made a sharp right turn into a driveway. She did not see any signal lights nor any brake lights on plaintiff's vehicle prior to the impact, which resulted in significant damage to his 2007 Toyota Camry hybrid. As a result of the accident, defendant received a motor vehicle citation which was "downgraded" in the municipal court action from a 4-point to a 2-point violation, to which she pleaded guilty.

Plaintiff testified that he paid "approximately" \$1,100 deductible charges and the balance of the repair bill of "approximately" \$11,000 was paid by defendant's insurance company. Plaintiff further testified that he bought the car new, paying \$27,800, and took excellent care of the vehicle prior to the accident. The car had been driven 42,000 miles by that date and had never been involved in any other accident. Although the entire cost of repairs performed was apparently satisfied by defendant's insurer, plaintiff seeks to recover what he claims is the "diminished value" of the vehicle as a result of the extensive damage caused by defendant's negligence. Plaintiff further testified that he went "on-line," researching various websites including Carfax, and determined that the value of his car was severely impacted by the extent of repairs necessary after the accident.

Plaintiff's expert, who actually conducted the repairs to plaintiff's car, testified to his experience as a collision consultant and automobile valuation expert who provides diminished value consulting services. He testified that, even though repairs made to the vehicle were performed as well as possible, the resulting welding, painting, corrosion protection, and other repairs could not totally meet new manufacturer's standards. He further stated that the consumer's perception of the damage sustained, and of the repairs themselves, caused a diminution in the value of the automobile, especially as the damage was extensive and included damage to the center post, rocker panels, quarter panel and other structural components. He also testified that plaintiff's ability to sell or trade the car would be severely impacted by the accident, especially as such information was now readily available to dealers and to the public via the internet. Utilizing several recognized valuation sources, in his opinion, the vehicle's pre-loss retail value was \$21,642, its private sale value was \$18,747, and its trade-in value was \$17,268, or an average of \$19,219. He further testified that as the repairs cost almost \$11,000, more than 50% of the pre-loss value had been impacted by the accident, and he therefore concluded that the value was diminished by the sum of \$8,362.

Defendant's expert, James Zoll, testified that he had previous experience with Allstate as an automobile valuation appraiser and now performs diminished value appraisals and other types of appraisals of heavy equipment and automobiles in the

regular course of his business, which is located in Toms River. Although he did not inspect plaintiff's car, he reviewed the insurance company's estimate and the plaintiff's expert report and concluded that, although the accident resulted in a diminution in value to the vehicle, that value loss was only \$1,939.49, not the higher figure alleged by plaintiff's expert, as there was no visible diminished value as a result of the accident. He testified that the car had been repaired to the "best possible" condition and based his opinion of loss of value, in part, upon his conclusion that the pre-loss value had to be adjusted for mileage and was only \$20,825.

Although a number of reported decisions address the proper measure of damages to be applied to personal property such as automobiles, neither attorney was able to point to any written decisions which address the impact of internet sites, such as those used by plaintiff, upon diminished value of vehicles. Plaintiff argues that the market for used cars has been changed by widespread information available to potential purchasers and, therefore, the value of his vehicle has been forever reduced by the severity of this accident and the resulting repairs. Although defendant does not agree with plaintiff's conclusion regarding the extent of the loss, she apparently concedes that there has been a diminution of value to plaintiff's automobile as a result of the accident.

Plaintiff argues that the Court should rely upon *Premier XXI Claims Management v. Rigstad*, 381 N.J. Super. 281 (App. Div. 2005), by finding that the damages should be calculated as the difference in the car's value just before and after the accident, which his expert found to be \$8,362. Defendant argues that *Premier XXI* does not require a formalistic approach but, rather, that "the sundry rules for measuring damages are subordinate to the ultimate aim of making good the injury done or loss suffered and hence 'The answer rests in good sense rather than in a mechanical application of a single formula.'", citing *N.J. Power & Light Co. v. Mabee*, 41 N.J. 439 (1964) (citation omitted). *Id.* at 284. Nevertheless, *Premier XXI* does apply the standard cited by plaintiff; that is, "when the cost to repair a vehicle is proven, but there exists additional proof showing that even with the repair, the vehicle has depreciated, plaintiff is entitled to the reasonable cost of repair plus the depreciation, if any." *Id.* at 284, citing *Fanfarillo v. East End Motor Company*, 172 N.J. Super. 309, 313-14 (App. Div. 1980).

This Court is persuaded that plaintiff has demonstrated, through expert testimony, that the value of his car was diminished by \$8,362.00 as a direct result of the accident. Although defendant's expert was no doubt experienced in appraisals of this type, he was hampered by his inability to inspect the car. Moreover, plaintiff's expert had direct knowledge of the vehicle as he actually performed the repairs. The Court also found him to be exceptionally knowledgeable and his testimony to be particularly persuasive. As the Appellate Division noted in *Premier XXI*, "making repairs at a reasonable cost may still leave the vehicle in a less valuable condition than immediately before the accident. When that is the case, a plaintiff is entitled to prove his full damages by proving the cost of repair and the depreciated value after repair...", 381 N.J. Super. at 285.

The Court notes that neither party addressed the issue of payment by defendant's insurer and whether or not plaintiff had signed any release as a result of that payment;

therefore, that issue was not presented at trial, and the Court has not addressed it. Likewise, defendant did not raise the issue of plaintiff's keeping the car, rather than disposing of it after it was repaired. Both parties seem to have concluded at trial that the vehicle's value had been reduced as a result of the accident; therefore, the only issue considered by this Court was the amount of diminished value which had resulted.

Judgment for the plaintiff and against the defendant will be entered in the amount of \$8,362.