IN THE COURT OF APPEALS OF IOWA

No. 1999-210 (9-434) / 98-2039
Filed December 13, 1999

FILED
DEC 13 1999
CLERK SUPREME COURT

ANN R. MILANI and GREGORY G. MILANI,

Plaintiffs-Appellees,

vs.

DYLAN F. GARRISON and VICKIE L. GARRISON,

Defendants-Appellants.

Appeal from the Iowa District Court for Wapello County, James Q. Blomgren, Judge.

Defendants appeal from a judgment for plaintiffs after a bench trial in a tort action arising out of a motor vehicle accident. **AFFIRMED.**

Ted J. Wallace, Bettendorf, for appellants.

Gregory G. Milani of Orsborn, Bauerle & Milani, L.L.P., Ottumwa, for appellees.

Considered by Streit, P.J., and Vogel, **and Vaitheswaran, JJ.**

VAITHESWARAN, J.

Dylan and Vicki Garrison appeal a judgment awarding Ann and Gregory Milani damages for the diminished value of their car. We affirm.

I. Background Facts and Proceedings. On October 8, 1997, Mr. Garrison drove into a parked 1996 BMW owned by the Milanis. At the time of the collision, the BMW had an odometer reading of 12,709 miles. The only prior damage to the car was a small door dent. The Garrisons paid the repair costs of $3,465.47.

In November 1997, the Milanis had the BMW appraised for trade-in. They were told the damage had reduced the car's value by $7,400. Although the Milanis did not sell the car, they sued the Garrisons to recover its diminished value. The trial court considered the case on stipulated facts and entered judgment in favor of the Milanis in the amount of $7,400. This appeal followed.

II. Standard of Review. Our review is for errors of law. *Papenheim v. Lovell,* 530 N.W.2d 668, 671 (Iowa 1995).[1] The court's findings of fact have the force of a jury verdict and will be affirmed if supported by substantial evidence. *Hawkeye Motors v. McDowell,* 541 N.W.2d 914, 916 (Iowa App. 1995).

III. Damage Calculation. The Garrisons' primary defense rests on Iowa's damage disclosure law. When owners transfer their vehicles, they are required to disclose certain repairs on their title certificate. Iowa Code § 321.69 (1999). Prior

---

[1] This case was the subject of a second appeal, concluding the trial court's calculations on remand resulted in error. *Papenheim v. Lovell,* 553 N.W.2d 328, 328-29 (Iowa 1996).

to July 1, 1998, the amount triggering disclosure under this law was $3,000. At the time this case was submitted to the court, that amount had increased to $5,000. The Garrisons contend the Milanis were required but failed to prove: (1) damages equal to or in excess of the statutory amount; and (2) actual transfer of title. We disagree.

Generally, when a car cannot be placed in as good condition as it was before the accident, an owner may recover "the difference between its reasonable market value before and after the injury, plus the reasonable value of the use of the vehicle for the time reasonably required to repair or replace it." *Long v. McAllister*, 319 N.W.2d 256, 261 (Iowa 1982). When a car is damaged and repaired, and there is no evidence of the car's value after the damage but before repairs, an owner may "recover the difference between the value of the repaired car and the value of the automobile before the accident, in addition to the reasonable costs of repairs." *Papenheim*, 530 N.W.2d at 672 (*citing Halferty v. Hawkey Dodge, Inc.*, 158 N.W.2d 750, 753-54 (Iowa 1968)). This rule is premised on generally accepted tort principles and standards governing damages to automobiles. *See id.* (noting "[a]llowance of diminution in market value where repairs cannot restore the vehicle to its pre-accident condition is consistent with the general rule that the measure of damages is the amount that will compensate for all detriment materially and proximately caused"); *Halferty*, 158 N.W.2d at 753 (permitting recovery for diminished value due to damage where "one could see by an inspection [car] had been damaged and repaired" and market value was less than a car that had never been damaged). The rule is not conditioned on compliance with Iowa's title transfer law.

Applying the modified *Long* rule set forth in *Halferty* and summarized in *Pappenheim*, the trial court found the value of the BMW before the accident was $24,500 and the value after repairs was $17,100. The court's damage award reflected the difference between these figures. The court considered and rejected the Garrisons' damage disclosure defense, noting:

> Although it would appear the change in the law might provide the plaintiffs a windfall because they are no longer required to disclose the damages, two factors would prevent this from occurring. The first is the general knowledge of sophisticated purchasers to inquire about damaged vehicles and the ultimate reduction in value which would occur when the damage is disclosed whether on the title or otherwise. Second, the amount of money it would require to put Plaintiffs in the position they had been prior to the accident and the value at the time the repairs are made must be considered. Any fortuitous change in legislation should not be used in order to reduce the amount that at the time of the repairs would have been required to appropriately compensate the Plaintiffs for their loss.

We agree with the court's reasoning and find no error in its ruling.

IV. Damage Award Not Speculative. The Garrisons contend the damage award was speculative because: (1) the Milanis were not required to file a damage disclosure statement; (2) the car would not necessarily have lost 30% of its value following repairs; and (3) the Milanis failed to mitigate damages.

In a bench trial, the district court has discretion to determine the amount of damages. *Hawkeye Motors*, 541 N.W.2d at 917. Uncertainty may exist in the specific amount of damages, as long as it clearly appears a party has sustained some damages. *R.E.T. Corp. v. Frank Paxton Co.*, 329 N.W.2d 416, 420 (Iowa 1993). We will uphold a damage award "if the record discloses a reasonable basis for which the

award can be inferred or approximated." *Hawkeye Motors*, 541 N.W.2d at 918.

We find the record contains reasonable support for the trial court's award. First, the Milanis' expert witness opined that the Milanis would have to disclose the damage to potential purchasers even in the absence of a statutorily prescribed filing. Second, the Garrisons failed to rebut the Milanis' evidence that their vehicle lost 30% of its value as a result of the damage and subsequent repairs.

We do not consider the Garrisons' mitigation defense because they did not specially plead mitigation and the trial court did not address it. *See Whewell v Dobson*, 227 N.W.2d 115, 120 (Iowa 1975) (noting nothing presented for review where mitigation defense not specially plead and proven). We find no error or abuse of discretion in the trial court's damage award.

AFFIRMED.