FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STEVEN WILLIAM DeKOCK,)

Plaintiff-Appellee,) Filed May 26, 1981

vs.)

MARJORIE M. HEIKENS,) 1-94
65699

Defendant-Appellant.)

Appeal from Keokuk District Court - Ira F. Morrison, Judge.

Defendant appeals from judgment for plaintiff in an action for property damage arising from an automobile accident claiming 1) that trial court erred in applying as the measure of damages the difference in the value of plaintiff's car immediately before and immediately after the accident and 2) that there is no evidence the vehicle could not be repaired and put in substantially the same condition as it was before the accident or that the vehicle had no value other than as junk. JUDGMENT VACATED.

Bruce L. Walker of Phelan, Tucker, Boyle & Mullen, Iowa City, Iowa, for defendant-appellant.

David D. Dixon of Heslinga & Heslinga, Oskaloosa, Iowa, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant, Marjorie M. Heikens, appeals from judgment for plaintiff, Steven William DeKock, in an action for property damage arising from an automobile accident. She alleges that trial court erred in applying as the measure of damages the difference in the value of plaintiff's car immediately before and immediately after the accident. She asserts that there is no evidence that the vehicle could not be repaired and put in substantially the same condition as it was before the accident or that the vehicle had no value other than as junk. We vacate trial court's judgment and enter judgment for plaintiff in the amount of $3,032.08.

In his original petition, plaintiff requested $4,082.05 from defendant for damages to his auto due to defendant's negligence. He alleged that the fair and reasonable costs of repair were $3,032.08. He later amended his petition to seek damages for loss of wages and recovery of a wrecker fee. A second amendment, filed on the day of trial, alleged that the "before" and "after" values of plaintiff's car were $6,240 and $1,450, respectively. Following presentation of plaintiff's case, defendant amended her answer to admit that the reasonable cost of repair for plaintiff's car was $3,032.08, including the wrecker fee.

Following trial to the court, the court entered judgment for plaintiff in the amount of $4,830, the difference between the car's reasonable market value immediately before and immediately after the accident, plus the $40 wrecker fee. Trial court thereafter overruled motions by defendant challenging the measure of damages and plaintiff's motion to enlarge. This appeal followed.

I. Scope of Review. Our review is at law for correction of errors only. Iowa R. App. P. 4. Trial court's findings are binding on this court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). "A finding of fact is supported by substantial evidence if the finding may reasonably be inferred from the evidence." Briggs Transportation Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978). The record is reviewed in the light most favorable to the judgment. Ambiguities are construed to uphold rather than defeat the judgment. Pillsbury Co. v. Ward, 250 N.W.2d 35, 38 (Iowa 1977).

II. Rules for Damages. The parties agree that there are three general rules for fixing damages for injuries to automobiles.

> 1. When the automobile is totally destroyed, the measure of damages is its reasonable market value immediately before its destruction.

> 2. Where the injury to the car can be repaired, so that, when repaired, it will be in as good condition as it was before the injury, then the measure of damages is the reasonable cost of repair plus the reasonable value of the use of the car while being repaired, with ordinary diligence, not exceeding the value of the car before the injury.
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> 3. When the car cannot, by repair, be placed in as good condition as it was in before the injury, then the measure of damages is the difference between its reasonable market value immediately before and immediately after the accident.

Langham v. Chicago, R.I. & P. Ry., 201 Iowa 897, 901, 208 N.W. 356, 358 (1926). If the car has no value other than as junk following the collision, the measure of damages is the reasonable market value before the accident, less the reasonable salvage value thereafter. Downing Dairy, Inc. v. Anderson, 253 Iowa 1004, 1005, 115 N.W.2d 200, 201 (1962). See also Aetna Casualty & Surety Co. v. Insurance Department of Iowa, 299 N.W.2d 484, 485 (Iowa 1980).

III. Pleadings as Binding Admissions. Defendant alleges the measure of damages relied upon by trial court is not applicable where the evidence shows that the vehicle involved could be repaired and that the cost of repair is less than the difference in value before and after the injury. Plaintiff asserts that trial court made the underlying factual determination from the record that plaintiff's vehicle could not by repair be placed in as good a condition as it had been before the accident and then applied the proper measure of damages to the evidence.

We believe the following principle enunciated in Hanson v. Lassek, 261 Iowa 707, 710, 154 N.W.2d 871, 873 (1968), governs the result. " '[citing authority] . . . . [U]nder the well-established precedents of this court specific admissions made in the pleadings forming the issues being tried are binding on the party making them . . . .' '[citing authority] . . . It may be conceded there is a conflict on whether these allegations are true. But, be that as it may, these allegations bind the one who makes them. . . .' " (quoting Grantham v. Potthoff-Rosene Co., 257 Iowa 224, 230-31, 131 N.W.2d 256, 259 (1965).

Plaintiff alleged that the fair and reasonable costs of repair were $3,032.08. We find nothing in the record to indicate that this allegation was withdrawn. Nor can we conclude that plaintiff's second amendment, which merely alleged the "before" and "after" values of his car, serve in any way to supercede the allegation as to cost of repairs.

Further, we find the record reflects no evidence that the vehicle could not be placed in as good a condition as it was before the accident. Plaintiff had the burden of proof on this issue where the facts admitted by plaintiff show the cost of repairs was less than the difference in value before and after the injury. Johnson v. Scott, 258 Iowa 1267, 1271, 142 N.W.2d 460, 463 (1966). See also Halferty v. Hawkeye Dodge, Inc., 158 N.W.2d 750, 753 (Iowa 1968). As a result, we conclude the second rule enunciated in Langham applies.

As a final matter, we must determine whether plaintiff can recover the $617.75 rental fee he incurred following the accident. We conclude that he cannot. We agree with defendant's assertion that loss of use as an element of damages is only allowed where the car is actually repaired and then only for that length of time in which repairs are made with ordinary diligence. Where, as here, the car was never repaired, no damages for loss of use can be allowed. Langner v. Caviness, 238 Iowa 774, 781, 28 N.W.2d 421, 425 (1947). See also Christensen v. Shelby County, 287 N.W.2d 560, 562 (Iowa 1980); Kohl v. Arp, 236 Iowa 31, 33, 17 N.W.2d 824, 826 (1945).

In summary, we conclude that plaintiff is entitled to recover only for the cost of repairs. We therefore vacate trial court's judgment in the amount of $4,830 and enter judgment for the plaintiff in the amount of $3,032.08, which includes the $40 wrecker fee.

JUDGMENT VACATED.