

THE ATTORNEY-GENERAL AND HUMPREY MAPOMA

SUPREME COURT
CHIRWA, J. S.

6TH FEBRUARY 1997 AND 6TH OCTOBER 2000
(S.C.Z .APPEAL NO. 54 OF 1996)

Flynote

Civil procedure - assessment of damages - factors to be taken into consideration - attempt at mitigation - proof of loss and damage.

Headnote

The respondent was the owner of a 1970 ford transit Mini Bus model registration number AAB 8526. He bought it second hand two years ago before the accident and the accident happened on 24th August 1988 when his driver was in collusion, with the servant of and driving the appellant's vehicle. According to the respondent, the car which was a write off was left at the garage and in 1993 he was not sure if the wreck was still there. He claimed inter-alia K12,000,000.00 as the replacement value which claim he was granted. On appeal it was submitted that the K12,000,000.00 award was very high and that the vehicle was over 18 years old at the time of the accident. It was also argued that it was the duty of the injured to mitigate his loss, which the respondent had failed to do.

Held:

For a vehicle to be beyond economic repair really just means that the costs of repair are more than the value of the vehicle. Some parts are saluageable and these could have been sold to mitigate the loss. The respondent showed no concern to mitigate his loss. Taking into account all the factors, a sum of K4,000,000 is more appropriate in damages. Appeal allowed.

Cases referred to:

1. The Edison [1933] All E.R. 144.
2. A. Hohamed & Another v. Chumbu, S.C.Z. Judgment No. 3 of 1993.
3. Zulu v. Avondale Housing Project Ltd. [1982] Z.R. 172.
4. Mhango v. Ngulube and another [1983] Z.R. 61.

For the Appellant D. K. Kasote, Asst. Senior State Advocate.
For the Respondent M. Maketo, Christopher Russell and Cook.

Judgment