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NZLR X

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M. No. 370/84

1398

BETWEEN GOLD STAR INSURANCE COMPANY LIMITED a duly incorporated Company having its registered office at 1-3 Arawa Street, Auckland and carrying on business there and elsewhere as an Insurance Company

Appellant

A N D WAYNE ADRIAN O'BRIEN of 342A Lincoln Road, Christchurch, Labourer

Respondent

Hearing: 29 October 1984

Counsel: K.J. Searle for Appellant
N.A. Till for Respondent

Judgment: 15 NOV 1984

JUDGMENT OF QUILLIAM J

This is an appeal against a decision of the District Court on a claim for indemnity under a motor vehicle insurance policy.

The respondent was the owner of a 1949 Ford Mercury motor car. The appellant issued a policy in respect of that car for the period of one year commencing on 20 December 1982 and the respondent duly paid the premium. On 4 April 1983 the car was involved in an accident in which it was badly damaged. Liability on the part of the appellant was declined and there were a number of issues raised when the matter came for hearing in the District Court. Only one

of those issues is now in dispute, namely, the way in which the District Judge arrived at the pre-accident value of the car. He accepted the purchase price paid by the respondent a few months before the accident as being the best indication of its market value and preferred that evidence to the evidence of a valuer called by the appellant.

That part of the policy which was relevant to the present claim provides:

> " The company may at its option repair re-instate or replace such vehicle or any part thereof ... or may pay the amount of the loss or damage not exceeding the reasonable market value of such vehicle ... at the time of such loss or damage. "

The policy further provides that the maximum amount payable is not to exceed the maximum amount specified in the policy. In this instance that specified amount was $8,000.

The car in question was an unusual one. It was one of the older style, heavy, powerful American cars which had been well preserved and, judging by the photograph of it produced as an exhibit, was outwardly at least in immaculate condition, even if the design painted on it may not have had universal appeal. This was, however, the type of vehicle which, according to the evidence, fell into the category known in the vernacular as a hot rod. It could perhaps be described as a specialised vehicle and, as the respondent put it in his evidence, "It was a show car, one that you would not drive every day - only bring out on special occasions and Sundays." This is where the present dispute arises. For the appellant it is argued that the reasonable market value of the car was its worth as a vehicle and without reference to any special interest it might have aroused in hot rod enthusiasts. For the respondent it was

said that the special nature of the car could not be put aside and that this was what determined its value on the market.

The expression "reasonable market value" used in the policy is a little puzzling. One might expect to find that the market value of an article is arrived at because it is reasonable, that is, because it is the compromise between what the seller would like to receive and what the buyer is prepared to pay. The word "reasonable" would seem to add little to that concept. It may perhaps have the effect of recognising that in the context of an insurance policy the amount of the loss is to reflect only the state of the market and without reference to any aberrant factors. It is on just this basis that it was argued for the appellant that the sum arrived at by the District Judge was not the reasonable market value.

The respondent purchased the car in December 1982, that is, some four months before the accident, for $7,990. It was accordingly claimed that this was a fair indication of its market value at that time as well as at the time of the accident. An experienced valuer of motor vehicles, called by the appellant, gave it as his opinion that the value would have been $5,000.

It is necessary, first, to determine, as a matter of principle, the correct approach to the market value of a specialised article. There is, I think, no doubt that this is to be regarded as the amount which would be paid by people interested in the article because of its special nature. It would be altogether unrealistic to ignore the effect of a specialised type of demand and to pretend that the market value was to reflect only what people without that special interest would be prepared to pay. A suitable analogy can be found in the field of antiques. Many of the

articles which attract high prices because they are antiques would attract little interest for their intrinsic qualities. A very old plate may have little value as a plate but considerable value because of its antiquity. It could not be said that the reasonable market value of such an article was anything other than the price it would attract as an antique.

It was apparent from the evidence that there was a separate and recognisable market for vehicles which came into the hot rod category. Plainly the market value of such a vehicle is the price that a hot rod enthusiast will be prepared to pay for it. I am satisfied, therefore, that the approach taken by the District Judge was a correct one.

It was then argued that the District Judge wrongly assessed the evidence of value and ought to have preferred that of the valuer. Apart from the price paid for the car the respondent gave evidence that he had compared the price he was paying with that of similar vehicles on the market and that he had received offers to purchase the car and, in particular, one of $9,500. This evidence was criticised as being hearsay in its nature and of no probative value. It may well be that these criticisms have some force but they detract little from the undoubted fact that the respondent had, indeed, paid $7,990 for the vehicle and had, in effect, disclosed this to the appellant when he insured it by specifying a sum of $8,000 as the maximum insurance cover.

The question which remains is whether there was anything in the evidence to suggest that the price paid by the respondent was one altogether out of line or disproportionate to the normal market for such vehicles. I am unable to see that there was. It was criticised that no representative of the dealer who sold the car to the

respondent was called. It was, however, acknowledged by the appellant's valuer that the dealer was a specialist in "sports cars and anything a little bit different" and this included American cars. There is, therefore, nothing to suggest that this sale was anything but a reflection of the current market in the particular specialised article.

It is unnecessary for me to review the evidence of the valuer and the reasons which prompted the District Judge to decline to accept that evidence because the finding I have just made provides sufficient justification for his decision. I should simply observe that the valuer's evidence appears to have been a good deal less than satisfactory in that it reflected the opinion at which he arrived before knowing what the purchase price was and before knowing a number of the special circumstances affecting this case. Even when these additional matters were put to him he seems to have been determined not to let them affect his view and so it may not be at all surprising that the District Judge felt unable to prefer his evidence to that of the respondent.

For the reasons I have given I am satisfied that the District Judge adopted a correct approach and was entitled to make the finding as to value that he did. The appeal is accordingly dismissed with costs to the respondent which I fix at $150.

Solicitors: Simes, Jacobsen & Steel, CHRISTCHURCH, for Appellant

R.A. Young, Hunter & Co., CHRISTCHURCH, for Respondent