

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2006/0226

BETWEEN:

MARY ANNE EMMANUEL

Claimant

and

NORTHWEST LIMITED

Defendant

Appearances :

Mr. H. Fraser for Claimant

Mr. Marcus Foster for Defendant

2007: April 3.

JUDGMENT ON ASSESSMENT OF DAMAGES

BACKGROUND FACTS

- [1] EDWARDS, J.: The Claimant Ms. Mary Anna Emmanuel bought a new Kia 12 Seater Pregi Minibus from the Defendant Northwest Limited (Northwest), on the 10th August 2004, for \$60,190.00.
- [2] The Minibus had a 2 year warranty. She had acquired this bus to operate it as a public passenger vehicle, and Northwest was aware of this.

- [3] On the 25th November 2004 Northwest pinpointed an alignment deficiency on the minibus which caused the tyres to wear on the outside. Ms. Emmanuel had to replace the 4 badly worn tyres with 4 new ones, at her own expense on 2 different occasions.
- [4] In January 2005 the steering developed a noise. On the 20th February 2006 the differential on the minibus was diagnosed by the technicians of Northwest as being bad. The differential was welded by a technician of Northwest contrary to Ms. Emmanuel's instructions. She was charged \$300.00 for this.
- [5] Having concluded that the minibus was not fit for the purpose for which it was bought, it has not been used for public hire since the 20th February 2006.
- [6] On the 28th February 2006 the technicians of Northwest diagnosed that the steering rack on the minibus was bad and in need of urgent replacement and that the vehicle should not be driven in its current state.
- [7] Northwest told Ms. Emmanuel that the cost for the differential replacement, steering rack replacement, and labour is \$7,715.00; and that she will have to bear this cost.
- [8] By her lawyer's letter dated the 15th March 2006 Ms. Emmanuel informed Northwest that she was rejecting the minibus. The mileage on the vehicle was then 49,724.00 kilometers.
- [9] By her Statement of Claim filed on the 23rd March 2006, Ms. Emmanuel contended that Northwest had breached the implied condition for fitness for purpose by delivering a vehicle on the 10th August, 2004 that did not meet her expectations. Her pleadings alleged further, that the defects in the minibus are latent manufacturing defects commonly being experienced by other vehicles of the same type and that she intends to rely on evidence of similar fact in this regard.

- [10] She has claimed Special Damages amounting to \$65,704.87 which includes the Purchase Price, General Damages, Costs, Interest and Further or other relief.
- [11] Northwest acknowledged service on the 27th March 2006, but has failed to file a Defence. On the 19th June 2006 Default Judgment was entered for the Claimant for an amount to be decided by the Court.
- [12] On the 13th March 2007 in the absence of Counsel Mr. Marcus Foster, I part heard the Assessment of Damages and directed that a Valuation of the minibus be carried out, with a view to determining the market value, depreciated value without differential and steering rack, and the cost of parts and labour to repair the minibus.
- [13] Having received this report on the 22nd March 2007, the Court is now better able to decided on the basis for awarding general damages.
- [14] There is no evidence that Defendant knew of the defects in the minibus at the date of purchase. Consequently Ms. Emmanuel cannot recover all the damages suffered as a consequence of the latent defects along with the purchase price which Article 1437 of The Civil Code Cap 242 allows.
- [15] Pursuant to Article 1438, Ms. Emmanuel is entitled to recover the purchase price and be re-imbursed the expenses caused by the sale where the Defendant cannot be legally presumed to have known of the defects.
- [16] Article 1436 of The Civil Code gives Ms. Emmanuel the option to return the bus and recover the price according to an estimation of its value. The circumstances in this case will best accommodate the application of Article 1436 in determining the damages to be awarded. The sum claimed for Loss of Earnings has to be reduced since there is no documentary evidence to substantiate the \$175.00 per day claimed.

[17] Consequently the Special Damages recoverable consists of:

1.	Replacement of tyres	=	\$2000.00
2.	Labour Costs	=	\$ 300.00
3.	Cost of Valuation Report requested by the Court	=	\$ 200.00
4.	Loss of Income for 273 days from) 20 th February 2006 to 20 th November) 2006 at \$130.00 per day, when her) damages were mitigated by acquisition) of another vehicle, less 10%)	=	\$31,941.00

		TOTAL =	\$34,441.00

[18] The Valuation Report discloses that the estimated value of the depreciated minibus is \$27, 685.00. Consequently, the bus must be returned to Defendants since they are sole agents and the sum of \$27,685.00 be recovered from them as general damages.

[19] The Claimant is entitled to Prescribed Costs pursuant to PART 65.5 (2), Appendix B and Appendix C (6). This amounts to \$9,855.12.

CONCLUSION

[20] It is this day adjudged that the Defendant do pay the Claimant:

1. \$34,441.00 for Special Damages
2. \$27,685.00 for General Damages

3. Prescribed Costs of \$9,855.12
4. Interest on the Judgment Debt at the rate of 6% per annum from this day until payment in full.

Dated this 3rd day of April 2007

OLA MAE EDWARDS
HIGH COURT JUDGE