

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHESTER COUNTY

Court of Common Pleas

Sixth Circuit Court

J. Ernest Kinard, Jr., Chief Administrative Judge

RECEIVED
MAY 19 2014
SC Court of Appeals

Case No. 2013- 002677

T. B. Patterson, Jr.,

Appellant,

v.

Justo ☐ Carmona Ortega,

Respondent.

FINAL REPLY BRIEF OF APPELLANT

T. B. Patterson, Jr.
Post Office Box 340
Lancaster, South Carolina 29721-0340
(803) 286-6999
Attorney for Appellant (*Pro Se*)

TABLE OF CONTENTS

Table of Cases and Authorities	1
Statement of the facts.....	1
Argument	2
Conclusion	6
Certificate of Service	7
Certificate of Counsel	7

TABLE OF CASES AND AUTHORITIES

Cases

<i>Coleman v. Levkoff</i> , 128 S.C. 487, 491, 122 S.E. 875, _____ (1924)	3
<i>Hutson v. Cummins Carolinas, Inc.</i> , 280 S.C. 552, 314 S.E.2d 19 (Ct.App. 1984)	3
<i>Newman v. Brown et al.</i> , 228 S.C. 472, 476, 90 S.E.2d 649, _____ (1955)	2, 3, 5
<i>Pricket v. A & B Elec. Service, Inc.</i> , 280 S.C. 123, 311 S.E.2d 402 (Ct.App. 1984)	5
<i>Rimer v. State Farm Mut. Auto Ins. Co.</i> , 248 S.C. 18, 148 S.E.2d 742 (1966)	4, 5
<i>Scott v. Southern Rwy. Co.</i> , 231 S.C. 28, pp. 33-34, 97 S.E.2d 73, _____ (1957)	4

Other Authorities

Ralph King Anderson, Jr., <i>South Carolina Requests to Charge—Civil</i> , 2009, § 13-14	3
--	---

STATEMENT OF THE FACTS

The respondent included a Statement of the Facts section in his brief; this responds to that statement.

The respondent characterized the loss of use as twenty-three days, stating that “some of which was attributable to defective repairs by the auto shop Appellant selected,” and referenced the “Judgment and Final Order (May 16, 2013).” (Respondent’s initial brief, April 1, 2014, page 2, lines 5-7). The problem was a defective part, the

window (magistrate's judgment, May 16, 2013, page 4, lines 6 and 7); respondent made the same misstatement of fact in his brief on appeal to the Court of Common Pleas (respondent's brief on appeal, July 11, 2013, page 2, lines 3-4; R. 24).

ARGUMENT

1.

THE COURT OF COMMON PLEAS ERRED IN UPHOLDING THE MAGISTRATE'S REFUSAL TO AWARD COMPLETE RELIEF FOR LOSS OF USE OF HIS VEHICLE TO APPELLANT.

The respondent argued that the magistrate did not make an error of law that would control the disposition of the loss-of-use compensation issue and that the evidence in the record supports the decision of the magistrate and of the circuit court. The respondent continued that appellant had cited no authority for the proposition that he was entitled to loss of use for the entire time claimed. (Respondent's initial brief, April 1, 2014, page 3).

In quoting the brief of appellant, respondent made an elision that he then uses to argue that appellant was only entitled to compensation for loss of use of his vehicle for a "reasonable length of time." (Respondent's initial brief, page 3). The Supreme Court actually approved a trial court's instruction, in *Newman v. Brown et al.*, 228 S.C. 472, 476, 90 S.E.2d 649, ____ (1955), as follows:

Now in addition to that, you could award a reasonable sum of money to compensate the owner of the automobile for the loss of the use of her automobile for a reasonable length of time **during which it would have taken her to have the same repaired.** (Emphasis added).

The damages for loss of use of a damaged vehicle are calculated on the basis of the rental value of a replacement vehicle for the reasonable period that it takes to repair it, not for an abstract "reasonable time." There is nothing anywhere in the record that

suggests the length of time for the repairs of appellant's vehicle was unreasonable. The respondent is trying to confuse the goal and rationale for compensation with the measure of damages: appellant is entitled to the compensation in the amount of the loss of use of his vehicle due to the accident (so as to put him, as nearly as possible, in the position he would have been had the accident not occurred), and those damages are measured by the rental value of a replacement vehicle for the time it took to repair the vehicle, unless the time for repair is unreasonable. That is the holding of the cases and the standard announced in Mr. Anderson's *South Carolina Requests to Charge* that appellant cited in his brief: *Coleman v. Levkoff*, 128 S.C. 487, 491, 122 S.E. 875, _____ (1924); *Hutson v. Cummins Carolinas, Inc.*, 280 S.C. 552, 314 S.E.2d 19 (Ct.App. 1984); *Newman v. Brown et al.*, 228 S.C. 472, 476, 90 S.E.2d 649, _____ (1955); and Ralph King Anderson, Jr., *South Carolina Requests to Charge—Civil*, 2009, § 13-14, Damages—Automobile—Negligence Cause of Action. The Supreme Court also made this clear, citing *Coleman* and *Newman* in response to the claim of appellant that the verdict was excessive as follows:

Respondent testified that he was out of the use of his car while it was being repaired from December 23, 1953, to February 20, 1954, a total of fifty-eight days; that during this period he had the limited use of a used car, said car being loaned to him by a third party without charge under the condition that it was not to be driven out of town. There was testimony that the rental value of a car in the Town of St. George at that time was \$5 per day. Dr. Scott also testified that he would not have accepted \$2,000 for the automobile at the time of the accident, and a garage man testified that the value of the car after the accident was \$650, which deducted from \$2,000 = \$1350; and \$5 per day for 58 days = \$290, which added to \$1350 totals \$1640, the amount of the verdict, which was for actual damages only.

In the instant case there is no showing that under the circumstances the time required to repair the car was unreasonable. *Coleman v. Levkoff*, 128 S.C. 487, 122 S.E. 875; *Newman v. Brown*, 228 S.C. 472, 90 S.E.2d 649; and there is no merit in the contention that the

rental value of the car used was not a proper element of damages because it was furnished gratis by a party other than appellants.

Scott v. Southern Rwy. Co., 231 S.C. 28, pp. 33-34, 97 S.E.2d 73, _____ (1957).

The error of law made by the magistrate and upheld in the circuit court was that he found that appellant clearly sustained the loss of use while his vehicle was being repaired and that it was proximately caused by the accident, but held that “the record before the court substantiates only the expense for a replacement vehicle for one week and not for the entire time for the repairs.” It further stated that appellant had proved “an amount equal to one-week’s rental expense but nothing more,” adding that, “There was no way to reliably quantify ‘loss of use’ as a general circumstance under these conditions.” (Magistrate’s judgment, May 16, 2013, page 6; R. 11).

In short, the magistrate held that the proof that met the standards enunciated in the appellate decisions noted above was not competent to prove the amount due to appellant and erred by failing to compensate appellant for the loss appellant sustained as a result of the accident. The court of common pleas refused to correct the error.

This court should reverse the judgment of the court of common pleas and direct entry of judgment in the amount of \$1,776.27, for loss of use, together with costs of \$80.00 in the magistrate court and \$150.00 in the court of common pleas.

2.

THE COURT OF COMMON PLEAS ERRED IN UPHOLDING THE MAGISTRATE’S
REFUSAL TO AWARD ANY SUM FOR LOST INCOME TO APPELLANT.

The respondent argued that there is precedent to deny any damages to appellant for his lost time in dealing with the accident and its aftermath, citing *Rimer v. State Farm Mut. Auto Ins. Co.*, 248 S.C. 18, 148 S.E.2d 742 (1966); the brief even provided a quote,

but, as in his cite from *Newman*, above, omitted the final portion (included in boldface below):

Where the rights, or asserted rights, of parties are in conflict, it is inevitable that each party desiring to protect his rights must give time and attention to that end. To do so is not generally an element of damage, **although it may be in some situations where loss of earnings is involved, which is not the case here.**

The omission in the quote changes the whole import of the cite. In this case, appellant had lost income and testified to establish it. The holding in *Pricket v. A & B Elec. Service, Inc.*, 280 S.C. 123, 311 S.E.2d 402 (Ct.App. 1984), essentially repeating the holding of *Rimer*, is likewise inapt. The sixteen hours and twenty-five minutes that the accident took out of time time available for work should have been compensated in a damages award for loss of income at his then-standard rate of \$300.00 per hour.

The magistrate noted that appellant testified to the loss of sixteen hours and twenty-five minutes and that his hourly rate was \$300.00, for a total claim of lost income in the amount of \$4,925.00 (magistrate's judgment, May 16, 2013, page 4; R. 9), but then stated that "[Appellant] has claimed \$300.00 per hour for his time but has not proven any tangible and quantifiable losses sustained as a result." (Magistrate's judgment, May 16, 2013, page 6; R. 11). The respondent echoed that "tangible" failure, as to both lost earnings and evidence of lost earnings. (Respondent's initial brief, page 4). Appellant testified under oath, was subjected to cross-examination, and provided specific testimony as to time lost and normal hourly rates. While not "tangible," in the sense that it can be seen in a physical form, the evidence appellant presented to the magistrate court was specific, detailed, and precise; it clearly provided a basis to calculate damages in this case.

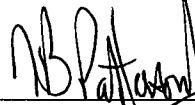
The duty of both the magistrate and the court of common pleas was to assess damages in this tort case with admitted liability, but both refused to do so. This court should reverse the decision of the court of common pleas ratifying the magistrate's judgment and either direct the entry of a verdict for the \$4,925.00 appellant sought or remand the matter to the courts below for a determination of the value of the time lost by the appellant using the proper criteria for measuring that loss.

CONCLUSION

The court should reverse the decision of the court of common pleas with directions to enter a judgment in the amount of \$6,931.27, comprising \$1,776.27 for the loss of use of his vehicle and \$4,925.00 for the time he lost from productive work due to the accident caused by the respondent, with the filing fees of \$80.00 and \$150.00 in the courts below, or, in the alternative, remand the matter with instructions for the courts below to determine the amounts owed to appellant using the proper criteria established by the law of South Carolina. In addition, the court should award appellant his costs and attorney's fees in this matter.

May 19, 2014

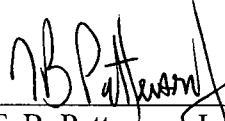
Respectfully submitted,



T. B. Patterson, Jr.
Post Office Box 340
Lancaster, South Carolina 29721-0340
(803) 286-6999
Attorney for Appellant (*Pro se*)

CERTIFICATE OF SERVICE

In accordance with the provisions of Rule 208(a)(3) SCACR, I hereby certify that a copy of this brief was mailed to Mr. Michael S. Traynham and Mr. George V. Hanna, IV, Post Office Box 12009, Columbia, South Carolina 29211-2009, on May 19, 2014.

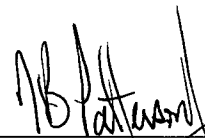


T. B. Patterson, Jr.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

May 19, 2014



T. B. Patterson, Jr.
Post Office Box 340
Lancaster, South Carolina 29721-0340
(803) 286-6999
Attorney for Appellant (Pro se)

RECEIVED
MAY 19 2014
SC Court of Appeals