

## LONE (TAGALOA) v KALATI (TUSI AUALI'ITIA)

Supreme Court Apia  
8, 11 October 1979  
Nicholson CJ

BAILMENT (Damages for breach of) - Calculation of measure of damages where a car left with bailee for repair and never returned in spite of requests.

ACTION claiming damages for breach of bailment.

Enari for plaintiff.  
Defendant in person.

Cur adv vult

NICHOLSON CJ. This is a claim for damages arising out of a contract of bailment of a motor car for certain repairs to be carried out by the defendant.

Briefly, the facts are that the plaintiff purchased a Toyota Crown motor car in August of 1974 for US\$1,000. In May of 1975, he handed over the vehicle to the defendant to carry out certain repairs. In pursuance of that agreement he supplied spare parts to the defendant to a total value of WS\$408.50. The plaintiff says that in spite of repeated requests, the vehicle has never been returned to him, and last year after conducting a search himself, he located the shell of his vehicle hidden at the residence of one Afamasaga. He has made no effort to take possession of and sell that shell. He now seeks damages covering the value of the vehicle, the value of the spare parts, and damages for loss of use of the vehicle since 1975.

Dealing first of all with the value of the vehicle, it would appear that at the time of purchase, the price was WS\$850.00 and that the plaintiff paid duty of \$93.25 to import the vehicle into Western Samoa. Having regard to the driving conditions of this country and in particular in and around the year 1975, I think it fair to allow depreciation of a motor vehicle at the rate of twenty per cent. per annum. The vehicle in question was under the use of the plaintiff for some nine months before he handed it over to the defendant and under these circumstances, I allow depreciation at fifteen per cent., which on the original purchase price of the vehicle would be \$125.50, leaving a value of the car at \$723.50, plus the duty of \$93.25, total of \$816.75, and I am satisfied also that spare parts to the value of \$408.50 were supplied to the defendant making a total of \$1,225.25. Insofar as loss of use of the motor vehicle is concerned, it appears to me that the plaintiff has not discharged the burden on him of using every endeavour to minimise his damage and it is extraordinary that he should allow some two years to pass before he filed these proceedings. In all the circumstances, I consider that a prudent plaintiff would at the end of six months have taken stern measures to recover his vehicle. I am therefore prepared to allow damages for loss of use for a period of six months. The plaintiff says that the particular use of the

vehicle was to transport his children to and from the various schools they attend in Apia area. I fix the sum of \$200 as damages for the loss of user since taxis had to be used to transport the children to their schools.

On the other hand, I remind myself that there was no attempt by the defendant to realise on the wreck of the vehicle, once he had discovered it. There is no adequate evidence before me of the value of the wreck, but in the circumstances I deduct the sum of \$100.00 as the value and I therefore enter judgment for the plaintiff in the total sum of \$1,325.25.