



HIGH COURT OF AUSTRALIA

8 December 2021

ARSALAN v RIXON; NGUYEN v CASSIM
[2021] HCA 40

Today, the High Court unanimously dismissed appeals from a judgment of the Court of Appeal of the Supreme Court of New South Wales. The appeals concerned whether a plaintiff whose vehicle is negligently damaged can recover as damages the reasonable costs incurred in hiring a replacement vehicle of broadly equivalent value to the damaged vehicle while that vehicle is being repaired.

Both respondents, Mr Rixon and Mr Cassim, owned prestige vehicles that were damaged in accidents for which the appellants, Mr Arsalan and Mr Nguyen, by their insurers, admitted liability in negligence. The vehicles were used for social and domestic purposes but not for income-earning purposes. The respondents hired replacement vehicles of similar value to their damaged vehicles while the vehicles were being repaired. In the Local Court of New South Wales, the magistrate held that Mr Rixon had not demonstrated a need for a prestige replacement vehicle and awarded damages representing the market rate of hire for a Toyota Corolla, which would have met his needs. A different magistrate found that, although a Toyota Corolla would also have met Mr Cassim's needs, he was entitled to damages representing the actual hire costs incurred because the hired replacement vehicle was of broadly equivalent value to the damaged vehicle.

The Supreme Court of New South Wales dismissed Mr Rixon's appeal. The Supreme Court allowed Mr Nguyen's appeal and substituted an award of damages representing the market rate of hire for a Toyota Corolla. A majority of the Court of Appeal allowed further appeals by Mr Rixon and Mr Cassim. Mr Rixon was held to be entitled to the reasonable hire costs he had incurred, and the matter was remitted to the Local Court for assessment. In Mr Cassim's appeal, the magistrate's award was reinstated.

The High Court dismissed the appeals, holding that both respondents were entitled to damages representing the costs of hiring replacement vehicles of broadly equivalent value to their damaged vehicles. Where a plaintiff's vehicle is negligently damaged and unavailable during a period of repair, loss will readily be inferred from the plaintiff's ownership and past use of the vehicle. That loss consists of (i) physical inconvenience from the inability to use the vehicle and (ii) loss of amenity or enjoyment of the use of the vehicle. Loss of amenity of use of a chattel should be recognised as a recoverable head of damage for negligent damage to a chattel, consistent with the compensatory principle. A plaintiff's loss of amenity of use includes the loss of convenience or pleasure derived from the use of their vehicle, and it may be inferred that a plaintiff who incurs significant expenditure on a prestige vehicle derives amenity from its functions. Once a plaintiff mitigates their loss by hiring a replacement vehicle of broadly equivalent value to the damaged vehicle, the onus lies upon a defendant to prove that the costs incurred in mitigation were unreasonable. The appellants did not prove that the respondents acted unreasonably in incurring any of the hire costs for the replacement vehicles.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*