

IN THE HIGH COURT OF SIERRA LEONE -COMMERICAL DIVISION

BETWEEN:

ALIE ABESS

TRADING AS ALIE ABESS TRANSPORT

AND GENERAL ENTERPRISE

-

PLAINTIFF

AND

SIERRA LEONE ROAD TRANSPORT AUTHORITY

-

DEFENDANT

In compliance with Order 3 of the Judgment dated 1st February, 2013, R. B. Kowa Counsel for the Plaintiff in the presence of Ms. Omo-Lisk, Counsel for the Defendant, on 15th February, 2013 lead the Plaintiff in evidence to give details of his loss suffered as a result of the unlawful detention of his commercial vehicle-Registration number ACN 379 from the 6th of June, 2011 to the 25th day of January 2013.

The Plaintiff gave evidence to the effect that :

He owns the Mercedes Benz bus ACN 379, a 5½ ton vehicle licensed to carry 35 passengers including their lugages, that a return trip entitles him to 70 passengers. That the vehicle's routine movement schedule is a return trip per day, ie. 70 passengers and their lugages per day.

that this vehicle plies the routes Freetown-Kono, Kono-Freetown on a weekly basis, alternated by another Freetown-Kenema, Kenema -Freetown the following week.

The cost per passenger on the above mentioned routes were stated as:

- (a) Le35,000.00 per passenger-Freetown-Kono, Kono-Freetown.
- (b) Le25,000.00 per passenger-Freetown - Kenema, Kenema-Freetown
- (c) That the average income realised from the lugages is Le200,000.00.

That the said vehicle was in a fairly good shape, being subjected to a regular two hourly maintenance per day with new tyres. As such, no special day was put aside for maintenance. He also maintained that not even the Sabbath day was observed.

With regards the daily expenditure incurred, he stated thus:

Fuel: (a) Freetown-Kono, Kono-Freetown (Return trip) 34 gallons at Le14,000.00per gallon.

(b) Freetown-Kenema, Kenema-Freetown (return trip) 30 gallons at Le14,000.00 per gallon.

(c) For every ten return trips, there is a change of oil approximately 14 litres at Le15,000.00per litre, including change of fuel filter at Le30,000.00 and oil filter at Le35,000.00

(d) On every successful return trip the Driver receives an allowance of Le60,000.00 on a daily basis and a monthly salary of Le350,000.00

That he stopped paying the Driver as soon as the vehicle was detained by SLRTA.

There was no cross examination by defendant's Counsel nor was there any re-examination by Plaintiff's counsel

This is an assessment of special damages based on a finding of an unlawful detention by SLRTA of vehicle registration number ACN 379 which they failed to return on demand..

The measure of special damages will be assessed based on the relative economic loss the Plaintiff has suffered as a result of being deprived of the use of the vehicle. The Plaintiff gets special damages based on his loss, it being assumed in his favour as against the Defendant that had he had ACN 379 in his possession after he had licensed same on the 10th June 2011 he would have used it for commercial purposes, plying the routes of Freetown-Kenema, Freetown-Kono on a daily basis as it were their pattern of operation.

From the evidence adduced, no reason had been advanced, why the Plaintiff should not recover as damages such intermediate amount which the vehicle would have earned, had the Plaintiff mitigated his loss.

In both conversion and detinue, the plaintiff may recover special damages arising from being deprived of his chattel, thus where a carpenter whose tools were converted by the Defendant was thereby rendered unable to work, he recovered in conversion his loss of wages as special damages.

Bodley V Reynolds (1846) 8 Q B 779. In *strand Electric Co V Brisford Entertainments* (1952) 2 Q B 242 the Plaintiff who sued in detinue for the return of some switchboards which they had hired to the Defendants were allowed to recover as special damages a hiring charge for the equipment during the period of detention (despite the fact that the Plaintiff could not have hired out all of the equipment during this period)

I hold the view that similar consideration applies in this case. There seems no reason why, similar awards should not be granted the Plaintiff in this case, the Defendant having unlawfully detained a commercial vehicle for an inordinate period, 18 months.

In an attempt to arrive at a figure that will represent the nominal extent of economic damage suffered by the Plaintiff as a result of the above mentioned unlawful detention, the court is being guided by the following consideration:-

1. That due to the Plaintiff's inability to mitigate his loss: ie disclosing at the earliest opportunity to SLRTA officials who were obstructing him from accessing /refusing return of his detained vehicle the relevant documents obtained ie the license, one third of the assessed special damages shall be discountenanced. The rationale being to prevent the Plaintiff taking advantage of the wrong meted on to him. He owed himself a duty to mitigate his loss, which he failed to do.
2. ACN 379 shall be attributed the following for the purpose of this exercise
 - (a) Average number of working days per month – 26 days
 - (b) Four (4) days a month are set aside for the purpose of maintenance, servicing etc.

- (c) Returns trips are evenly distributed between Freetown-Kono, Kono-Freetown and Freetown-Kenema Kenema-Freetown.
- (d) Period of assessment shall cover the time range, 1st July, 2011 to 31st December, 2012 a total of 18 months
- (e) Nine (9) months of plying Freetown-Kono, Kono-Freetown route. Nine months of plying Freetown Kenema, Kenema-Freetown.
- (f) Average number of fully paid-up passengers per day is assessed at 50 passengers per return trip-on either routes.
- (g) Earnings from lugages shall be discountenanced for lack of certainty. Furthermore they shall comprise of workmanship which was not costed.

DAILY EXPENDITURE

- (h) ACN 379 is presumed to change oil three (3) times every month ie:
 14 litres at Le15,000.00 = Le210,000.00
 Fuel Filter at Le30,000.00
 Oil Filter at Le35,000.00
 ie, Le275,000.00 x 3 x 18months = Le14,850,000.00
- (i) Fuel:
 Freetown-Kono
 34 gallons 26 days x 9 months x Le14,000 /gallon = Le111,384,000.00
 Freetown-Kenema
 30 gallons x 26 days x 9 months x Le14,000.9000/gallon = Le98,280,000.00
- (j) Drivers daily allowance of Le60,000.00 per return trip x 26 days a month + Le350,000/00 per month (Le1,910,000.00) x 18 months = Le34,380,000.00
- (k) Proceeds from 50 fully paid-up passengers per return trip from:
 - Freetown-Kono at Le35,000.00/passenger: 50 passengers x 26 days/month x 9 months x Le35,000.00 = Le409,500,000.00
 - Freetown-Kenema at Le25,000.00 passenger
 50 passengers x 26 days/month x 9 months x Le25,000.00 = Le292,500,000.00

Total earnings minus total expenditure = sum total of K minus sum total of h+ i+ j

ie (Le409,500,000.00 + Le292,500,000.00)

- (Le14,850,000.00 + (Le98,280,000.00 + Le111,384,000.00) + Le34,380,000.00)

Le702,000,000.00- Le258,894,000.00 =

Less 1/3 of Le443,106,000.00 (due to Plaintiff's failure to mitigate his loss)

(-147,702,000.00)

295,404,000.00

(1) refers

Assessed special damages in the ACN379 cause is : Le295,404,000.00

= 295,404,000.00 ACN 379 cause is:

Le295,404,000.00

M. D. Kamara J
Hon. Mr. Justice M. D. Kamara
Read: 26/03/2013.