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Damages for Breach of Automobile Liability Insurance Contract - Pennsylvania Threshermen and Farmers' Mutual Casualty Insurance Company v. Messenger

DAMAGES FOR BREACH OF AUTOMOBILE LIABILITY INSURANCE CONTRACT

Pennsylvania Threshermen and Farmers' Mutual Casualty Insurance Company v. Messenger[1]

The plaintiff, a produce hauler of Salisbury, Maryland, while operating his motor truck in Yemassee,[1a] South Carolina, struck and damaged a filling station. At the time of the accident the vehicle was insured by a liability insurance policy issued by the defendant company, insuring the plaintiff against legal liability up to $5,000 for damage to the property of others. The policy contained a clause agreeing that the insurance company would defend all suits brought against the insured on claims covered by the policy, but they refused either to defend the attachment suit brought by the owners of the damaged buildings or to pay the judgment recovered, basing the refusal to act on the contention that the accident had not occurred within the 500 mile radius covered by the policy. As a result of the failure to act the truck and trailer were sold on execution on the judgment for much less than they were worth.

The instant suit was instituted by the insured alleging a loss of the damaged truck and trailer as a result of the breach of contract by the company. The trial court found on expert testimony that the accident was within the 500 mile radius covered by the policy and made an award of $1,500, the value of the damaged truck and trailer as found by the jury. The Court of Appeals affirmed.

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[1] 29 A. (2d) 653 (Md., 1943). For a note on the companion rule of damages for breach of alternative contract, see (1943) 7 Md. L. Rev. 160.

[1a] The name of the town is spelled Yamassee in the opinion. The various standard atlasses give it Yemassee.

The case is one of interest not on its rulings as to the use of expert testimony, but rather as an application to a new field of an established rule of damages. The Court in its opinion cites the leading English case of *Hadley v. Baxendale*[2] as laying down the proper rule for measure of damages for breach of contract. In that case the plaintiffs were owners of a mill, and, having broken their only mill shaft, sent the broken shaft by the defendant, a carrier, to the engineer to be used as a model for the new shaft to be made by him. Due to the delay in delivery of the broken shaft, delivery of the new shaft was delayed. The plaintiff sued for breach of the contract of carriage, alleging as special damage the loss of profits of the mill during the time the mill was idle due to the defendant's delay. The Court held that there could be no recovery because of a failure to prove that the defendant at the time the contract was made had knowledge that the mill was kept from operating solely for want of the shaft; but, in laying down the rule which it considered applicable to ascertain the damages recoverable for a breach of contract, the Court used the following language:

> "Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect to such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i. e., according to the usual course of things, from such breach of contract itself or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as a probable result of the breach of it."

It will be noted that the "rule of *Hadley v. Baxendale*" is really a limitation on the primary rule of damages, that the court will by damages attempt to place the injured party as far as possible in the position in which he would have been had the contract been properly performed. The sound logic of this limitation on the rule has been almost unanimously recognized in the United States, being adopted by the state and Federal courts,[3]

[2] 9 Exch. 341, 354 (1854).

[3] Primrose v. Western Union Tel. Co., 154 U. S. 1 (1894); Howard v. Stillwell and Bierce Mfg. Co., 139 U. S. 199 (1891); Taylor Mfg. Co. v. Hatcher Mfg. Co., 39 F. 440, 3 L. R. A. 587 (C. C., S. D. Ga., 1889); Moulthrop v. Hyett, 105 Ala. 493, 17 So. 32 (1895); Cohn v. Norton, 57 Conn. 480, 18 A. 595, 5 L. R. A. 572 (1889); Moses v. Autuono, 56 Fla. 499, 47 So. 925, 20 L. R. A. (N. S.) 350 (1908); Hall v. Paine, 224 Mass. 62, 112 N. E. 153, L. R. A. 1917C 737 (1916); Hitchcock v. Supreme Tent of Knights of Maccabees, 100 Mich. 40, 58 N. W. 640, 43 Am. St. Rep. 423 (1894); Gari-

the leading encyclopedias of law,[4] and the Restatement of Contracts.[5]

Maryland has followed this view taken by the great weight of authority, establishing the rule in a case as far back as 1858, *Abbott v. Gatch.*[6] In that case the plaintiff sued for services rendered in the building of a new mill and the defendant sought to set off, by way of recoupment, the profits which he would have made had the plaintiff completed the mill within the contract time. The Court refused to allow such a claim because the profits of a new mill were speculative, and dependent on too many contingencies to be provable as damage. But in laying down the rule of damages applicable in breach of contract the Court laid down a rule almost identical with that quoted above, and allowed the defendant only the fair rental value of the mill for the period of idleness caused by the plaintiff's breach of contract.

The case of *Hadley v. Baxendale* has been consistently cited and followed in the Maryland cases since its adoption by our courts.[7] Both in Maryland and the other courts of the United States the rule has been applied to breaches of widely varied types of contracts,[8] so it is only logical that the breach of contract having been established[9] the

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baldi v. Rubenstein, 99 N. J. L. 223, 122 A. 727 (1923); Mortimer v. Otto, 206 N. Y. 89, 99 N. E. 189, Ann. Cas. 1914A 1121 (1912); Wilson v. Wernwag, 217 Pa. 82, 66 A. 242, 10 Ann. Cas. 649 (1907). Note however criticism of the rule on the ground that it is obscure and inaccurate, for parties did not contemplate a breach but performance. See Daugherty v. American Union Telegraph Co., 75 Ala. 168, 51 Am. Rep. 435 (1883); McNamara v. Village of Clintonville, 62 Wis. 207, 22 N. W. 472, 51 Am. Rep. 722 (1885); the cases have since been overruled in both states.

[4] 25 C. J. S., Damages, Sec. 24a; 15 AM. JUR., Damages, Sec. 52.

[5] RESTATEMENT, CONTRACTS (1932) Sec. 330.

[6] 13 Md. 314, 71 Am. Dec. 635 (1859).

[7] Abbott v. Gatch, 13 Md. 314, 71 Am. Dec. 635 (1859); United States Tel. Co. v. Gildersleve, 29 Md. 232, 96 Am. Dec. 519 (1868); Camden Consolidated Oil Co. v. Schlens, 59 Md. 31, 43 Am. Rep. 537 (1882); Furstenburg v. Fawsett, 61 Md. 184 (1884); Lanahan v. Heaver, 79 Md. 413, 418, 29 A. 1036 (1894); Strasbaugh v. Sanitary Can Co., 127 Md. 632, 648, 96 A. 863 (1916); Winslow Elevator Co. v. Hoffman, 107 Md. 621, 69 A. 394 (1908).

[8] Moses v. Autuono, 56 Fla. 499, 47 So. 925, 20 L. R. A. (N. S.) 350 (1908), (breach of contract to lease land); Hall v. Paine, 224 Mass. 62, 112 N. E. 153, L. R. A. 1917C 737 (1916) (breach of brokerage contract); United States Tel. Co. v. Gildersleve, 29 Md. 232, 96 Am. Dec. 519 (1868), (breach of contract to send telegram properly); Winslow Elevator Co. v. Hoffman, 107 Md. 621, 69 A. 394 (1908), (breach of contract to install elevators in set time); Furstenburg v. Fawsett, 61 Md. 184 (1884), (breach of contract for sale of wood).

[9] In the language of the Court: "But the refusal of the insurance company to defend the attachment suit and to pay the damages resulting . . . caused the insured to lose his truck and trailer. Unquestionably the company's failure to perform these obligations constituted a breach of contract."

rule set forth above should properly be applied. It is submitted that the instant case is an intelligent extension of the rule of damages for breach of contract into the field of insurance. The insurance company, dealing as it did in risks and legal liabilities of others assumed by contract, was certainly most fully aware that on its failure to perform the obligations required by the liability insurance policy some loss might be suffered by the insured. And, where the insured is an interstate trucker what action is more to be supposed probable than an attachment proceeding against the one thing of value which is in the grasp of the injured party? Such a loss following the breach of contract by the defendant company is certainly one of the results "arising naturally" out of the breach of contract, and by application of the rule of *Hadley v. Baxendale* would make the defendant company liable for the entire loss sustained.