



Wolver v. Rosenaur

2004 | Cited 0 times | California Court of Appeal | December 7, 2004

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Eugene Wolver appeals from a judgment awarding him damages in an amount less than the sum he sought following a jury trial in his action for personal injury and property damage. The action arose from an automobile accident. Appellant contends: (I.) The trial court abused its discretion in failing to exclude the testimony of Stanley Zahn, one of respondent's experts, regarding valuation of appellant's automobile. (II.) The verdict regarding cost of repairs is not supported by substantial evidence. We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

Appellant filed his complaint in March 2001. He alleged that he and respondent were involved in an automobile accident in Calabasas in April 2000. The complaint alleges that respondent was driving "in a manner that constituted a willful and conscious disregard for the rights and safety of others." Appellant sought personal injury and property damages, as well as punitive damages.

Respondent answered the complaint in May 2001. In September 2002, the trial court granted respondent's motion for summary adjudication, ruling that appellant's claim for punitive damages had no merit.

Respondent admitted liability. The case was tried to a jury in April 2003 on the issue of damages only. The jury rendered its verdict in the sum of \$3,294, consisting of \$780 for loss of use of the vehicle and \$2,514 for property damage. It rejected appellant's claim for personal injuries. Appellant does not appeal from that portion of the verdict.

The trial court denied appellant's motion for a new trial. It assessed costs against appellant in the sum of \$24,525, based upon his failure to accept respondent's offer of judgment pursuant to section 998 of the Code of Civil Procedure. A net judgment in favor of respondent, in the sum of \$20,785.05 was entered in July 2003. Appellant does not challenge the section 998 cost award, except to the extent that the award would be vacated should appellant prevail on appeal.



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The evidence adduced on the issue of property damage shows the following. Respondent was driving west on Calabasas Road when traffic stopped in front of him. To avoid colliding with the vehicle in front of him, respondent swerved to his left. In doing so, he sideswiped the side of appellant's 1974 Porsche 911 Carrera, which was traveling eastbound on Calabasas Road.

Appellant claimed that his damages for cost of repair was \$12,293.02 in addition to \$4,403.26 that respondent had paid toward repairs. There were a number of disputed repairs, the most expensive of which was the decision to strip and repaint the entire vehicle, rather than just painting the side damaged by respondent. William Lawyer, appellant's repair expert, testified that after the accident he examined the Porsche and prepared a repair estimate that totaled \$5,839.41. He ultimately charged \$13,352.85, however, apparently largely because he stripped and painted the entire car. Appellant subsequently had additional work done by a second garage. Kurt Donohoe, respondent's expert, also testified that, in his opinion, the cost to repair the accident-related damage totaled \$5,839.41.

Appellant testified that the Porsche was worth \$43,000 just before the accident. Stanley Zahn, a licensed automobile dealer and experienced classic car salesman, testified that appellant's vehicle was worth \$12,000 before the accident and approximately \$8,000 to \$8,500 immediately after the accident, before repair.

Appellant claimed loss of use of the Porsche for 99 days. He testified that he rented a Nissan Altima during that period. Respondent paid \$1,179.60 toward the rental cost, which comprises approximately 37 days of rental. ¹ Appellant paid a total of \$1,530.32 toward the first rental period of 85 days, plus \$518.03 for a second period of 14 days. Appellant testified that had he rented a car equivalent to the Porsche for 85 days, the cost would have been \$4,019.26. Concerning appellant's loss-of-use claim, Donohoe testified that the repairs to the vehicle should have taken two to four weeks to complete. That estimate is based upon the assumption that only the damaged side of the vehicle would be repainted.

As noted above, the jury awarded \$2,514 for property damage and \$780 for loss-of-use damages.

DISCUSSION

I. Expert testimony

Appellant contends that the testimony of respondent's expert, Stanley Zahn, did not constitute competent evidence. As to pre-accident fair market value, appellant contends that the testimony was not based upon comparable sales of which Zahn professed knowledge, and his opinion was contradicted by leading auto industry price guides, the evidentiary materials he purported to rely upon. As to the value of the Porsche after the accident and before it was repaired, appellant contends that Zahn lacked expertise in the sale of auto parts and failed to provide a foundation for his opinions.



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A. Qualifications generally

The trial court has broad discretion to determine whether to allow a witness to testify as an expert. (Stevens v. Roman Catholic Bishop of Fresno (1975) 49 Cal.App.3d 877, 882.) "A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." (Evid. Code, § 720, subd. (a).)

Zahn stated his qualifications to testify as an expert in valuing classic cars as follows. He is licensed as a wholesale and retail automobile dealer. Zahn has been in the business of buying, selling, appraising, and auctioning automobiles for the past 12 years. He owns a classic car auction company, Spectrum Auctions, which sells in excess of 300 vehicles each year. Zahn has also personally sold approximately 60 classic cars per year for the past 12 years. Representatives of Kelly Blue Book, the N.A.D.A. Guide, the Old Cars Price Guide, and the CPI (Cars of Particular Interest), publications concerning automobile values, have asked Zahn's opinion regarding values. His experience includes appraising automobiles for government entities, corporations, and insurance companies.

We conclude that the trial court did not abuse its discretion. Zahn was not required to qualify as an expert in valuing Porsches, as appellant urges. No special training or occupation is necessary to qualify a witness to estimate automobile values. A salesman may qualify as a witness on automobile values even if he currently sells a different manufacturer's products. (Naples Restaurant, Inc. v. Coberly Ford (1968) 259 Cal.App.2d 881, 884.) Zahn's qualifications to value classic cars generally are sufficient.

Appellant urges that Zahn's testimony does not comport with Evidence Code section 814, which states that opinion as to value may be based upon information "of a type that reasonably may be relied upon by an expert in forming an opinion as to the value of property." We disagree. Zahn testified that he consulted pricing guides, the internet, and other people who deal in classic cars. Those are sources that reasonably may be relied upon in forming an opinion as to value. He was cross-examined extensively regarding specific pricing guides. Zahn did not identify individuals or websites by name, but was not asked for that information.

B. Foundation

Before rendering his expert opinion, Zahn prepared to testify by inspecting appellant's Porsche, reviewing photographs of the automobile, and consulting with classic car buyers and sellers. He read the deposition of appellant's vehicle valuation expert, Jacob Pfluegler, consulted several automobile valuation guides, and reviewed appellant's repair records. Zahn then offered his expert opinions as to the value of the Porsche before and after the accident. We conclude that the opinions were based upon a sufficient foundation.

Appellant finds fault with many of Zahn's answers, stating that they demonstrate that Zahn lacked



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expertise in valuing Porsches. For example, he was unable to state what "RS" stands for, when used to identify a particular Porsche model, and wasn't specific as to why modifications to the Porsche would decrease its value, even if they increased performance. These, however, were matters for cross-examination, and appellant thoroughly cross-examined Zahn.

Zahn testified that the industry-pricing guides, which showed higher values for the Porsche than Zahn's, were based upon sales of unmodified Porsches. Appellant notes that Zahn admitted that the price guide information is based upon public, retail, and auction sales across the nation. Zahn also stated that because the car had been driven -- it had more than 100,000 miles -- it was worth less than a car that was kept for show. Zahn was not required to abandon his position that appellant's vehicle would not bring a higher price. Zahn, moreover, conceded that in a private sale, the Porsche could fetch \$17,000. Appellant has failed to show that Zahn's testimony regarding pre-accident value lacked a sufficient basis.

C. Post-accident valuation

With regard to post-accident valuation, Zahn testified that the Porsche was worth \$8,000 to \$8,500 for parts, immediately after the accident. More specifically, he valued the engine at \$4,500, the wheels at \$1,500, the seats at \$500, and other components at \$1,500 to \$2,000. Appellant asserts that Zahn failed to establish that he dealt in auto parts, and therefore failed to show that he had expertise in their valuation. Appellant cites *California Shoppers, Inc. v. Royal Globe Ins. Co.* (1985) 175 Cal.App.3d 1, 66-67 (a plaintiff's attorney was not qualified to testify as an expert on insurance practices) for the proposition that an expert's qualifications must be established with respect to the subject matter of the testimony. The trial court, however, was free to assume that Zahn's familiarity with the sale of classic cars would include the cost of parts used to repair those vehicles. His testimony as to value was admissible, and its weight was for the jury to determine.

II. Cost of repair

Appellant contends that the awards for loss of use and for cost of repair were inadequate. We disagree.

As noted above, the damages claimed by appellant to be due to the accident included a number of items that were disputed. His own mechanic, William Lawyer, testified that appellant was "very meticulous" and "obsessive-compulsive" concerning the condition of the car and that the Porsche was in better shape after it was repaired than before the accident. The jury apparently determined that appellant was entitled to more than the amount previously paid by respondent, but less than the amount appellant claimed.

Related to the question of what repairs were reasonable, was the issue of reasonable damages for loss of use of the Porsche. Rental value is a factor to be considered in ascertaining the extent of the injury



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due to deprivation of an automobile while it is undergoing repairs. (See *Crain v. Sumida* (1922) 59 Cal.App. 590, 597.) Kurt Donohoe, respondent's expert, testified that the repairs to the Porsche would reasonably have taken at most four weeks. Respondent had already paid for approximately 37 days. Appellant claimed that he was without the car for a total of 99 days. He also claimed damages for the difference in quality between the Nissan Altima he rented and the Porsche.

The jury decided that appellant was entitled to more than 37 days' loss of use, that use of the Altima was worth less than use of the Porsche, or some combination of the two. It awarded \$780, which was in addition to the \$1,179.60 previously paid by respondent. Appellant has not shown that the amount is inadequate.

DISPOSITION

The judgment appealed from is affirmed. Appellant shall bear respondent's costs of appeal.

NOT FOR PUBLICATION.

We concur:

BOREN, P.J.

DOI TODD, J.

1. The testimony regarding loss of use is unclear. According to appellant, the Altima was rented for \$28.99 per day.

