Diminished Value in Automobile Damage Cases

By Stephen Hankin

A t times, we as practitioners lack a keen sense for the obvious. Take, for example, the instance of a rear-end accident involving injury claim, where the rea- 
sional focus is usually upon a recovery for bodily injury. The faultless client’s carrier is the normal course is paid, for and thus, by subrogation, recovery the payment. So the process goes. Little, if any, thought is given to the resultant value of the client’s vehicle, once repaired. After all, the repair costs have been paid and presumably the vehicle looks the same as it always did.

However, this is a shortlived practice which overlooks the prevalence of modern day, readily online available valuable vehicles which have been damaged and have incurred liability. These vehicles have upon post-repair value. These reports contain critical information regarding not only a vehicle’s title history but also a record of accidents and repairs.

Of course, these historical reports admit- tally reflect only those repairs which have been reported—reparis which may be delayed up to a year—and many times, a vehicle’s diminished value is a result of minor and major repairs and are otherwise in-accurate. “Carfax” is the most popular commercial vehicle-based service that supplies history reports. In fact, Carfax has a “price adjustment” based upon the reported damage it reports—an adjust- ment which a knowledgeable benefits in valu- able at best. Nonetheless, rarely do (or should) consumers or dealers purchase vehicles without a post-repair history.

The present-day availability and use of repair history, as inaccurate as it may be, has a material impact upon dealer auction and the one-cutting a deal which may be im- pact is especially noticeable among higher price foreign and collector vehicles. For example, the diminished value of a per-fectly driven vehicle of a 2012 911 Porsche Turbo “S” would be sold post-accident for $50,000. As Robert Hollenfield, CEO of R. Hollenfield Auto Sales, North America’s largest and most well-respected wholesaler, has so simply put it: “If you had the choice between the same car, same color, same options, same every- thing and same apparent condition but one had repairs, which one would you choose?” Naturally, the buyer of the repair-free vehicle will have a lesser utility. Fortunately, a remedy does exist for the blameless vehicle owner who is left with the damaged goods.

The Diminished Value Doctrine

The doctrine of diminished value is really a very elementary principle: It in- troduces a term that has been labeled the “damaged goods syndrome,” which is, that a re- paired vehicle should be valued just as much both before and following repair. Put an- other way, diminished value recognizes that even after perfectly completed repairs, a faultless plaintiff’s vehicle will be worth less than it was unfortunatly before the damage occurred.

It is well settled in New Jersey that in an action for injury to a vehicle, the meas- sure of damages is the absence of total de- struction. The difference in value of the automobile immediately before and after the damage. Hence v. Roberts, 98 N.J. L. 673 (N.J. 1905). In determining diminished value, a claimant must demonstrate the condition of the vehicle before the acci- dent in order to prove that the repairs did not put it in better condition than it was. Winner v. App. Div. 351 (App. Div. 1954). Thus, in Fenwello v. East End Motor Company, 172 N.J. Super. 309 (App. Div. 1980), the court squarely held that the cost of repair and the depreciated value of the vehicle is an appropriate measure of damages, provided the sum does not exceed the natural decline in market value and does not exceed the pre-accident market value of the vehicle. The proposition is not surprising because rarely is windfall damage reimbursable. Accord- ingly, a plaintiff must be careful to prove the value of the vehicle both before and after repairs. Premier XXI Claims Inc. v. Randy, 381 N.J.Super. 281 (App. Div. 2005).

The underpinning of these decisions is the Restatement (Second) of Torts which at Section 929(a) provides:

When one is entitled to a judgment for harm to chattels not amounting to total destruction in value, diminished value includes compen-sation for:

(a) the difference between the value of the chattel before the harm and the reasonable cost of repair or restitution; or, at his election in an appro-priate case, the reasonable cost of repair or restitution with due allowance for any different between the original value and the value after repairs.

In establishing diminution in value it is critical to demonstrate through expert testimony the condition and thus value of the vehicle before the damage occurred, and as well sale prices of comparable ve-hicles with “clean” and poor CarFaxes sold post-accident. This is especially im-portant because motor vehicle appraisal guidelines such as the NADA Official Used Car Guide, Kelley Blue Book or the Auto Value Guide do not take into con-sideration the repaired damages in their calculations of used car values. However, these appraisal guides are useful and ad-equate for determining pre-accident valu-e. See State v. Langford, 167 N.J. Super. 296, 303 (App. Div. 1979) (noting that under N.J.R.E. 63 (2G), the predecessor to N.J.R.E. 603 (es) 7), a judge must first be convinced the compilation is published for all persons engaged in that business and that it is generally considered useful. See also, Ruby v. GMC, 952 F. Supp. 294 (D.N.J. 1996). (N.A.D.A. Official Used Car Guide accepted for threshold jurisdictional amount determination and recognizing diminution of value as a re-sult of public disclosure of a vehicle defect).

In re Maddox, 194 B.R. 763, 764 (Bankr. D.N.J. 1998) (N.A.D.A. Used Car Guide admissible for determination of value). In establishing post-repair value, at total, care should be taken in the choice of an expert. Strong consideration should be given to providing testimony from an experienced automobile wholesaler or used car manager with a long history of dealing or based upon unconscionability claims, generally claims under the Con-sumer Fraud Act, for a breach of the implied covenant of good faith and fair dealing or based upon unconscionability which will not save the day. Myoka, 440 N.J. Super. at 487. In Kieffer, for example, the policy excluded payment “for any loss to your automobile or any other- owned automobile due to diminution in value,” which was defined as “body ac- tual or perceived loss to market or resale value which results in a loss.” Kieffer, 422 N.J. Super. at 42. But see 12 Couch on Insurance, §17:19 (Third Edition, June 2015), suggesting “[t]he insured should make a public policy argument that any formula used must be adequate to place the insured in the same position he or she was prior to the loss.”

Conclusion

Diminished value is the most complex area involving automobile damage cases. However, given the prevalence and the effect of diminished value claims are permissible under the provisions of a faultless’insured’s policy. Myoka, 440 N.J. Super. at 466. Because there is no common practice directed to payment of diminution of value dam-ages, payment, as a result of UM/UIM claims, Myoka, 440 N.J. Super. at 478. evening a plaintiff should always inspect the policy at the outset, including a careful review of the definition section.

The Appellate Divisions made clear in Myoka where a policy clearly excludes first-party diminished value claims, generally claims under the Con-sumer Fraud Act, for a breach of the implied covenant of good faith and fair dealing or based upon unconscionability which will not save the day. Myoka, 440 N.J. Super. at 487. In Kieffer, for example, the policy excluded payment “for any loss to your automobile or any re- owned automobile due to diminution in value,” which was defined as “body ac- tual or perceived loss to market or resale value which results in a loss.” Kieffer, 422 N.J. Super. at 42. But see 12 Couch on Insurance, §17:19 (Third Edition, June 2015), suggesting “[t]he insured should make a public policy argument that any formula used must be adequate to place the insured in the same position he or she was prior to the loss.”

Next Week...

Health Care Law