INTRUSCO CORPORATION, Defendant/Appellant**, *v.* MOHAMOUD OSSEILY**, Plaintiff/Appellee**.**

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: December 4 and 5. Decided: January 11, 1985.

1. Admissions, whether of law or fact, which have been acted upon by others, are conclusive against the party making them.
2. A bill of exceptions must set forth the points upon which it is believed the court decided erroneously and contrary to law. To simply state that a court has erred in sustaining or overruling objections, without stating what the objections were, constitutes ground to dismiss the count in the bill of exceptions.
3. Special damages must be specially pleaded and specifically proved at the trial by a preponderance of the evidence upon which the trial jury may base its verdict.
4. Fraud, being an intentional perversion of the truth designed for the purpose of inducing another to act in reliance upon it or to part with some valuable thing belonging to him, or to surrender a legal right, is an affirmative plead.
5. Fraud is never presumed, even in third parties whose conduct comes into question collaterally.
6. Being an affirmative plea, fraud, when relied upon to establish a case, must be specifically pleaded and positively, not presumptively, proved at the trial. Hence, one claiming the perpetration of fraud on him must state with positiveness what was said, done or omitted by the person who perpetrated the fraud.
7. Actual fraud is something said, done or omitted by a person with the design to perpetrate what he knows to be a cheat or deception.
8. The law forbids the proving of fraud by testimony of witnesses based on presumptions, hypothesis and deductions.
9. Damages is a pecuniary compensation or indemnity which may be recovered by any person who has suffered a loss, detriment, or injury, whether to his person, property or rights, through the unlawful act or omission or negligence of another. It is, in legal contemplation, the sum of money which the law awards or imposes as pecuniary

compensation, recompense, or satisfaction for an injury done or a wrong sustained, as a consequence of either a breach of contract or a tortuous act.

10. Damages are of two kinds: Compensatory and punitive.

11. Exemplary damages are damages on an increased scale, awarded to the plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings,
shame, degradation or other aggravation of the original wrong, or else punish the defendant for his evil behavior or make an example of him.

12. Because exemplary damages are given for injuries such as mental anguish and distress, insult, indignity and hurt to the plaintiff's feelings, such damages are incapable of definite ascertainment, and cannot be accurately estimated or be governed or measured by any precise rule.

13. Exemplary damages are not imposed in the sense of or as a substitute for criminal punishment, but rather as enlarged damages for a civil wrong. As such, they are not criminal fines or penalties.

14. The allowance or refusal to allow exemplary damages rest in the sole discretion of the trial jury, having regards to all the circumstances of the particular case.

15. The amount recoverable as exemplary damages is not a matter of right to be subject to question by the parties.

16. A trial court has no authority to set aside a jury's verdict on the ground that the exemplary or punitive damages awarded is exorbitant, as such court has no legal or judicial yardstick to measure mental anguish and distress, insult and indignity for which such damages are awarded as compensation.

17. A jury may refuse to award exemplary damages without regard to the evidence.

18. The general doctrine is that punitive damages awarded must bear relation to the injury and the cause thereof. Thus, such damages should not be awarded in a case where the amount of compensatory damages is adequate to punish the defendant; and where compensatory damages are not adequate for the purpose of punishment, only such additional amount should be awarded as taken together with the compensatory damages will be sufficient for that purpose.

Appellee's car was damaged when it ran off the pavement and collided with a pole while appellee was attempting to dodge an unknown vehicle which was overtaking another vehicle coming from the opposite direction. Appellee's car was insured with the appellant company. Following the accident, the appel-lant company had the appellee's car towed to a garage where an assessment of the damage was carried out, presumably for repair of the vehicle. Subsequently, however, appellant wrote to the appellee informing him that it would not have his vehicle repaired and directing that he remove the said vehicle from the garage, stating that the appellee had intentionally driven his vehicle off the road and onto the pole in order to collect insurance money.

Following the exchange of letters and the continued refusal of appellant to compensate the appellee for the damage to his vehicle, the appellee commenced an action of damages against the appellant, claiming both special and general damages.

At the close of the evidence, the jury returned a verdict in favour of the appellee, awarding him $4,960.00 as special damages and $30,000.00 as general damages. A motion for new trial was filed, argued and denied, and final judgment entered by the trial court confirming the verdict. It is from this judgment that an appeal was taken to the Supreme Court.

On appeal the appellant argued that the appellee had not proved the special damages claimed by him to be entitled to an award, and that the award made by the jury, in the absence of such proof, was speculative and uncertain. It also contended that fraud had been committed by the appellee, as had been shown by appellant's witnesses; that the commission of fraud relieved appellant of any responsibility to compensate appellee for the damage done to his vehicle; and that the amount awarded as general damages was exorbitant in that it was over and above the value of the vehicle and the costs of the repairs to the car.

The Supreme Court disagreed with the contentions raised by the appellant, holding that the verdict and judgment were sound and justified, except as to certain aspects of the award of special damages. The Court reiterated the position taken by it in the past, that special damages had to be specifically pleaded and proved and that where such proof was lacking, the award would not be affirmed. It observed that the appellee had proved certain aspects of the special damages but had failed to prove others. It noted that with regards to the estimated costs for repairs to the vehicle, the appellant itself had selected the garage and had sent the car to the said garage which had provided the estimate. This document had been testified to, identified and admitted into evidence without any denial of or objections or challenge thereto from the appellant. These, the Court said, constituted a salient and

undisputed fact by the appellant and was an admission that was conclusive against the appellant. As such, it said, there was no further need for additional evidence as to what it would have cost to repair the vehicle. The Court therefore sustained the jury's award of the estimated costs of the repairs as special damages.

However, on appellee's claim to reimbursement of $1,300.00 for loss of use of the vehicle for twenty-four days, at the rate of $40.00 per day, the Court held that although the appellee had pleaded same in the complaint, he had failed, by a preponde-rance of the evidence, to prove at the trial entitlement to the amount. Thus, as to this amount, it held that the award was with-out any legal and justifiable basis, and it accordingly disallowed this portion of the award of special damages.

The Court further held, on the issue of fraud, that the appellant had failed to prove the allegations set forth in its answer that the appellee had deliberately destroyed the vehicle in an attempt to claim insurance compensation. The Court observed that the fraud to which the appellant had made reference was an alleged conspiracy between appellee and others to have his vehicle destroyed. But it noted that while witnesses had testified to the effect at the trial, these did not coincide with what had actually transpired regarding the damage to appellee's car. At the most, the Court said, the testimony of the appellant's witnesses was based on presumption, hypothesis and deductions which are forbidden in proving fraud. The law, it said, requires that fraud be affirmatively pleaded and positively proved. In the instant case, not only was there no testimony that the witness who was to destroy the car ever carried out the act, but the evidence presented by appellant was to the contrary, and showed that the accident had been caused as narrated by the appellee.

On the issue of the exorbitance of the general damages awarded by the jury, the Court opined that such award, which it referred to as "exemplary or punitive damages", are designed to compensate a plaintiff for mental anguish, distress, insult, indig-nity and hurt to his feelings, and to punish the defendant for the wanton nature of its conduct. Such damages, it said, are not susceptible to any accurate estimate or definite ascertainment, but rests solely in the sound discretion of the trial jury which may refuse or allow same. The trial court, it further said, has no legal authority to set aside a jury verdict on the grounds that the exemplary damages awarded was exorbitant, since the court has no legal or judicial yardstick to measure mental anguish, distress, insult or indignity. While the Court acknowledged that such damages must bear some relation to the injury inflicted, it observed that the refusal by the appellant to repair the appellee's car did cause the factors for which exemplary damages are justified. It concluded, therefore, that the jury did not abuse its discretion in making the

award complained of by the appellant. Accordingly, the Court *confirmed* the verdict and judgment of the trial court, with the modification mentioned hereinabove.

S. Edward Carlor of the Carlor, Gordon, Hne and Teewia Law Offices appeared for the appellant. *Gladys K. Johnson* of the Johnson, Barnes and Koenig Law Firm, in association with *Joseph Andrews,* appeared for the appellee.

MR. JUSTICE KOROMA delivered the opinion of the Court.

On July 16, 1980, the appellee insured his Fiat Sedan Car with the appellant corporation under insurance policy number 201CA, for one calendar year, covering property damage liability to the tune of $10,000.00. For this coverage, the appellee paid a total premium of $661.00 per year. The use for which the car was insured, as laid out in the policy, was for "Pleasure and Business".

On March 23, 1981, the appellee's car was involved in a traffic accident while on a business mission on the Monrovia- Kakata Highway. A police charge sheet, which forms part of the record certified to this Court, shows that the appellee's car ran off the pavement and collided with a light pole, and that the accident occurred while appellee was attempting to dodge an unknown vehicle which was overtaking another vehicle from the opposite direction. Upon receiving report from the appellee of the traffic accident, involving the insured's car, the appellant towed the appellee's car to a garage of its choice for repairs. On March 27, 1981, the Modern Freeway Garage, located on the Gardnersville Highway, submitted an estimated cost of repairs in the amount of $3,600.00.

About a week later, on April 6, 1981, the appellant, by and through its assistant claims manager, Charles L. Ananaba, wrote the appellee informing him that the appellant corporation could not undertake the repair of the appellee's car because he had deliberately destroyed his own vehicle. For the benefit of this opinion, we have decided to quote this letter and other communi-cations that were exchanged between the appellee and appellant:

"INTRUSCO CORPORATION
80 BROAD STREET
MONROVIA, LIBERIA
April 6, 1981

Mr. Mohamoud Osseily
P.O. Box 2597
Monrovia, Liberia

Dear Mr. Osseily:

Sub: Collusion to Flat Sedan

Policy No. 201CA 13797

Claim No. 515A-9986

Date of Event 3/23/81

In regard to our discussion with reference to the above captioned claim, I would like to bring to your attention that the insurance contract requires utmost good faith as a condition at all times. Your deliberate destruction of your vehicle has voided that condition thereby making it impossible for the policy to respond.

I suggest you take delivery of your vehicle from the Modern Freeway Garage as we are not prepared to have it repaired.

Please do not hesitate to contact me if you should have questions regarding the decision taken.

Very truly yours,

Sgd: Charles L. Ananaba

ASSISTANT MANAGER-CLAIMS

CLA/jtn"

The appellee's answer to the above letter is very interesting, squarely addressing itself to the issue raised by appellant. We herein quote said letter:

"FREE AND SMITH LAW ASSOCIATION

20 CAMP JOHNSON ROAD

MONROVIA, LIBERIA

April 15, 1981

"Mr. Charles L. Ananaba

Assistant Manager-Claims

Intrusco Corporation

80 Broad Street

Monrovia

Ref: Collision to Fiat Sedan

Policy No. 201CA 13797

Claim No. 515A-9986

Date of Event 3/23/81

Dear Mr. Ananaba:

Your letter of 6th April, 1981, addressed to our client, Mr Mohamoud Osseily, in

reference to subject claim, has seen referred to us for appropriate attention.

Having carefully nudged the contents of your said letter, we wondered how a person of normal mind would sacrifice his life, or that of any other person, by deliberately destroy-ing his vehicle simply to gain benefits under an insurance policy of such a meager sum, but when our attention was drawn to the diagram prepared by the police officer who went on the scene and investigated the accident, we assumed that you did not see said diagram, hence your letter above referred to.

We submit that although the diagram tends to show the right-of-way in favor of your insured's vehicle, we maintain that the deflection to avoid the more serious danger which could have resulted into death was the best decision. We therefore attached photo copy of said diagram for your good judgment.

Under the above circumstances, and, as a means of fair play and that utmost good faith which your insurance contract requires as a condition at all times, we suggest that you reconsider your said decision and have our client's vehicle repaired with an award for the time he has been out of its use.

We trust that this will claim your prompt attention.

Very truly yours,
Sgd: J. Henrique Smith
COUNSELLOR-AT-LAW"

Appellant's reply is herein quoted:

"LAW OFFICES
CARLOR, GORDON, HNE AND TEEWIA
CORNER BROAD AND GURLEY STREETS
P.O. BOX 224
MONROVIA, LIBERIA

April 28, 1981

Counsellor J. Henrique Smith
Free and Smith Law Association
20 Camp Johnson Road
Monrovia, Liberia

Dear Counsellor Smith:

Re Collusion of Fiat Sedan
Policy No. 201CA 13797
Claim No. 515A-9986

Date of Event 3/23/81

We refer to your letter dated April 15, 1981, addressed to our client, Intrusco Corporation, on the claim of your client Mr. Mohamoud Osseily, relative to the above captioned incident.

Our client possesses documented evidence which tends towards a serious lack of good faith on the part of your client in connection with the said incident. Our client therefore reiterate the position of their letter of April 6, 1981, and accordingly find themselves unable to comply with the request of your letter now under acknowledgment.

Very truly yours
CARLOR, GORDON HNE AND TEEWIA
Sgd: Victor Hne
COUNSELLOR-AT-LAW

VDH/jww
cc: Mr. Charles Ananaba
Intrusco Corporation"

The substance of these letters could be properly adjudged by social justice as a demonstration of bad faith on one side and good faith on the other. We shall however address ourselves to this later on in this opinion when we are settling the issue of fraud argued before this Bench by the appellant.

Following the fruitless exchange of these communications, the appellee sought redress in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, when, on May 28, 1981, he instituted an action of damages, demanding a judgment for $4,960.00 for lost of use and estimated cost of repair of his car. Pleadings progressed and rested at the appellee's reply. A trial was duly held upon the facts ruled to trial, at the conclusion of which the jury brought a verdict awarding the appellee $4,960.00 as special damages and $30,000.00 as general damages. A motion for new trial having been filed, argued and denied, the appellant has appealed from the final judgment of the trial court confirming the verdict of the trial jury, and has perfected its appeal to this Court. This case is before us for re-view and final determination upon a ten-count bill of exceptions.

For our purpose in the fair determination of this case, we shall give judicial cognizance to counts 1 to 3 and 7 to 10 of the bill of exceptions, counts 4 to 6 being irrelevant and immaterial.

In count one of the bill of exceptions, the appellant has contended that the trial judge

erred when he confirmed the jury's verdict because said verdict is completely against the weight of evidence adduced at the trial. In count two of the bill of exceptions, the appellant had attached error to the denial of the motion for new trial, giving the same reason that the verdict is not in harmony with the evidence and the law controlling. These two counts are a summary of all the other counts in the bill of exceptions which we are going to traverse, and by that, the contentions in these two counts will have been settled. Hence we will proceed to count three.

The legal contention of the appellant to the effect that special damages must be specially pleaded and proven at the trial is indeed the legal principle upon which any action of special damages must rest for its successful conclusion in a court of law. This Court has always based its conclusions in actions of special damages on this principle. Under the doctrine of *stare decisis,* it cannot now depart from those holdings.

In count four of plaintiff's complaint he pleaded that he had been damaged in the sum of $3,600.00. Appellee argued that when his insured car got damaged in a traffic accident, he reported it to the appellant company, and that appellant then had the car removed and carried to a garage of its choice, where it obtained an estimate to have the said car repaired and restored to its former condition. A copy of this estimate was proferted with the complaint and said count in the complaint was ruled to trial.

In traversing plaintiff's contention of being damaged to the tune of $3,600.00, being the garage's charge for spare parts and workmanship to restore the plaintiff's car to its former condition, the defendant admitted in count four of the answer that it obtained the estimated cost of repair of the plaintiff's car from its own garage. However, it then went on to argue that the claim by the plaintiff of the amount as damages was speculative and uncertain. The speculation and uncertainty that the defendant predicated its argument upon is that the cost of repair of the plaintiff's car could be more or less than $3,600.00.

In count five of plaintiff's reply, he decried this quality of pleading as being evasive and prayed for said count to be overruled. Although the trial court ruled this count to trial, it was a proper subject for dismissal. For, not only was the estimated cost of repairing the plaintiff's car prepared at the instance of the defendant by its own garage, but the estimate was never rejected by the defendant under the claim that it was uncertain or that its preparation was influenced by the plaintiff. The fact that the defendant subsequently refused to undertake the obligation of repairing the plaintiff's car, for the reason stated in count two of the answer, did not vitiate the fact that $3,600.00 was the amount required by the Modern Freeway Garage to restore the plaintiff's car to its former running condition. As a matter of fact, this

estimate was never questioned by the defendant when it was testified to by witnesses and admitted into evidence. Hence, the estimate, having been prepared at the instance of the defendant, and not rejected by it as being uncertain and speculative, it having been pleaded, ruled to trial, testified to and admitted into evidence without any objection, constitutes a salient and un-disputed fact and an admission of the legality of such fact by the defendant. Admissions, whether of law or fact which have been acted upon by others, are conclusive against the party making them. *Richards v. Coleman,* 6 LLR 285 (1938). Counts three and eight of the bill of exceptions, which contain this contention of the defendant, are therefore overruled.

With regards to count four of the bill of exceptions, which we have said is irrelevant and immaterial to a fair determination of this case, we base our holding on the fact that said count is ambiguous and unintelligible. In that count, the appellant failed and neglected to state the questions that were asked by both the plaintiff and defendant during the trial, the objections that were interposed to such questions, and the rulings of the court sustaining or overruling those objections. To simply state, as was done in the instant case, that a court has erred in sustaining or overruling objections without stating what the objections were, constitutes ground to dismiss such count in the bill of exceptions. For, in appeals, the bill of exceptions must set forth the points upon which it is believed the court decided erroneously and contrary to law. *Anderson v. McLain*, 1 LLR 44 (1868). Count four of the bill of exceptions is therefore overruled.

A careful perusal of the records certified to this Court shows that neither the verdict nor the judgment was based on any issue raised in counts five and six of the bill of exceptions. Hence the issues therein raised do not deserve our judicial consideration. Counts five and six of the bill of exceptions are therefore overruled.

In count five of the complaint, the plaintiff in the court below contended that based upon the defendant's refusal to repair his car, he had to spend $40.00 a day for transportation and continued to spend this amount for thirty-four (34) days. Hence, he demanded $1,360.00 as special damages. However, at the trial, the plaintiff failed to produce evidence sufficient to support this claim. We have held on numerous occasions that special damages must be specially pleaded and specifically proven at the trial by preponderating evidence upon which the trial jury may base its verdict. Hence where special damages are relied on, as in this case, they must be laid in the complaint and proven. *Appleby v. Freeman & Son,* 2 LLR 271 (1916) and *Firestone Plantations Company v. Greaves,* 9 LLR 250 (1947). We are of the opinion that under the foregoing principles of law, the special damages of $1,360.00

laid in the complaint have not been proven at the trial, and therefore, the confirmation of the jury verdict in this respect was error on the part of the trial judge.

Counts nine and ten of the bill of exceptions embrace very important issues of law and fact for the determination of this Court. In those counts, the appellant contended that the trial jury abused its discretion in awarding $30,000.00 as general damages, and that the trial court erred in confirming this award, since indeed the car which was damaged cost only $5,000.00 and the cost of repair estimated at $3,600.00. In other words, the appellant contended that the general damages awarded was not in proportion to the value of the car and the estimated cost of repair and therefore exorbitant. The appellant contended further that as the plaintiff had not proved the special damages laid in the complaint, no legal ground therefore existed for the award of general damages.

In passing upon the later of the two issues, we take recourse to the pleadings, particularly the answer, and the evidence adduced at the trial. We find in count two of the answer the issue of fraud being vaguely raised by the defendant when it contended that the plaintiff facilitated the destruction of his own vehicle and was attempting to claim benefits from such fraudulent act. During the trial, the defendant produced Mr. Charles L. Ananaba, claims manager of Intrusco and one Mathew Tuo, a store boy of the plaintiff, to testify to the act of fraud on part of the plaintiff, which resulted in the destruction of his own car. The testimony of army officer Elijah Cole during the first trial of the case was made a part of the records of the second trial, upon application of the defendant and against the objection of the plaintiff. The testimony of Charles Ananaba is based upon what was told him by Elijah Cole and Mathew Tuo, who are said to have made voluntary statements concerning the alleged plan of the plaintiff to destroy his own car. The voluntary statement of Elijah Cole and his testimony during the first trial were both admitted into evidence and made a part of the records of the second trial, since the sheriff's returns to a subpoena showed that Elijah Cole could not be found. An analysis of the voluntary statements of Elijah Cole and Mathew Tuo, which statements the defendant claims constitute the basis of the act of fraud on part of the plaintiff, will disclose a conglomeration of judicial flaws. We note the following: (1) There is no showing as to where, why and upon whose request these so-called voluntary statements were made. (2) Why were these voluntary statements not made before a person authorized by law to take such depositions? (3) Why were the statements not notarized as the law requires, before their admission into evidence? These and many other questions remained unanswered when the statements were admitted into evidence over and above the objections of the plaintiff.

Our colleague, Mr. Justice Yangbe, who dissents, has capita-lized upon these voluntary statements and the testimonies of army officer Elijah Cole and Mathew Tuo, and has concluded therefore that the plaintiff in this case perpetrated fraud. Being in complete disagreement with his conclusion, we will proceed to point out where lies the weakness of the plea of fraud and the evidence in support thereof.

Fraud being an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right, is an affirmative plea. BLACK'S LAW DICTIONARY 788 (4th ed. 1951). Fraud is never presumed even in third parties, whose conduct comes into question collaterally. *Sancea v. Republic,* 3 LLR 347,354 (1932). Fraud must be affirmatively pleaded and positively proven at the trial. In the instant case, the defendant unprofessionally raised the issue of fraud in count two of the answer by stating, and we quote:

> "Defendant says that the claim of the plaintiff is fraudulent in that according to evidence which substantially came to the knowledge of the defendant, the plaintiff collided in and facilitated the destruction of his vehicle as shown by signed statements which were given to the defendant by Pvt. Elijah M. Cole and Mathew Tuo. Defendant says that such an attempted fraud on the part of the plaintiff voids the insurance policy in accordance with the provisions of the policy."

By this count, it appears that the defendant is arguing on one hand that the plaintiff's claim is fraudulent and not necessarily that the plaintiff had committed or perpetrated fraud, while on the other hand, it appears that the defendant's contention is that the plaintiff had not committed any fraud but was attempting to commit same. What a bad plea. The claim laid in the complaint is that of the garage's estimate to repair a damaged car, and the plaintiff claim to this amount, as owner of the damaged car, does not in any way spell fraud. Actual fraud is something said, done, or omitted by a person with the design to perpetrate what he knows to be a cheat or deception. One claiming the perpetration of fraud on him must state with positiveness what was said, done or omitted by the person who perpetrated the fraud. In the instant case, Elijah Cole and Mathew Tuo testified that the plaintiff requested Cole to destroy his car so that the insurance company could pay for it. This indeed is a positive statement of what was allegedly said by the plaintiff, although said statement was challenged by the plaintiff and rebutted by witnesses at the trial. However, as to what was done, that is, the destruction of the car, the testimony of no witness for the defendant is positive. Indeed, the testimony of all of the defendant's witnesses on the issue of the destruction of the car is based on presumption, hypothesis and deduction, a method which the law strictly forbids in

proving fraud. Elijah Cole and Mathew Tuo, whose voluntary statements and testimonies the defendant has capitalized upon as constituting the fraudulent act of the plaintiff, also testified to the cardinal fact that not only did Elijah Cole not destroy the car but also that they were not present when the accident took place. They never even testified that they ever went to the scene of the accident. On the contrary, the driver and the store boy who were in the car at the time of the accident, testified as to what happened. Their testimony was confirmed by the police report which was never challenged by the defendant, even up to this appellate level. Fraud is an affirmative plea and when relied upon to establish a case, must be specifically pleaded and positively, and not presumptively, proven at the trial. This not having been done, the defendant cannot benefit in this case by the plead of fraud.

Having now dispelled the nightmare of fraud over the claim of $3,600.00, we hold that there existed grounds for the trial jury to award general damages to the plaintiff. As to the exorbitance of the said award, as argued before this Bench by the appellant, we shall now proceed to address ourselves thereto.

Damages, as defined by legal authorities, is a pecuniary com-pensation or indemnity which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property or rights, through the unlawful act or omission or negligence of another. BLACK'S LAW DICTION-ARY 466 (4th ed. 1951). Further, in legal contemplation, the term damages is the sum of money which the law awards or imposes as pecuniary compensation, recompense, or satisfaction for an injury done or a wrong sustained, as a consequence either of a breach of a contractual obligation or a tortuous act. Dama-ges, generally speaking, are of two kinds. They are compensa-tory damages and punitive damages 15 AM. JUR, *Damages*, § 2.

In the settlement of the contention raised in counts nine and ten of the bill of exceptions, we shall concern ourselves with the latter of the two kinds of damages. Exemplary or punitive damages are usually referred to in our civil jurisdiction as general damages.

The appellant has contended that the trial jury abused its discretion when it awarded the plaintiff $30,000.00 as general damages and that the trial judge erred when he confirmed the verdict in this respect. The reason which the appellant has advanced in support of this contention is that the value of the car, being $5,000.00, and the estimated cost of repair, being $3,600.00, the award of $30,000.00 as general damages, over and above the total of the value of the car and cost of repair, is therefore exorbitant.

While our tireless effort to find any legal authority to support this contention of the appellant has failed us, we have found numerous holdings as to what constitutes exemplary or punitive damages and how they are distinguished from fines and penalties which, when imposed, could be considered exorbitant or excessive. Quoting from BLACK'S LAW DICTIONARY, we have the following:

> "Exemplary damages are damages on an increased scale, awarded to the plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of vio-lence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation or other aggravations of the original wrong, or else to punish the defendant for his evil behavior or to make an example of him." BLACK'S LAW DICTIONARY 467-468 (4th ed. 1951).

Further:

> "Exemplary or punitive damages are generally defined or described as damages which are given in enhancement merely of the ordinary damages of the wanton, reckless, malicious, or oppressive character of the acts complained of. Such damages go beyond the actual damages suffered in the case; they are allowed as a punishment of the defendant and as a deterrent to others.
>
> In most jurisdictions exemplary damages are allowed and awarded as a punishment to the defendant and as a warning and example to deter him and others

from committing like offenses in the future. Under this theory such damages are allowed on grounds of public policy and in the interest of society and for the public benefit, not as compensatory damages, but rather in addition to such damages.

It is also held that such damages are given on the theory that the injury is greater, and the actual damages are increased by reason of the aggravating circum-stances. Thus, it has been held that they be given as compensation for injuries which cannot be accurately estimated, such as mental distress and vexation, or what in common language is spoken of as "offenses of the feelings", "insults", "indignity". 15 AM JUR., *Damages*, §§ 265 & 266.

Damages are not fines and penalties and the legal authorities on this point hold that:

"Whatever, in legal contemplation, exemplary damages may be, whether basically they are compensatory or punitive in their nature, they are not imposed in the sense of or as a substitute for criminal punishment, but rather as enlarged damages for a civil wrong. They are to be distinguished therefore from a fine that the latter is an amercement imposed on a person for a past violation of the law, while exemplary damages have reference rather to the future than to past conduct of the offender and are not given as a compensation to the injured party, but as an admonition to the offender not to repeat the offense. *Id.,* § 267, at 703.

Predicated upon these legal authorities, we can safely say that the trial jury did not abuse its discretion in awarding the amount of $30,000.00; nor did the trial judge err when he confirmed this award. For exemplary or punitive damages are given as compensation for injuries such as mental anguish and distress, insult, indignity and hurt to the plaintiff's feelings, etc. which cannot be accurately estimated. As the allowance or refusal to allow exemplary damages rests in the discretion of the trial jury, so also the amount recoverable is not a matter of right subject to question by parties. A trial court has no legal authority to set aside a jury's verdict on the ground that the exemplary or puni-tive damages awarded is exorbitant, as such court has no legal or judicial yardstick to measure mental anguish and distress, insult and indignity for which such damages are awarded as compensation.

While legal authorities hold that the jury may refuse to award exemplary damages without regard to the evidence, it is certain that in the instant case the trial jury took into serious considera-tion the evidence adduced at the trial which spelled the anger and distress of the plaintiff. According to the insurance policy, the insured car was to be used for business and pleasure. In their testimonies, the plaintiff and his witnesses testified to the effect that the car transported the plaintiff's children to and from school and went on business errands. There is no denial that the insured car was not used for the purpose for which it was insured. It therefore reasonably follows that when the car was grounded and parked by virtue of the accident, the plaintiff suffered depriva-tion of the services which the said car heretofore rendered. The fact that plaintiff did not establish by preponderance of evidence his financial expenditures during the period he was deprived of the services of his insured car does not

vitiate the fact that he did not suffer such deprivation, or that he was not thereby subjected to mental anguish, vexation and distress. Exemplary damages are incapable of definite ascertainment and from their nature, cannot be governed or measured by any precise rules. The general doctrine is that the punitive damages awarded must bear some relation to the injury inflicted and the cause thereof. They should not be awarded in a case where the amount of compensatory damages is adequate to punish the defendant. And in a case where such compensatory damages are not adequate for the purpose of punishment, only such additional amount should be awarded as taken together with the compensatory damages will be sufficient for that purpose. The amount to be awarded rests largely in the discretion of the jury having regard to all the circumstances of the particular case. 15 AM JUR., *Damages*, § 295.

It is our candid opinion that under the foregoing principle of law, the trial jury did not abuse its discretion in awarding $30,000.00 as exemplary damages to the plaintiff; nor did the trial court err in confirming the said award when all the circum-stances surrounding this case are considered.

Wherefore, and in view of the foregoing facts and circum-stances narrated herein, as well as the legal authorities herein cited, it is our holding that the judgment of the trial court be and same is confirmed with the following modifications: That the plaintiff not having proven the special damages of $1,300.00, is not entitled to such award. The said amount is therefore hereby deducted from the special damages awarded by the jury. The judgment, as modified, is confirmed with cost against the appel-lant. And it is so ordered.

Judgment confirmed with modification.