THE LIBERIA MINING COMPANY, by and through its general manager, W. E. SHEIBE, Appellant, *v.* AHAMADA ZWANNAH, Appellee.

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

Argued May 15, 1968. Decided June 14, 1968.

1. In an action of damages for injury to personal property, if the chattel is damaged beyond repair the measure of damages is the market value thereof at the time of loss. If the chattel is reparable, the measure of damage is the cost of repair together with the loss of income therefrom during the time for repairs.
2. Objections to the charge of a judge to the jury must be by specific objection to particular portions thereof.

A motor truck owned by plaintiff was totally wrecked in an accident caused by the negligence of the defendant. The jury returned a verdict for the plaintiff, allowing both the value of the vehicle at the time of the accident, and the loss of income therefrom, based on executory contracts for haulage. The defendant appealed from the judgment of the trial court affirming the jury's verdict. The *judgment* was *modified* on appeal, recovery being allowed only for the market value of the vehicle and, as modified, was affirmed.

O. Natty B. Davis for appellant. *MacDonald M. Perry* for appellee.

MR. JUSTICE SIMPSON delivered the opinion of the court.

On February 24, 1966, Ahamadu Zwannah filed an action of damages for injury to personal property against the Liberia Mining Company, for damage done to one Henschel diesel truck owned by plaintiff.

The complaint which was filed in the Sixth Judicial Circuit Court, Montserrado County, substantially alleged

that on February 12, 1966, plaintiff's truck was plying the highways, and defendant's driver while operating vehicle no. T-1364, recklessly ran into plaintiff's truck and damaged same. The complaint additionally alleged that, realizing its responsibility for damage to plaintiff's vehicle, defendant had the truck towed away for repairs; however, up to the time of the filing of the suit this had not materialized.

In the circumstances, plaintiff, now appellee in these proceedings, prayed for recovery against appellant by way of the full value of the damaged vehicle, together with a per diem loss of $125.00 for two hundred days, predicated upon sundry executory contracts for freight hauling.

After the filing of a formal appearance, appellant, then defendant, filed a six-count answer. Count two of the answer contended that for there to be a proper invocation of the doctrine of *respondeat superior* to vicariously hold defendant liable for the acts of his agent, there should have been an allegation or averment in the complaint to the effect that the damage was sustained while the driver was operating within the scope of his employment.

Counts three and four, respectively, held that the nature and extent of the damage sustained should have been given and profert should have been made of the contracts of freight-carrying mentioned in the complaint. The complaint, therefore, was defective for failure to so plead.

The last issue raised by appellant by way of answer to the complaint filed, dealt with the amount of recovery allowable under the law in the factual circumstances given. It was contended by defendant that in an action of damages the law allowed recovery for the *res* where totally destroyed. In instances where the *res* is not totally destroyed, the recovery is predicated upon loss of use and/or use and its consequential damages. In the circumstances the law would not allow consequential damages plus the value of the damaged chattel.

In ruling on the issues of law, the trial judge made an extensive ruling in respect to the issue of improper service of summons. However, he studiously avoided any comment upon the other issues raised, except to rule the case to trial on all counts of the complaint and counts 2, 3, 4, 5, and 6, of the answer, which he held presented mixed questions of law and fact. Strangely enough, no exceptions were taken to the ruling of the judge on the issues of law.

After trial, a verdict was returned in favor of plaintiff, in the amount of $33,300.00. Of this amount, $8,300.00 was for the vehicle, and the residue, $25,000.00 for loss of per diem income. A motion for a new trial was denied by the judge and thereafter he gave judgment on the verdict, confirming the verdict of the jury. It is from this judgment that an appeal has been brought to this court.

The appeal has come here upon a five-count bill of exceptions. The first three counts of the bill deal with the judge's instructions to the jury. However, when argument commenced, appellant was called to a point of order in regard to the objections to a portion of the charge to the jury. It was contended that where particular portions of the charge are deemed prejudicial to a party litigant, that party must make specific averments in respect to objections to the particular portion of the charge, and mere exceptions to the charge *in toto* is not allowable, especially where a particular portion thereof favors the party raising the exception. The point of order was sustained by the court, leaving but the last two counts of the bill legally reviewable. These had to do with the judge's denial of the motion for a new trial and his consequent affirmation of the verdict of the jury.

In the premises, we find that this court has for review only one major point, and this has to do with whether, in an action of damages for injury to personal property, recovery may be had for both the depreciated value of the

chattel and loss of per diem income predicated upon executory contracts of freight hauling.

This Court feels that the issue here is elementary and its determination available with relative facility. In an action of damages for injury to personal property, the chattel must be damaged beyond repair or be reparable. If it is damaged beyond repair, the measure of damages recoverable by the damaged party is the depreciated value of the *res* just prior to its destruction. Conversely, when the damage can be repaired and the chattel be restored to the *status quo ante,* the measure of damage is the cost of repair coupled with loss of income. Now, in this case, other issues were argued with regard to what constitutes actionable loss of income where executory contracts existed in respect to use of the particular chattel. These questions, though interesting, need not be resolved, for the determination of the present suit is that the vehicle was totally destroyed. Therefore, by virtue of what has been held above, the depreciated value of the vehicle at the time of its destruction constitutes the amount recoverable for it.

In view of the above, the judgment of the court below is affirmed, with the modification to the effect that only the $8,300.00, at six percent interest from the time of the accident, is allowable as damages under the circumstances. Costs in these proceedings are ruled against appellant. And it is hereby so ordered.

Affirmed as modified.