

**IN THE HONORABLE SUPREME COURT OF LIBERIA SITTING IN ITS
MARCH TERM, A.D. 2017**

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
 BEFORE HIS HONOR KABINEH M. JA'NEH.....ASSOCIATE JUSTICE
 BEFORE HER HONOR: JAMESETTA H. WOLOKOLLIE.....ASSOCIATES JUSTICE
 BEFORE HIS HONOR: PHILIP A. Z. BANKS, III.....ASSOCIATE JUSTICE
 BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE

Mr. Kantara Malian Kamara of the City of
 Monrovia, Republic of Liberia.....1ST APPELLANT/PLAINTIFF)

VERSUS)

APM Terminals Liberia, by and thru its Authorized
 Representative, also of the City of Monrovia, Republic
 of Liberia..... APPELLEE/DEFENDANT)

APPEAL

AND)

Camer Shipping Corporation by an thru its Authorized
 Representative, also of the City of Monrovia, Republic
 of Liberia.....2nd 1ST APPELLANT/3RD DEFENDANT)

GROWING OUT OF THE CASE:)

Mr. Kantara Malian Kamara of the City of
 Monrovia, Republic of Liberia.....PLAINTIFF)

VERSUS)

Fortress Liberia, Ltd by and thru its Authorized
 Representative, of the City of Monrovia
 Liberia.....1st DEFENDANT)

AND)

ACTION:
 DAMAGES FOR WRONG

APM Terminals Liberia, by and thru its Authorized
 Representative, also of the City of Monrovia, Republic
 of Liberia2nd DEFENDANT)

AND)

Camer Shipping Corporation by an thru its Authorized
 Representative, also of the City of Monrovia, Republic of
 Liberia..... 3rd DEFENDANT)

Heard: April 20, 2016

Decided: September 29, 2017

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This appeal is an outgrowth of an action of damages for wrong filed before the Sixth Judicial Circuit Court, Montserrado County, by Mr. Kantara Malian Kamara, the 1st appellant/plaintiff.

The facts of this case are indisputable. The Ship, M/V JIAN QIANG, arrived at the Freeport of Monrovia with a consignment of cement for Fortress Liberia Limited, 1st defendant, in the court below. The 1st defendant, Fortress Liberia Limited, hired the Port Truckers Association to transport its consignment of cement to its points of

destination. The appellee, APM Terminals Liberia, who is in charge of the handling of cargo at the National Port Authority (NPA), contracted the 2nd appellant, Camer Shipping Corporation, to perform stevedoring activities to offload the cargo of bagged cement on board the ship onto the hired trucks. On the 17th day of November, 2011, while the cargo of cement was being offloaded from the ship by the 2nd appellant, the shackles attached to the lifting rig broke, causing the sling with several bags of cement to fall off the rig onto the cabin of the 1st appellant's truck; thereby, damaging same.

In his complaint in the court below, the 1st appellant alleged that he attempted to have the matter settled amicably but his request made for settlement was rejected by the defendants, who instead referred the matter to the 2nd appellant's insurer, Mutual Benefits Assurance Company. The insurance company, 1st appellant said, told him that consultations with several garages revealed that the truck could not be repaired; therefore, in compensation for the damaged truck, it was willing to offer him the book value of his vehicle as at the date of the accident, which the insurance company calculated and determined to be Six Thousand One hundred and twelve United States Dollars US\$6,112.00 as per its policy. The insurance company's determination, 1st appellant states, was based on the purchased cost of the vehicle in 2010, established as Eighteen Thousand, Three hundred United States Dollars (US\$18,300.00), less the accumulated depreciation of the truck at the official rate of 33.3% per year for the two years the 1st appellant had used the vehicle prior to the accident. This offer, 1st appellant said, was insulting or unreasonable, which prompted him to file an action of damages for wrong before the Sixth Judicial Circuit, Civil Law Court, Montserrado Court, jointly holding liable the 1st defendant, Fortress Liberia, Ltd, the importer of the cement which hired the truck; the 2nd defendant, the Appellee APM Terminals Liberia; the operator of the terminal of the Freeport of Monrovia who contracted the services of the 3rd defendant, Camer Shipping Corporation, to carry out the stevedoring services; and the Camer Shipping Corporation, 3rd defendant/2nd appellant, for its negligence in the offloading of the cement.

The 1st appellant in his complaint, prayed for special, general and punitive damages, alleging that since the accident, the appellee APM Terminals, Liberia had refused to allow his other trucks to enter the concession area of the Free Port of Monrovia, a clear violation of Section 5.03(f) of the concession agreement in which appellee, APM Terminals, Liberia had pledged to grant shipping lines' employees and agents and the staff of any contractor employed by them, access to the concession area. Counts 9 and 10 of the complaint setting out the 1st appellant's claim of damages reads as follows:

9. "In view of counts one thru eight, plaintiff contends that the 2nd defendant is liable to plaintiff in view of the fact that it was said 2nd defendant who appointed 3rd defendant as stevedores on board the M/v JIAN QIANG and thru whose gross negligence plaintiff's truck was wrecked; hence, 2nd defendant must be held responsible for any and all damages to plaintiff under the doctrine of *respondet superior* which is consistent with section 17d which provides that "APM Terminals, Liberia shall be liable to a port user for any loss or damage to any vessel where such loss or damage was caused by the gross negligence or willful default of APMT, its agents, servants or sub-contractors ..." Excerpt from the APMT Concession Agreement and APMT Tariff for 2011 are hereto annexed as Exhibit R/9 in bulk to form a cogent part of this complaint. The damages claimed by plaintiff are as follows:
 - a) Special damages in the amounts of US\$47,790.00 (Forty-Seven Thousand Seven Hundred & Ninety United States Dollars) representing cost of repairing plaintiff's truck in the amount of US\$8,000.00 (Eight Thousand United States Dollars) and US\$39,790.00 (Thirty Nine

Thousand Seven Hundred & Ninety United States Dollars) being loss of income up to and including May 8, 2012, as per attached schedule marked Exhibit P/10 to form a cogent part of this complaint and which loss of income shall continue to increase daily as long as 2nd defendant fails to restore plaintiff.

- b) General damages in the amount of US\$150,000.00 (One Hundred & Fifty Thousand United States Dollars), and,
- c) Punitive damages in the amount of US\$350,000.00 (Three hundred & Fifty Thousand United States Dollars) for defendants wrongful conduct.

10. Plaintiff says that damages would lie in view of defendant's negligence in overloading the crane of the said vessel and wrongful conduct in refusing to make plaintiff whole after damaging plaintiff's truck and causing plaintiff to lose income during the period his truck had been damaged, punitive damages for the wicked, reckless, irresponsible and careless conduct.

WHEREFORE AND IN VIEW OF THE PROCEEDING, plaintiff prays that Your Honor grant this complaint and hold defendants liable for special damages in the amount of US\$47,790.00; general damages in the amount of US\$150,000.00; and punitive damages in the amount of US\$350,000.00 and grant unto Your Humble plaintiff any and all other relief the law affords and that the defendants be ruled to pay all costs and expenses in this case."

The 1st defendant, Fortress Liberia, Ltd., answered and prayed the trial court to deny and dismiss 1st appellant's complaint, as well as his prayer therein, on grounds that the 1st appellant did admit in count 4 of his complaint that the accident occurred as a result of the 2nd appellant negligently overloading the sling with cement bags and which act was the direct cause of the accident and could not be attributed to the 1st defendant; that Fortress Liberia, Ltd. had only hired the Port Truckers Association to transport its consignment of cement but was neither the owner nor operator of the crane at the time the incident occurred. Also, Fortress Liberia, Ltd. alleged that it had no contractual obligation with the 1st appellant; instead, the agreement to transport Fortress Liberia, Ltd.'s consignment of cement was entered into by it and the Port Truckers Association, which was paid in full, in total satisfaction of its obligation to the Association; that counts 9 and 10 of the complaint were admissions by the 1st appellant that he had no claims against Fortress Liberia, Ltd. So, Fortress Liberia, Ltd. prayed that it be exonerated from the said suit based on the 1st appellant's own admissions in the complaint. It filed along with its answer a motion to dismiss the 1st appellant's complaint against it. This motion to dismiss the Fortress Liberia, Ltd., as a party defendant, was denied.

The appellee, APM Terminals, Liberia, responding to the complaint in an amended answer, admitted that the 1st appellant's truck did get damage by the 2nd appellant, Camer Shipping Corporation, which was hired by it for offloading cargo from the M/V JIAN QIANG vessel; that the offloading of the cement commenced under Appellee APM Terminals' direction and supervision, and when appellee was certain that the cargo was being discharged in a safe manner, it became unnecessary for it to remain present at all times. The appellee further asserted that from a perusal of the 1st appellant's exhibit P/1, it could not have been possible for the 1st appellant to have made Four Hundred and Fifty United States Dollars (US\$450.00) per day as alleged in count 5 of his complaint, since the total price which Fortress Liberia, Ltd. said it agreed to pay the Port Truckers Association for transporting the consignment of cement was Twenty Two Thousand, Five Hundred United States Dollars (US\$22,500.00) to cover the supply of a minimum of fifteen (15) trucks. The total number of days which it took to complete the

offloading of the cargo was eight days (November 15-22). The appellee, APM Terminals further averred that if the Truckers Association had assigned a maximum of fifteen trucks to transport the cargo for the sum of US\$22,500.00, each truck would have earned a total of One Thousand, Five Hundred United States Dollars (US\$1,500.00) over the period of eight days. In other words, on a daily basis, each truck would have earned one hundred and eighty-seventy dollars and fifty cents (US\$187.50) per day and not Four Hundred and Twenty United States (US\$420.00) as alleged by the 1st appellant. Referring to the letter from the insurance company, the appellee said it was normal for a party who has an insurance coverage to call upon its insurer to indemnify it, especially where the claimant does not have an insurance coverage. Therefore, the 2nd appellant, Camer Shipping Corporation, being insured, referred the issue of the damaged truck to its insurer to address. Further, the appellee averred that it is common in the insurance industry that the book value of a damaged vehicle is taken into consideration when an insurance company makes a decision regarding whether to write off or repair a damaged vehicle. The custom in the insurance industry, APM Terminals stated, is that, if the cost of repairing a damaged vehicle exceeds the book value of the vehicle at the time an accident occurred, the book value of the vehicle at the time of the accident is paid. In this case, appellee says the book value of the 1st appellant's truck was determined by the insurance company to be US\$6,112.00. This amount was derived at by the insurance company based on the purchase price of the vehicle (US\$18,300.00) as supplied by the 1st appellant, less it accumulated depreciation at the official rate of 33.3% per year for the two years the 1st appellant had used the vehicle prior to the accident. Accordingly, appellee stated that the letter from the insurer, Mutual Benefits Assurance Company and the offer contained therein was in no way insulting or unreasonable.

The 2nd appellant, Camer Shipping Corporation, did not file an answer to the complaint and accordingly was ruled to bare denial on all the allegations as contained in the 1st appellant's complaint.

The parties having agreed to a bench trial, the case was ruled to trial without a jury, commencing with the 1st appellant/plaintiff taking the stand along with his driver to testify in support of his complaint.

Both the 1st appellant and his driver testified to the undisputed facts that the 1st appellant's truck was damaged when the cargo of cement on the M/V JIAN QIANG vessel was being offloaded unto the 1st appellant's truck and the shackles attached to the lifting rig broke, resulting to a load of cement falling onto the truck. The driver further said the incident occurred when he left the truck to urinate and it was by the mercy of God that he was saved.

Taking the stand, the appellee, APM Terminals, presented three witnesses. The first witness, Jackie Smith, from the Mutual Benefit Assurance Company, testified that the insurance company was contacted by the 2nd appellant, Camer Shipping Corporation, after the accident occurred. The insurance company made contact with the 1st appellant, and working along with him, it was established that his truck was totally damaged and could not be repaired; accordingly, the insurance company made the decision that the truck be written off and the 1st appellant be paid the value of his truck at the time of the accident. This decision of the insurance company was communicated to the 1st appellant by a letter dated January 27, 2014. The witness explained that in the insurance industry, when the cost of repairing a damaged vehicle is more than fifty percent of the vehicle's book value, said vehicle is considered a total loss and written off. In such instance, the owner of the damaged vehicle would be entitled to the book

value of the vehicle at the time of the accident. According to the witness, the value of the vehicle before the accident is determined by applying the applicable rate of depreciation of 33.3% annually against the purchase price of the vehicle. In other words, the value of the vehicle is the purchased price minus the accumulated depreciation at the time of the accident.

The appellee's second witness, Mr. Varney Gray, an Auto Claim Adjuster of the Insurance Company of Africa (ICA), testified, corroborating the first witness testimony with regards to the custom and practice of the insurance industry in Liberia relative to declaring a motor vehicle damaged in an accident a "total loss". He explained that if the damaged vehicle is assessed and it is determined that the cost of repair is or exceeds 50% of the book value of the vehicle at the time of the accident, the vehicle is considered a total loss and written-off by the insurer and the claimant is indemnified by paying him/her the book value of said vehicle which is determined by applying the applicable depreciation rate (33.3% per annum) to the purchase price of the vehicle for the years that the owner had the vehicle. Mr. Gray further testified that in the event where the vehicle is considered a total loss, the owner is not entitled to receive compensation for loss of income. Witness Gray also stressed that the essence of insurance is to put the claimant (property owner) in the position he/she was prior to the occurrence of the accident and not to overly indemnify the claimant.

Mr. Daniel Tolbert, the General Manager of Camer Shipping Corporation, APM Terminals third witness testified that upon being informed of the occurrence of the accident which took place on November 17, 2011, he, on the following morning, contacted his insurer, Mutual Benefit Assurance Company, informing it of the accident, as well as 2nd appellant, Camer Shipping Corporation obligation's to pay the 1st appellant for the damaged that occurred. The witness explained further that the insurance company was invited to see the damage and to do an assessment and liaise with the truck owner so that they could repair the truck. Mr. Tolbert said he followed up with the insurance company and had a representative of the insurance company and the 1st appellant meet with him at his office where the insurance company presented a letter offering US\$6,112.00 for the damage to the truck. The 1st appellant, the witness said, rejected the offer. The 2nd appellant then offered an additional one thousand, three hundred and eight-eight United States Dollars (US\$1,388.00) and further offered that it would arrange with the insurance company so that the salvaged vehicle remained in the possession of the 1st appellant, but the 1st appellant insisted that the settlement offer was inadequate. The witness said that the amount offered the 1st appellant remains available to the 1st appellant at any time.

The parties having rested evidence in toto, the trial Judge ruled on two issues as follows: (1) Who was the responsible party for the damage at issue, and (2) What quantum of damages the 1st appellant was to recover from the responsible party?

Ruling on the first issue, the judge concluded that that the 2nd appellant, Camer Shipping Corporation, accepted full responsibility for the accident and had the matter referred to its insurer; that this admission and acceptance of responsibility was buttressed by Mr. Daniel Tolbert, the General Manager of Camer Shipping Corporation; hence, he held:

"In the mind of this court, the 3rd defendant (Camer Shipping Corporation) having accepted its obligation for liability arising as a result of the incident, there is no reason why the 1st and 2nd defendants must be held liable. Hence, it is the ruling of this court that the doctrine of *respondet superior* is not

applicable to the relationship between each of the defendants. Accordingly, only the 3rd defendant, Camer Shipping Corporation, is liable to the plaintiff."

As to the second issue regarding damages to be recovered, the judge ruled that the 1st appellant purchased the truck in 2010 for US\$18,300.00 and had used the truck for about two years prior to the accident. In determining the value of the truck at the time of the accident, the court applied the rate of depreciation used by the insurance company, that is, 33.3% of the purchase price for the two years that the 1st appellant had the truck. The value of the truck, the judge held, was US\$8,480.29 and not \$6,112.00 as the Mutual Benefits Assurance Company had calculated and offered to pay.

The trial judge further held that the accident occurred as a result of the negligent handling of the cargo by the the 2nd appellant, Camer Shipping Corporation, which was employed by the appellee, APM Terminals; that the 1st appellant's truck had since remained on appellee, secured premises for about one hundred and eighty-nine days (189 days); that there was evidence to the effect that the truck could be repaired and should have been repaired, but according to the 2nd appellant's insurance company, the repair cost was high and therefore it was not feasible for the insurance company to pay. The fact, the judge said, that the 1st appellant had communicated to the defendants that the minimum amount his truck made on an ordinary day was Two Hundred and Fifty United States Dollars s (US\$250.00) per day and the defendants received this communication but chose to ignore it, and when the communication was admitted into evidence there was no objection from either of the defendants, this failure of the defendant to have objected to the alleged daily income of US\$250.00, the court said, brought to its mind, that the defendants were "aware" of such daily income since defendants had been in the trade for a period of time. Referring to the case *Robert Francis v. Liberia French Timber Corporation*, 22LLR 168,178 (1973), the trial judge held that the 1st appellant could plead for damages for the destruction of his property and at the same time ask for loss of income resulting from said damage. The 1st appellant was therefore, the judge held further, entitled to payment of US\$250.00 per day for 189 days which amounted to US\$272,250 as total loss of income for the days the truck remained on the appellee, APM Terminals' premises due to the accident.

The lower court judge therefore found the 2nd appellant, Camera Shipping Corporation, liability to the 1st appellant for the depreciation value of the car, in the amount of US\$8,480.00, plus US\$272,250.00 for the loss of income, making the total liability of 2nd appellant Camer Shipping Corporation to the 1st appellant in the amount of US\$280,730.00. The judge held that he was reluctant to award the 1st appellant's claim for punitive and general damages and therefore denied the 1st appellant's claims of US\$350,000 for punitive damages and US\$150,000 as general damages.

Counsel for the 2nd appellant, Camer Shipping Corporation, having been absent throughout the trial, the court appointed a counsel to take the ruling on behalf of the Corporation, and in accordance with the statute, the appointed counsel excepted to the judge's final ruling and announced an appeal on behalf of the Corporation. The 1st appellant also excepted to the ruling, specifically, the court's holding that the Appellee APM Terminals Liberia was not liable under the doctrine of *respondeat superior*.

Both the 1st appellant, Kantara Malian Kamara, and 2nd appellant, Camer Shipping Corporation, filed bills of exceptions in conformity with the appeal statute; thereby, properly placing the case on the docket of the Supreme Court for review. We note that in both bills of exceptions, no exception was taken to the 1st defendant Fortress

Liberia Ltd. being declared not liable by the judge. This means that the issue of the liability of the 1st defendant is not before this Court for review.

In the 1st appellant's bill of exceptions, he principally contends that the judge committed grave and reversible error in his judgement when he held that the doctrine of *respondeat superior* was not applicable to the relationship between the appellee, APM Terminals Liberia, and the 2nd appellant, Camer Shipping Corporation; that the appellee, APM Terminals, could not be held liable for the loss of use of 1st appellant's truck under the doctrine of *respondeat superior* even though said truck had been under the control of APM Terminals. The 1st appellant said that the judge overlooked the fact that the appellee, APM Terminals, admitted that it appointed 2nd appellant, Camer Shipping Corporation, to perform stevedoring activities on the M/v Jian Qiang Ship under its direction, and in this regard, appellee should have been held liable under the doctrine of *respondeat superior*, especially, as to do otherwise, 1st appellant would be exposed to further hardship since 2nd appellant, Camer Shipping Corporation, obviously cannot totally satisfy the judgement of the lower court and therefore the 1st appellant would be parading with a judgement that cannot be enforced against and satisfied by the 2nd appellant, Shipping Corporation.

1st appellant also contends in his bill of exceptions that the judge erred when he ruled that the truck was written-off and awarded a depreciated value of US\$8,480.29, although the 2nd appellant's insurer by its letter of January 27, 2012, acknowledged that the 1st appellant's vehicle was repairable but refused to have said vehicle repaired alleging that the repair cost was high, and therefore unilaterally opted to offer 1st appellant an amount of US\$6,112.00 as the book value of his truck. 1st appellant said the judge himself wrote in his ruling: "The court's ruling, is supported by the evidence and records to the effect that after the accident, plaintiff's truck was repairable and should have been repaired, but it was not repaired by the 3rd defendant insurer, because according to the insurer, the repair cost was high and it was not feasible for the insurance company to pay." The judge's ruling, therefore, writing off the truck totally and awarding a depreciated value of US\$8,480.29, was contrary to the law controlling in the case *Liberia Mining Company v. Ahamada Zwannah*, 19LLR 73, 76 (1968), in which the Supreme Court held, "When the chattel can be repaired and the chattel be restored to *status quo ante*, the measure of damage is the cost of the repair coupled with loss of income."

The 1st appellant Kamara says further that the judge should have awarded a replacement price of the vehicle at its value in 2010, which is US\$18,300.00, particularly when the passage of time, from November 2011 to present, the vehicle has been exposed to all sorts of weather, the proximity of the vehicle to the ocean and the high salt contents in such area which now makes the vehicle irreparable. Failure of the judge to use the quantum of damage in the *Liberia Mining Company* case as the controlling legal principle, the 1st appellant said, was a grave reversible error especially when there is no provision in the Liberian law that permits any insurance company to elect to repair a vehicle that is repairable or consider such repairable vehicle as a write off only because the cost of repair is high.

Again, the 1st appellant alleged that the judge's denial in awarding general damages was another serious reversible error because the judge overlooked the hardship, pain, suffering, mental anguish and humiliation he experienced due to the damage of his vehicle.

For its part, in its eight count bill of exceptions, 2nd appellant, Camer Shipping Corporation, contends that though it did not file a formal answer to the complaint of the 1st appellant, it was under the law entitled to all notices of assignment for trial of the case so as to be afforded the opportunity to appear and cross-examine 1st appellant's witnesses; that there was no evidence adduced at trial to support the US\$272,250.00 awarded to the 1st appellant for loss of income for 189 days; that the judge further failed to state what period was taken into consideration in arriving at the computation of 189 days, and that the daily income rate of US\$250.00 used by the judge, when multiplied by 189 days, does not amount to US\$272,250.00. Further contending, 2nd appellant asserted that eventhough the income allegedly earned by the 1st appellant as stated in his testimony, said statement was inconsistent with the 1st appellant's previous self-serving statements of income attached to his complaint, no evidence was presented in substantiation of any of the stated amount as required by law; yet, the judge proceeded to rely on one of such amounts in awarding the 1st appellant damages for loss of income. 2nd appellant also contended that eventhough the court agreed that the 2nd appellant offered to pay the 1st appellant the value of his truck at the time of the accident and presented this amount to him, the judge further proceeded to award the 1st appellant loss of income for a period beyond the 1st appellant's refusal of the 2nd appellant's offer.

Further, in its bill of exceptions, 2nd Appellant Camer Shipping Corporation said that the judge also committed a reversible error when he ruled that the 1st appellant's truck had been in the possession of the appellee, ATM Terminals, without taking into consideration 1st appellant's own testimony that it was determined that the truck could not be repaired and therefore left the truck in the Free Port of Monrovia; that the judge overlooked the un-rebutted and unrefuted testimony of appellee's witness, Varney Gray, in respect of the practice in the insurance industry regarding payment of loss of income, and proceeded to award the 1st appellant US\$272,250.00 as loss of income; and that it was a reversible error for the judge to rely on the case *Firestone Liberia v. Galimah Kollie*, when the facts of said case are not analogous to the present case.

The Court would like to firstly address the 2nd appellant, Camer Shipping's contention that eventhough it did not file a formal answer to the complaint of the 1st appellant, under the law, it was entitled to all notices of assignment for trial of the case so as to appear and cross examine the 1st appellant's witnesses.

This Court is taken aback that Camer Shipping Corporation would raise this issue at this time when it had notice of the trial involving it but raised no issue, especially where the Court has held that every man is entitled to take full advantage of the law in defence of his rights, but if he fails to do so the law gives no protection to him who abuses his own right, (*Clark et al v Lewis* 3LLR 95, 98 (1929); *Sheriff v. Pearson et al*, 35 LLR 355, 359 (1988)). 2nd Appellant Camer Shipping Corporation does not deny that it was summoned and did not file an answer to the complaint; its General Manager appeared to testify in the trial on behalf of APM Terminals and in its brief before the Court, even admitted to being in privy with the 1st appellee, APM Terminals, based on the contractual relationship between them. Since APM Terminals participated in the trial and relied on the defence of the 2nd Appellant Camer Shipping Corporation, referring to Camer Shipping Corporation insurance policy offer to make settlement to the 1st appellant, and during APM Terminals' testimonies, Camer Shipping Corporation General manager appeared and admitted to being responsible for the damage to the 1st appellant's truck, and stating that its offer to pay was rejected by the 1st appellant, we do not think that this exception by Camer Shipping Corporation is material or made in good faith. Besides, the facts are not in issue, the

undisputable fact being that the 1st appellant Camer Shipping Corporation, under the supervision and control of APM Terminal, having recklessly damaged the 1st appellant Kantara Milian Kamara's truck, what would be a legal and equitable payment to be made to the 1st appellant under the facts and circumstances?

The Court having discounted the 2nd appellant contention of not being served notices of assignment, the Court will now turn to address the substantive contention raised in the appellants exceptions to the trial court's ruling.

The Court finds that there is no dispute of the fact that Fortress Liberia, Ltd, 2nd defendant below, contracted with the Port Trucker Association to provide trucks for transporting its cement from the M/v JIAN QIANG Ship, docked at the Freeport of Monrovia, and the 1st appellant's truck was among those trucks sent to carry the cement; that 1st appellee, APM Terminals, Liberia, who is responsible for all activities in the port, particularly the hiring of stevedoring companies for offloading ships at the Port, did hire the 2nd appellant, Camer Shipping Corporation, to offload the cement off the ship; that the 2nd appellant in offloading the cement, overloaded the sling with several bags of cement resulted in the shackles attached to the lifting rig breaking and the sling with several bags of cement falling onto the cabin of the 1st appellant's truck, damaging same.

From the facts and circumstances, ruling made by the trial court, exceptions taken and appeals filed, and arguments made by the parties and heard by this Court, we find two issues dispositive of these appeals; firstly, the issue of ascribing liability emanating from the accident to the defendants; and, the determination of the appropriate damages the claimant, 1st appellant, Kantara Malian Kamara, is entitled to for the loss of his truck.

Relative to the issue of the 1st appellant attributing damages for the loss of his truck to the appellee, APM Terminals, the trial judge held that appellee, APM Terminals, was not liable for damages under the 1st appellant assignment of responsibility under the doctrine of *respondeat superior*, and that the said principle was not applicable under the circumstances.

1st appellant Kamara argues that APM Terminals Liberia is directly liable to him for the damage of his truck, since APM Terminals Liberia is responsible for managing cargos at the port and admitted hiring 2nd appellant Camer Shipping Corporation to carry out the stevedoring work, and that for the lower court to rule otherwise exposed 1st appellant to further hardship since the 2nd appellant, Camer Shipping Corporation, obviously cannot totally satisfy the judgement of the lower court, and in which case, if allowed by this Court, the 1st appellant Kamara would be parading with a judgement that cannot be enforced and satisfied by the 2nd appellant Camer Shipping Corporation.

We agree with the 1st appellant that the appellee, APM Terminals, should not have been relieved of liability where its agent, 2nd appellant was directly responsible for the damage of the 1st appellant's truck. The Supreme Court has held that the doctrine of *respondeat superior* is invoked in a damage case where there is evidence that the damage was sustained while the agent was operating within the scope of a party's employment, (*Liberia Mining Company v. Ahamada Zwannah*, 19 LLR 73 (1968). Count 4 of the 1st appellee, APM Terminals, own amended answer reads:

"That as to count four (4) of the complaint, 2nd defendant says that it does not dispute the hiring of the 3rd defendant to carry out stevedoring activities on the vessel in question. 2nd defendant denies that it failed to supervise the work and ensue that he activity was being carried out properly by the 3rd defendant. 2nd defendant notes that the offloading of the cement commenced under the

direction and supervision of the 2nd defendant and when it was certain that the cargo was being discharged in safe manner, it became unnecessary for the 2nd defendant to be consistently present at all times. 2nd defendant says that as per its contract with the Camer Shipping Corporation, the company contracted to stevedore the vessel which brought in the consignment of cement."

We are unable to fathom how the judge could have held that the 1st appellee, AMP Terminals, was not liable under the principle of *respondeat superior* when APM Terminals in its own admission stated that it hired the 2nd appellant, Camer Shipping Corporation, to offload the vessel, and it was while the 2nd appellant was carrying out the offloading, the accident occurred. Moreover, the 2nd appellant Camer Shipping Corporation did not file a responsive pleading to the complaint, nor participated in the trial, but, rather came to testify on behalf of the appellee, APM terminals. 2nd appellant Camer Shipping Corporation's General Manager, Daniel Tolbert, testified for APM Terminals and stated that 2nd appellant was carrying out stevedoring work for appellee and 2nd appellant was responsible for the accident. Appellee's own witness testimony established that 2nd appellant was in privity with the appellee. Besides, 2nd appellant on page 3 of its brief filed before this Court, writes:

"That still on the presentation of fact in this matter, 2nd defendant (APM Terminals) who is privity with 3rd defendant (Camer Shipping Corporation) based on their contractual relationship out-rightly objected to 1st appellant/plaintiff's claim of special damages and the amount thereof and described such claim as outrageous and unsubstantiated by any fact. In support of its objection of the special damages, 2nd defendant (APM Terminals) provided legal and factual reasons why the special damages are said to be outrageous or excessive. 2nd defendant (APM Terminals) reasons for terming 1st appellant/plaintiff special damages as outrageous are contained in count fourteen (14) of 2nd defendant's amended answer."

Black's Law Dictionary defines privity as "the connection or relationship between two parties, each having a legally recognized interest in the same subject matter; mutuality of interest" (9th Edition, Pg. 1320). This Court in its Opinions has defined privity as an identification of interest of one person with another as to represent the same legal right; *Mahmound v. Judge Pearson and Jolloh et al.* 37 LLR 3, 10 (1992); *The International Trust Company v. Judge Cooper and Imani House*, 38 LLR 252, 257 (1996);

We do not find it sufficient for APM Terminals to deny its liability because it says the offloading of the cement commenced under its direction and supervision and when it was certain that the cargo was being discharged in a safe manner, it became unnecessary for it to remain present at all times. If the 2nd appellant shipping corporation did not follow the instructions and safety measures of the appellee, the appellee, APM Terminals, cannot deny its liability for the 2nd appellant's negligence under the principle that an employer or principal is liable for the employee's or agent's wrongful act committed within the scope of the employment or agency. Besides, the judge himself on page 15 of his final judgment stated: "1. the incident occurred as a result of the negligent handling by 3rd defendant (Camer Shipping Corporation) which was employed by the second defendant (APM Terminals)".

This Court believes that appellee, APM Terminals, should have assigned an overseer to the 2nd appellant throughout its execution of the stevedoring contract to ensure that the offloading of the cement was properly carried out. Failure to do so, we hold, that the lower court's ruling exonerating appellee, APM Terminals, from liability, was erroneous.

We recognize that insurance companies normally limit their liability as per their insurance policy; and in such case, this Court has held that the principal is not absorbed from satisfying the balance of the liability adjudged by the court after the insurance company has paid up its maximum liability (*World Vision v. Atlantic Life Insurance Company and Peter Kroma*, Supreme Court Opinion, March Term A.D. 2009). In this case, the Court having found that the appellee, APM Terminals, under the doctrine of *respondeat superior*, is also liable for the damage to the 1st appellant's truck, the appellee is also liable to the 1st appellant for damage to his truck, appellee is liable for the damages imposed by court less the maximum liability of the insurance company based on its contract with the 2nd appellee, Camer Shipping Corporation; otherwise, or as the 1st appellant states, he would be parading with a judgement that cannot be enforced and satisfied by the 2nd appellant, which the lower court found solely liable for the damage of the truck.

In the mind of this Court, all the defending parties below, Fortress Liberia, Ltd. are jointly and severally liable to the 1st appellant for the damage done to his truck. Though, the 1st defendant, Fortress Liberia, Ltd, who is not before this Court, was not directly involved in the offloading of the cement onto the truck, it however was the one that contracted to have the 1st appellant's truck taken into the Port, and it could not deny responsibility to what happened to the truck while it was in the Port. The judge, however, having dismissed the Fortress Liberia, Ltd, 2nd defendant below, from liability because it was not directly involved in the offloading and damage to the 1st appellant's truck, and the appealing parties not having excepted to the judge dismissal of Fortress Liberia, Ltd. from liability, this Court must accordingly restrict itself to the exceptions filed by both the appealing parties.

We therefore hold that the appellee, APM Terminals, being the hirer of the 2nd appellant, it is liable jointly and severally under the doctrine of vicarious liability and the principle of *respondeat superior*, for the damages sustained by the 1st appellant from the accident caused by the 2nd appellant since they at the time of the accident both the appellee and the 2nd appellant were in a principal-agent relationship.

This brings us to the second issue, whether the lower courts damages awarded in compensating the 1st appellant, is legal, proper and a just settlement of damages sustained under the facts and circumstances?

The 1st appellant his bill of exceptions excepted to the judge's ruling awarding a depreciated value of US\$8,480.29 as compensation for his damaged truck. The judge ruled accepting the depreciation rate of 33.3% per annum used by the insurance company to determine the value of the car at the time of the accident on grounds that the said depreciation rate was not disputed by the 1st appellant.

We are unable to comprehend this aspect of the lower court's finding stating that the depreciation rate was not disputed in that it was the very dispute of the rate that led to the 1st appellant filing the action before the trial court and which also triggered this appeal. The records clearly show that the rate was rejected by the 1st appellant outrightly, calling such policy of the insurance company insulting and unreasonable and thus forming the crux of this action.

Excepting to the judge's award on the value of the car when damaged, the appellee and 2nd appellant referred to the letter of the insurance company, dated January 27, 2012, in which the insurance company stated that since the possible repair costs of the truck far exceeded sixty percent (60%) of the pre accident value, the vehicle would be deemed a total loss and written off. The 1st appellant contends that the insurance

company by that communication acknowledged that the vehicle was repairable but since the repair cost would be high, it unilaterally opted to offer 1st appellant the book value of his truck. The 1st appellant, Kamara, insists that the judge should have awarded the replacement price of the vehicle at its value in 2010, which was US\$18,300.00, particularly taking into account the passage of time from November 2011, to present with the vehicle being parked at the port and exposed to all sorts of weather, especially with its proximity to the ocean and the high salt contents in such area which now makes the vehicle irreparable.

The appellee, APM Terminals, also brought witnesses to testify that insurance policies in the insurance industry provide that where damage to a vehicle exceeds fifty percent of the value of the car, payment for the damage to the vehicle is made at a depreciation value of 33.3 % per annum per the value of the car when purchased. In this case, where the 1st appellant out-rightly rejects the depreciation value set by the insurance company contending that it is contrary to settled law in our jurisdiction, and claims the original cost of the vehicle plus damages, we must look and revert to cases of similar nature settled by this Court on action of damages for injury to personal property.

So what does our laws say on such matter? How has damage for value of a vehicle involved in an accident been computed in our jurisdiction in such cases?

Firstly, the judge decided that he would apply the same rate of the insurance company to determine the value of the truck at the time of the accident, how did he derive at US\$8,480.29? The 1st appellant's truck was bought for US\$18,300.00 and the insurance company's depreciation rate was calculated at a rate of 33.3% annually, which means, after two years of use by the 1st appellant, the value of the truck was US\$6,112.00 at the time of the accident as the insurance company rightly calculated. Clearly, the judge calculation is incorrect, taking into account that he used the same rate of depreciation for two years. Having decided on the depreciation rate of 33.3% per annum, the judge award for liability on the value of the vehicle should have been US\$6,112.00 same as the insurance company's offer.

Ruling on the quantum of damages to be recovered by the 1st appellant, the trial judge referred to the case *Robert Francis v. Liberia French Timber Corporation*, 22 LLR 168, (1973). He held that the 1st appellant could plead for damages for the destruction of his truck and at the same time ask for loss of income resulting from said damage. He ruled that the 1st appellant was entitled to payment of US\$250.00 per day for 189 days, amounting to US\$272,250.00 as total loss of income sustained for the days the truck remained on the APM's premises due to the accident.

The facts in the *Robert I. Francis v. Liberian French Timber Corporation* referred to by the judge are that, the appellee Liberian French Timber Corporation entered an agreement with the appellant Robert I. Francis for the use of Francis' aircraft. The agreement was for a definite term of one month, subject to renewal by the parties thereafter. Though a month had expired and the written agreement expired on its terms without a written renewal or extension, the Liberian French Timber Corporation continued to use the aircraft, paying Francis for its use monthly. Unfortunately, the general manager who signed the agreement on behalf of the appellee was piloting on an occasion when the aircraft crashed and he died in the crash. Francis sued the Liberian French Timber Corporation company for damages, claiming the value of the aircraft at the time of the accident and loss of income on the contract leasing the aircraft. The issue arose as to whether the Frances could claim a specific sum for the destruction of the aircraft while simultaneously claiming an amount for lost income or

loss of the use of the aircraft. The Court held that since there had not been a prior case in the jurisdiction regarding aircraft accident, the laws regarding automobile accidents could be applied where the factual situation is similar and since both cases concerned the destruction of property. The Court held:

"The measure of damages for the loss or destruction of personal property is, as a general rule, its value, or its reasonable value, at the time of the loss or destruction, or as is frequently stated, the fair and reasonable market value immediately before and immediately after injury (or destruction) 25 C.J.S., *Damages*, § 83. " It is also true that where the injury or destruction of an item or property used to produce profit has been caused by the tortious conduct of the defendant and has caused the owner to lose such profits which he may have been able to make with that item or property, and the item could not have reasonably been replaced by hiring a substitute or by repairing it, then loss of profit may be awarded for the time reasonably needed to replace the item, provided the lost profit are proved with the necessary degree of certainty and, in contract cases, was in the contemplation of the parties at the time the contract was entered into" (22 Am Jur, 2d, *Damages*, §§ 155, 176).

This being the law extant in our jurisdiction, we hold that a suit could be instituted for damages for the loss of a chattel and for an implied contract that had come into being by the conduct of both parties subsequent to the expiration of the written agreement.

The Court in the Francis case referred to the Supreme Court's Opinion, *Firestone Plantation Co. v. Greaves*, 9 LLR, 250 (1947), where the appellee, William-E. Greaves, sued the 1st appellant, Firestone Plantation Company for damages for injury to his car sustained in a collision. The facts were that William E. Greaves bought a second hand sedan car from the government for two hundred and twenty dollars (\$220.00), and after much efforts, he repaired it, putting it in a good and usable condition. He commenced using the car but after few months the sedan was involved in an accident with a truck owned by the Firestone Plantation Company. The Firestone driver, who was alleged to be intoxicated, collided with the sedan and was found liable for the collision and the damage to William E. Greaves's car. The Supreme Court held, "In the assessment for injury or destruction of personal property, it is not the actual cost of said property that must be ascertained but rather, its market value, if any, at the time of the injury." The measure of damages for the loss of personal property, the Court held, is its reasonable value at the time of the collision. The Court wrote:

"Ordinarily the measure of damages for the loss or destruction of property is its market value, if it has a market value, and in such case no recovery can be had on the basis of its value to the owner individually, apart from its market value. In order to say of a thing that it has a market value, it is necessary that a demand therefor, and an ability from such demand to sell the same when a sale thereof is desired. Where, therefore, there is no demand for a thing, and no ability to sell same, then it cannot be said to have a market value. If the market value would not be a fair compensation to the plaintiff for his loss, he is sometimes permitted to recover the value to him based on his actual money loss. The fact that property has no market value does not restrict the recovery to nominal damages only, but its value or the plaintiff's damages must be ascertained in some other rational way, and from such elements as are attainable. In such case the proper measure of damages is generally its actual value, or, as is sometimes said, its value to the owner, taking into account its cost and such other considerations as may affect its value in the particular case..." (ibid. pages 266-267).

The Court, taking into account the purchase price of the vehicle and the several efforts and expenditures made by Greaves to put his vehicle into usable condition, and the

evidence shown as to the value of the car at the time of the collision, the Court held that as a result of the injury caused by the Firestone Company's driver, and the showing by Greaves that he put forth every effort through correspondence with 1st appellant to protect his damaged property from further injury and even to have Firestone Company undertake the possible repairs of the damaged car and the Firestone having failed to do so, the appellee was entitled to the assessed market value of eight hundred (\$800) dollars, for the car. The Court though agreeing that Greaves was entitled to damages for deprivation of the use of his car, it however remanded the lower court's ruling granting damages in an amount of \$2,275.00 on the claim made by Greaves for deprivation of the use of his car as a result of the accident. Greaves' claim for damages at a rate of ten dollar per diem for the time he was deprived of car, the Court held, needed to be specifically proven. The Court therefore sent the matter to the court below to award a new trial for the purpose of taking evidence only in proof or disproof of the damages claimed.

Again, in the case *Vianini Limited v. McBorough*, 19 LLR 39 (1968), a truck owned by McBorough the plaintiff/appellee was totally wrecked in a collision. The evidence established that the vehicle was irreparable. At trial, the Appellee McBorough produced evidence that he had purchased his truck for the sum of \$5,375.00 and the truck had been in his possession for a period of twenty-one (21) months before it was damaged beyond repair by the 1st appellant's truck; that the accident was due to the reckless, wrongful and negligent acts of the 1st appellant's driver; that the depreciation on the truck as to the time of the impact was \$1,345.00, at the rate of \$64.00 per month according to the calculation from reputable garages within the City of Monrovia; that the value remaining was \$4,030.00, excluding license fees, registration and other charges, thus bringing the total value of the car at the time of the accident to \$4,850.00 for which amount he sued. Further testifying, he stated that the truck was a common carrier from which he received a minimum daily intake of \$450.00 and the act of the 1st appellant's driver rendered the truck beyond repair. The Supreme Court ruled that the appellee had proven sufficiently his damages of \$4,850.00 and that the verdict of the jury for said amount be not disturbed. The Court however modified the judgment of the lower court ruling granting the appellee McBorough's claim of daily intake of \$45.00, holding that the Firestone Company instead pay to McBorough interest at six percent on the judgment amount from the time of the accident as punitive damages for the inconvenience the appellee suffered.

From the facts presented, was the 1st appellant's truck damaged beyond repair and is the general rule which allows for only the depreciated value of the vehicle prior to its destruction applicable in the instant case?

The letter of January 27, 2012, written by Mutual Benefits Assurance Company and referred to by the 1st appellant reads:

January 27, 2012

Mr. Kantara Kamare
Garnersville, Somalia Drive
Monrovia, Liberia

Dear Sir:

RE: ACCIDENTAL INCIDENT OF NOVEMBER 17, 2011
INVOLVING A FALLEN OBJECT ON GT-51
INSURED: CAMER SHIPPINBG LINBE TPL CLAIMANT: KANTARA
KAMARA

We have received your claim notification concerning the above stated accidental incident and would like to express sincere sympathy for the loss sustained.

Based on the available value of your vehicle, it will neither be safe nor feasible to repair the vehicle because its possible repair cost far exceeds 60% of the pre-accident value.

Consequent upon the assessment, the vehicle shall be deemed a write-off with the claim settled on a total loss basis as derived below:

❖ Purchase value Jan. 26, 2010.....	US\$18,300.00
❖ Less 66.6% depreciation allowance for usage and age.....	12,188.00
❖ Assessed pre-accident value.....	6,112.00
❖ Less policy excess.....	0.00
❖ Gross settlement payable.....	US\$6,112.00

Accordingly, please find our total loss discharge form to be completed, signed and returned with the original documents of the vehicle for our settlement cheque.

However, if you prefer to retain the salvage, please confirm in writing so that necessary adjustment can be made to the quantum of settlement – net of the salvage value.

Yours faithfully,

MUTUAL BENEFITS ASSURANCE COMPANY

In its letter above, the insurance company referred to the repair costs presented by one Bernard Farm Truck Garage which the 2nd appellant, Camer Shipping Corporation, in its argument before the Court said was referred to it by the 1st appellant, as one that could repair the car. The total cost presented by Bernard Farm Truck Garage for the repair work and workmanship totalled US\$12,500.00. The records however reveal that the assessments of other well-known garages concluded that the truck was irreparable. During the crossed-examination of the 1st appellant, he himself testified as follows:

Q. Mr. Witness, after the accident occurred, did the 3rd defendant, Camer Shipping, refer you to the insurance company called Mutual Benefit Assurance Company to settle the accident matter?

A. Mutual Benefit Assurance came and I told them to fix the truck. They (insurance company) went to Total Garage and Total Garage said it could not repair the truck; they went to Africa Motors, and they too said they could not repair the truck; they even went to bring someone else from outside, the person said he could not repair the truck. That was how they left and since that time they have not come to me.

Q. Mr. Witness is it not a fact that Mutual Benefits Assurance Company offered to pay you the amount of US\$6112.00 representing the book value of the truck at the time of the accident?

A. I told them to repair the car and they went all over but they could not repair the car; **the car cannot be repaired** [emphasis ours], how can US\$6,112.00 repair the car? I said they should repair the car and give it to me and pay for my days. That is what I told them." (See minutes, Sept 3, 2014, pg. 33-34).

We think that any option an insurance company may have to write off a damaged property is not absolute but must rather be exercised upon proof that the damaged property cannot be substantially restored to its fair market value immediately prior to the loss when repair. The 1st appellant Kamara himself in responding to questions on

the cross examination, indicated that the car was damaged beyond repair when asked if it was possible that his truck be removed.

The judge in the lower court seemed to have contradicted himself in that he awarded damages based on the principle of total loss, while at the same time stating that there was evidence to the effect that the truck could be repaired and should have been repaired.

The testimony of 1st appellant Kantara Milian Kamara above and a review of the exhibits of the damaged truck, in our view, confirm that the vehicle was irreparable. In which case, this Court, based on precedent in our jurisdiction, must determine whether or not the award given by the judge as the book value of the truck at the time the accident occurred was a reversible error as alleged by the 1st appellant; and whether having granted an award for the book value of the car, he could have further granted damages to the 1st appellant for loss of income.

From the cases cited above, the Supreme Court has held that where a vehicle is proven to be totally wrecked as a result of an accident, the measure of damages recoverable by the injured party is the value of the *res* prior to its destruction; in other words, the payment is the market value of the vehicle at the time of the accident. Conversely, the Court has held where the vehicle is repairable, the measure of damage is the cost of the repair together with the loss of income therefrom during the time of the repairs.

The insurance company says its policy calculates payment for an irreparable vehicle at a depreciated rate of 33.3% annually based on the purchase price of the vehicle. Though we do not see the policy in the record of this case, in any event, said policy if contracted, is a policy between the insurance company and the insured, 2nd Appellant Camer Shipping Corporation. There is no privity of contract between the insurance company and the 1st appellant. The 2nd appellant which contracted with the insurance company cannot impose its insurance agreement on the 1st appellant.

This Court is inclined to ask, what if two cars are bought at the same time, one for private use and is barely used by the owner, and the other is used for commercial transportation purposes; where both cars are damaged in an accident about the same time, will the payment for both losses be at the depreciation rate of 33.3% per annum? Will the private car depreciation rate be the same as the one used as a commercial transport car? As in the above mentioned case, *Firestone Plantation Company v. Greaves*, what if a car is bought and repairs and other aesthetics works are done on the car so that its value is appreciated, will the depreciation rate of the car be calculated based on the historical value of the car, or the actual market value of the car at the time of the accident?

We hold that the payment for the loss of the car is the market value of the car at the time of the accident. However, the ruling extant of the Supreme Court has been that the market value of the vehicle at the time of the accident should be established at trial as measurement for payment of damages to the vehicle's owner.

Unfortunately, the 1st appellant did not set out to prove in the court below the market value of his car at the time the accident occurred, which could have been more than the truck's historical value of US\$18,300.00, or if less, higher than the insurance company depreciated book value. He has instead insisted, without presenting any evidence in the court below as to the value of his truck car at the time of the accident, that he is

entitled to payment of the historical value of US\$18,300.00, contrary to the settled law in this jurisdiction.

We see in the record that 1st appellant, in his letter dated February 10, 2012, to Camer Shipping Corporation, outlined his total loss in daily wages from November 17, 2011, the date of the accident, to February 18, 2012, and calculated his total daily loss as US\$21,540.00, at US\$250 per day, requesting the court for continuous loss of income as long as the 2nd appellant failed to restore him.

The lower court judge in his final judgment awarded the 1st appellant the amount of US\$272,250.00 which he said was based on the 1st appellant's loss of income for one hundred and ninety eight (198) days at a rate of Two Hundred and fifty United States (US\$ 250/day), the minimum amount the 1st appellant testified he made in a single day.

This Court must first deal with the inconsistency of the figure of the days calculated by the judge to arrive at the total loss of income awarded the 1st appellant and raised by Camer Shipping Corporation on appeal. In order to arrive at the award for the loss of income, the judge in his ruling held that the vehicle had been in the exclusive control of the appellee, APM Terminals, on its secured premises up to the rendition of his judgment. On page 15 of the ruling of the trial court, the judge in considering the 1st appellant's loss of income stated: "(1) the incident occurred as a result of the negligent handling by 3rd defendant (Camer Shipping Corporation) which was employed by the second defendant (APM Terminals); (2) that the truck has been kept in 2nd defendant (APM Terminals) secure premises for about "189" days as of the date of the rendition of this judgment and continue to remain as this court speaks; (3) plaintiff informed defendant that the minimum amount his truck reported on an ordinary day was US\$250, this was the minimum loss of income". On page 16 of the final ruling, the judge again wrote: "Here, it is an undisputed fact that plaintiff's truck had been in the exclusive control of defendants for 198 days as of the date of the rendition of this judgment. This act is a clear violation of the rights of the plaintiff. In the mind of this court, plaintiff is entitled to the sum of US\$272,250."

The record of the case shows that the accident took place on November 17, 2011, and the final judgment was handed down on November 4, 2014, the equivalent of one thousand eighty three days (1083). The figure written in the ruling that the truck was kept on the 1st Appellant APM Terminals' premises for about one hundred and eighty-nine (189) and sometimes written as 198 days is clearly an error of transcription. Besides, it is not clear as to which days the judge based his calculation, since November 17, 2011 when the accident occurred up to November 2014, when the lower court handed down judgment, the calculated days is neither 189 days nor 198 days as written in the trial court's ruling, but One Thousand and Eighty Nine (1089) days. When calculated, 1089 days multiply by US\$250.00 is equivalent to US\$272,250, the award made by the judge as loss of income to the 1st appellant. We believe this was the actual intent of the judge in his calculation of the award.

Having derived at what we believe the judge based his award for loss of income, we revert to the 2nd Appellant Camer Shipping's contention in its bill of exceptions that it having offered to pay the 1st appellant/plaintiff the value of the vehicle at the time of the accident and provided this amount to the 1st appellant, the judge made an error when he proceeded to award the 1st appellant/plaintiff loss of income for period beyond the time the 1st appellant refused the settlement payment of Camer Shipping Corporation. Besides, it was a further error for the judge to rule that the 1st appellant's

truck had been in the possession of the appellee APM without taking into account the 1st appellant's own testimony stating that it was determined that the truck could not be repaired and he therefore left the truck in the Free Port of Monrovia.

Let us again chronologically recap the facts: On November 7, 2011, the Port Truckers Association entered a contract with Fortress Liberia Limited to provide minimum of fifteen trucks for offloading cement from the MV Jian Qiang vessel. The accident to 1st appellant Kamara's truck occurred on November 17, 2011, the first day of offloading cement from the ship. The appellee, APM Terminals and 2nd appellant, Camer Shipping Corporation, immediately took responsibility for the damage to the truck and told 1st appellant that the damage would be taken care of. 2nd appellant contacted its insurer who then wrote to the 1st appellant on January 27, 2012, seventy one (71) days after the incident, making an offer to pay what it called the depreciation book value of the truck at the time it was damaged; 1st appellant rejected the payment offer stating that it was unreasonable and insulting. The question then would be, could the 1st appellant be entitled to loss of income where it is determined that the truck was irreparable and the 2nd appellant insurance company offered the 1st appellant settlement of US\$6112.00, but he rejected said amount, admitting that he left the damaged truck on the premises of the APM Terminals even though the appellee, APM Terminals third witness, Daniel Tolbert, General Manager of the 2nd appellant offered that he would arrange that the salvaged vehicle remain in the possession of the 1st appellant.

As we have previously stated, generally, where a chattel is proven to be totally damaged as a result of an accident, the measure of damages is the market value of the chattel at the time of loss. The Court has however in some cases allowed compensation for loss of income or *piem diem* based on the deprivation of the use of the car by the owner; proof of executory contract, annoyance and personal inconvenience, etc., and has emphasized that loss of income when pleaded must be specifically proved in the lower court (*Firestone v. Greaves*, 9 LLR 250 (1947); *Vianini v. McBourough*, 19 LLR 39 (1968); *Francis v. French Timber Corporation*, 22 LLR 168 (1973)).

In this case, the damage done to the 1st appellant Kamara's truck not being in dispute, and this Court having found that from the 1st appellant's own admission the truck was irreparable, 1st appellant Kamara is entitled to the value of his car at the time the accident occurred. 1st appellant Kamara, however, not having brought any evidence to prove the value of his truck at the time of the accident, and it is the law extant in our jurisdiction that payment for a damaged vehicle must be based on the value of the car at the time the car was damaged and not on its historical value (US\$18,300.00) this Court is no position to say what the value of his truck was at the time of the accident. In this case, taking into account the length of time the vehicle was damaged, and the 1st appellant own statement that the vehicle has further deteriorated due to its proximity to the sea where it is parked in the APM Terminal Shipping yard, this Court is convinced that an adequate assessment of the value of the truck at this time would be almost impossible. The Court is therefore constrained to award the appellant the Six Thousand One Hundred and Twelve United States Dollars (US\$6112.00) offered by the 2nd appellant's insurance company as the value of the truck.

Proceeding further into the claims of the 1st appellant, the 1st appellant has shown that at the time his truck was damaged, he was contracted by the Port Truckers' Association, Inc., to haul cement from the Freeport of Liberia for Fortress Liberia, Limited. Kamara put into evidence a letter from the Port Truckers' Association, Inc. signed by John S. Mulbah, and approved by Sam Tetteh, Acting General Secretary and President of Port Truckers' Association, Inc. respectively stating that 1st appellant

Kamara was contracted by it to work for a daily amount of US\$420.00. As the 1st appellant is entitled to the loss of income based on an executory contract, the letter both from the Port Truckers' Association and the letter from Fortress Liberia, Limited gave no indication of how many days the contract was for. 1st appellant in his own testimony dated September 3, 2014, stated that the contract to offload the cement took six days as he continued to work with the other truckers after his truck was damaged. In this case, then, 1st appellant's loss would be calculated at US\$420 x 6 days, the equivalent of Two Thousand, Seven Hundred United States Dollars (US\$2,520.00) which is due and payable to him under his executory contract.

1st appellant in Count 12 his bill of exceptions states that the judge committed a serious reversible error when he denied the award of general damages overlooking the hardship, pain, suffering, mental anguish and humiliation experience by him.

The record of 1st appellant's testimony on the direct reveals the following:

"They know that since the car was damaged up to now, I'm not working; I'm not doing anything. I have been in the Port; they themselves can be with me in the Port and they know. One time one of my friends was doing some job and they called me to help them; I went to help the man, but the white man denied me from entering the terminal; he said I could not enter the terminal and that is where I'm getting my daily bread from. I have been in that Port from 1974 up until now; I have no record in that Port to say this man did certain thing that the people can't allow him to enter the Port or they put me on blacklist. We were inside from that time up to now. I don't have food to eat; I have no car and my family is sitting; they see me in the Port every day. I have to go behind my friends to help them when they have small jobs so that I can have daily bread to carry home. I don't have anything; I don't have anything right now. They themselves know; some of them are here sitting down. They can be in the Port seeing me; I have nothing, not even food to eat now. Last year my daughter finished school and she is supposed to go to college, but there is no way to go because I don't have anything. So right now, the place I am, I just want you people to help me because I'm suffering. I have nothing; I'm suffering too much.

Q. Mr. Witness, please refresh our memory and tell this court how much money your truck was supposed to receive from this contract and how much money your truck usually makes every day?

A. If my truck is alright, everyone knows that my truck can make USD450.00 every day

In the Greaves case, the Court held:

"One who is injured in his property by the wrongful act of another may recover for any pecuniary loss sustained by reason of such injury. He is also generally entitled to recover compensation for discomfort, annoyance, and personal inconvenience, where these are the proximate result of the defendant's wrong... The remuneration must be commensurate with the plaintiff's interest in the property, and hence will vary accordingly. In ascertaining the damages to be allowed, the jury may consider all the circumstances connected with the injury."

The 1st appellant testified that when the accident occurred he refused to move his truck from under the ridge where the ship decked but the appellee, APM Terminals, and 2nd appellant, Camer Shipping Corporation, prevailed on him to have the truck towed and that they would make settlement for the damage done to his truck. However, the 1st appellant said he was drilled up and down and had to write several letters to the

defendants requesting them to settle their obligation, and it was not until January 27, 2012, seventy-one (71) days after the accident had occurred on November 17, 2011, that 2nd Appellant Camer's insurance company wrote to the 1st appellant stating that it was prepared to make settlement for the damage to Kamara's truck in the amount of US\$6,112.00. In such case, the 1st appellant was entitled to damages up to the time the insurance company offered final settlement for the truck. Even if the 1st appellant had accepted the settlement, the record reveals that he went through two months of uncertainty, hardship, and mental anguish trying to get the responsible parties to come up with a final decision regarding their settlement of the damage to his truck. The Court does not believe that an assessment of the truck said to be irreparable would have taken seventy-one (71) days. The 1st appellant is therefore entitled to damages for the days taken by the appellee, APM Terminal, Liberia and the 2nd appellant, Camer Shipping Corporation, to make settlement.

We do agree that the amount claimed by the 1st appellant Kamara as to what his truck made daily is inconsistent since in his testimony he said he made US\$450.00 a day excluding Sundays, but in his statement of account of loss dated February 10, 2012, addressed to the 2nd Appellant Camer Shipping Corporation, he indicated that he made US\$250.00 a day. The 1st appellant's letter to the 2nd appellant, stating his claim of \$250.00 a day as the loss of income as the result of damage done to his truck was admitted into evidence and was never objected to by the opposing parties. The trial judge, in his final ruling awarding loss of income, based on this calculation of Two Hundred and Fifty United States Dollars (\$250.00) a day, stated that the said claim of daily loss was never objected to when put into evidence (See minutes of lower court dated September 3, 2014, pages 13-15). This Court has held that the failure of a party to object to evidence being admitted at the time of trial constitutes an admission of its authenticity and that in the absence of an exception an objection is lost, no matter what its intrinsic merits are: *Richard v. Coleman*, 5 LLR 56, 59 (1935); *Levin v. Juvico Supermarket*, 24 LLR 187, 192 (1975).

We hold therefore that the 1st appellant is entitled to damages for the daily loss of income for the period of seventy (71) days commencing from the date of the accident to the date the offer was made to him by the 2nd appellant's insurance company. Of the 71 days, six (6) days is allotted for payment on the executory contract between the 1st appellant and the Port Truckers Association to transport cement from the port to the warehouse of Fortress Liberia Ltd., at a rate of US\$420 daily, thereby amounting to Two Thousand Five Hundred and Twenty United States Dollars (US\$2,520.00), and for the remaining period of 65 days, the 1st appellant is entitled to a daily loss average of Two Hundred and Fifty United States Dollars (US\$250.00) amounting to Sixteen Thousand, two Hundred and Fifty United States Dollars (US\$16,250.00). We also find for the 1st appellant Ten Thousand United States Dollars (US\$10,000.00) as general damages for mental anguish which the 1st appellant said was due to the unreasonable delay which the appellee APM Terminal and 2nd appellant took for advancing settlement of their liability.

We further hold that the determination of the fair market value of the truck at the time of the accident being cardinal to deriving the quantum of damages due the 1st appellant for loss of his truck, 1st appellant having failed to establish same by preponderance of evidence, the appellant is entitled to, under the circumstances, the US\$6,112.00 offered by Mutual Benefit Assurance Company, the 2nd appellant's insurance company, which was calculated at the depreciation rate of 33.3% per annum and constituting the maximum liability under the coverage., shall be the applicable quantum of damages representing the value of the car at the time of the accident.

The trial court's ruling awarding \$8,480.49 for the depreciated value of the car, and ~~US\$280,730.00~~ for loss of income, not being in consonance with the law and evidence adduced at trial, and as opined above, same is reversed, with this Court holding that appellee, APM Terminal, Liberia and the 2nd appellant, Camer Shipping Corporation, are jointly and severally liability to the 1st appellant in the sum of Twenty Eight Thousand, Seven Hundred and Seventy United States Dollars (US\$28,770.00), excluding the Six Thousand, One hundred and Twelve United States Dollars (US\$6,112.00) payable by the 2nd appellant's insurer, Mutual Benefit Assurance Company to the 1st appellant, Kantara Malian Kamara. Thus, the total amount awarded 1st appellant under this judgment is Thirty-Four Thousand, Eight Hundred and Eighty two United States Dollars (US\$34,882.00).

The Clerk of this Court is ordered to send a mandate to the trial court to resume jurisdiction over this matter and give effect to the judgment. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR G. WIEFUEH A. SAYEH OF THE LAW OFFICES OF SAYEH AND SAYEH, IN ASSOCIATION WITH COUNSELLOR F. JUAH LAWSON OF THE RENAISSANCE LAW GROUP, APPEARED FOR THE 1ST APPELLANT. COUNSELLOR SCHEAPLOR R. DUNBAR OF THE PIERRE, TWEH AND ASSOCIATES APPEARED FOR THE 2ND APPELLANT. COUNSELLORS GOLDA A. BONAH ELLIOTT AND ALBERT S. SIMS OF THE SHERMAN AND SHERMAN, INC. APPEARED FOR THE APPELLEE.