the Court took the case under advisement without hearing from appellee to decide the appeal upon the basis of the Commission record. By this judgment, rather than dismissal of the appeal, appellant has the right to appeal to the Appellate Division.

Ordered, adjudged and decreed:—

That the determination of ownership by the Palau Land Commission for Lot No. 001 A 04, Tochi Daicho designated No. 1558 that Sedang Etibek is the individual owner is affirmed and the claim of the appellant is denied.

TUTII NGIRUTOI, Plaintiff

v.

TERUZI ILUCHES, REIKO FISH, and TELEI RENGIIL, Defendants

Civil Action No. 2-73

Trial Division of the High Court

Palau District

March 25, 1974

Action for damages sustained in auto collision. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that loss of use of vehicle struck from rear by defendant, at the rate of eighteen dollars a day income for seven months, at which time a replacement was obtained, the vehicle being plaintiff's taxi, could not be recovered for where the vehicle was completely destroyed.

1. **Torts—Damages—Before and After Value**

   Measure of damages for negligent destruction of auto was difference between value of auto immediately before and immediately after the destruction.

2. **Torts—Damages—Loss of Use**

   Loss of use of vehicle struck from rear by defendant, at the rate of eighteen dollars a day income for seven months, at which time a replacement was obtained, the vehicle being plaintiff's taxi, could not be recovered for where the vehicle was completely destroyed.

3. Negligent Driving—Owner's Liability

In absence of statute imposing liability, under family car doctrine, upon owner of auto a relative negligently drives so as to damage another, and in absence of showing that defendant negligent driver was driving under defendant owner's direction and authority and as owner's agent, owner was not liable for damage occurring when defendant driver struck the rear of plaintiff's vehicle.

4. Gifts—Promise—Enforceability

Promise, without consideration therefor, to make a gift, was unenforceable.

Assessor:	FRANCISCO MOREI, *Acting Presiding Judge, District Court*
Interpreter:	AMADOR D. NGIRKELAU
Reporter:	SAM K. SASLAW
Counsel for Plaintiff:	JONAS W. OLKERIIL
Counsel for Defendants:	JOHN O. NGIRAKED

TURNER, *Associate Justice*

Plaintiff purchased a new automobile in June, 1971, and operated it as a taxicab until it was "rear-ended" and knocked off the causeway between Koror and Meyungs hamlet into the lagoon. The incident occurred when a vehicle driven by the defendant Teruzi Iluches, crossing the causeway in the same direction as the plaintiff's automobile, struck plaintiff's vehicle in the rear, as the defendant driver attempted to pass plaintiff's car on the causeway.

The accident occurred when plaintiff's vehicle had been used only three months. Plaintiff's vehicle cost new $1,600.00 and was totally destroyed except for a stipulated salvage value of $100.00. The depreciation in value for the short time the car was used as a taxi was suggested by the Court and agreed to by counsel for the parties at $550. Thus the value immediately before the accident was $1,050 and the value immediately after the accident the $100.00 salvage value.

[1] The litigation almost solves itself by application of law to the agreed facts. Plaintiff's loss was the difference between the value immediately before the accident and the salvage value immediately afterward, the loss being $950.00.

After the Court announced this calculation of a Judgment amount a most unusual and unexpected event took place. The plaintiff asked and was granted permission to make a statement to the Court, upon his own initiative, without advice from his counsel.

Plaintiff said that he was related to the defendants, all of whom were in the same family or lineage. He said he bore them no ill will and that he was willing to share with the defendants his loss. He asked the Court for permission to reduce the amount of Judgment against the defendant by $100.00 and that he further agreed the defendants have a reasonable time within which to satisfy the Judgment.

Seldom has there been such an example of applying traditional Palauan custom with respect to the relationship of lineage members to the stern and inflexible liabilities of the principles of law practiced in the Courts. Plaintiff's request was granted without consultation with defense counsel.

Although the foregoing solved the principle issue of the litigation, there were a number of other matters in the record requiring disposition, in addition to the principles of law upon which the Court reached its conclusion. A similar case, involving loss of a taxicab, sets forth the applicable tort law in *Neton v. Ywelelong*, 5 T.T.R. 300. The same rules were applied in *Demei v. Sungino*, 6 T.T.R. 499.

[2] The plaintiff had asked in his complaint, compensation for lost income at the rate of $18.00 per day for a

seven-month period until he obtained a replacement. The Court said in the *Neton* case:—

"The damages pertain to the vehicle, not the amount of business expenses such as the cost of a taxi license. However, loss of use, if proven, is recoverable for the period reasonably required for repairs. If the vehicle cannot be restored to use, loss of use may not be included."

The plaintiff could not under the facts of this case recover for lost income.

[3] The complaint lists three defendants, only one of whom, Teruzi, was engaged in negligent driving. Telei was named in the complaint as co-owner with Robert Uluwal, but only Telei was named a defendant. In any event, no evidence was offered by plaintiff showing any basis for liability of the vehicle owners. To impose liability on Telei it would have been necessary for the plaintiff to show that the driver, Teruzi, was acting under the direction and authority of Telei as agent for the owner. In the absence of a statute imposing liability under the family car doctrine the fact, if it was a fact, that Telei was the owner of the vehicle driven by Teruzi and was a family relative of Teruzi could not impose liability upon Telei.

[4] The third defendant named in the complaint, Reiko Fish, was included upon the allegation she had promised the plaintiff to replace his automobile. If the theory of the action against Reiko was upon a promise, recovery against her could be had against her only if it was shown that her promise to plaintiff gave rise to a binding contract supported by consideration. There was not such showing. There was no liability. An individual's promise to make a gift is not enforceable without consideration. The rule is stated in 38 C.J.S., Gifts, Sec. 62:—

". . . an executory or imperfect gift will not be enforced either at law or in equity . . . ."

A court will affirmatively establish or enforce a gift when there is proof of all the essential elements of a completed gift. In the present case there was only a promise to make a gift. It was not enforceable, hence there was no liability to plaintiff of Reiko.

Ordered, adjudged and decreed:—

1. That plaintiff shall have and recover from the defendant Teruzi Iluches the sum of $850.00 together with interest thereon at the rate of 6% per annum from date of Judgment until paid.

2. That plaintiff is denied recovery from the defendants Reiko Fish and Telei Rengiil.

3. That Teruzi Iluches is allowed six months from date of entry of Judgment within which to make payment.

4. That no costs are assessed.

BRIKUL NGIRUCHELBAD, Plaintiff

v.

TARO NGIRAINGAS, Defendant

Civil Action No. 595

Trial Division of the High Court

Palau District

March 26, 1974

Action to collect amount unpaid under oral building contract. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held plaintiff failed in his burden of proof as to amount claimed due.

Contracts—Oral Contracts—Proof

Where building contractor orally agreed to limit labor cost to $2,000, and could not substantiate billing for more than that, claim for that part of billing in excess of the agreed upon amount must fail.