NY CLS CPLR R 4533-a

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New York

Consolidated Laws Service **>**

Civil Practice Law And Rules (Arts. 1 — 100) **>**

Article 45 Evidence (§§ 4501 — 4551)

R 4533-a. Prima facie proof of damages.

An itemized bill or invoice, receipted or marked paid, for services or repairs of an amount not in excess of two thousand dollars is admissible in evidence and is prima facie evidence of the reasonable value and necessity of such services or repairs itemized therein in any civil action provided it bears a certification by the person, firm or corporation, or an authorized agent or employee thereof, rendering such services or making such repairs and charging for the same, and contains a verified statement that no part of the payment received therefor will be refunded to the debtor, and that the amounts itemized therein are the usual and customary rates charged for such services or repairs by the affiant or his employer; and provided further that a true copy of such itemized bill or invoice together with a notice of intention to introduce such bill or invoice into evidence pursuant to this rule is served upon each party at least ten days before the trial. No more than one bill or invoice from the same person, firm or corporation to the same debtor shall be admissible in evidence under this rule in the same action.

History

Add, L 1966, ch 263; amd by the Judicial Conference, eff Sept 1, 1968.

Annotations

Notes

Repeal Notes

[1968] Former Rule 4533-a, relating to automobile repair bills and invoices as prima facie proof of damages, was rescinded in order that a more expanded rule including other types of bills and invoices might be adopted in the same proposal.

Notes to Decisions

In light of fact that itemized bill is prima facie evidence of reasonable value of services and repairs only for amount in excess of $1,000, it was error to award motorist property damage for damage done to his automobile as result of automobile accident where motorist was seeking to recover greater amount than $1,000 but failed to present additional evidence necessary to support itemized statement of repairs made to his automobile. Meyer v State, 51 A.D.2d 828, 379 N.Y.S.2d 546, 1976 N.Y. App. Div. LEXIS 11425 (N.Y. App. Div. 3d Dep't 1976).

Probative value of invoices from building supply houses was limited to proving basis for masonry contractor’s expenditures; it was still incumbent on the contractor, seeking recovery for improvements and repairs done under oral “cost plus” contract, to establish that such expenditures were actually made and to prove the reasonable value of the items charged to “cost”; contractor did not meet his burden where he failed to establish that invoice amounts were customary charges for such materials, that invoices were paid and that no amount paid on account of the invoices was to be refunded to him. Lewis v Barsuk, 55 A.D.2d 817, 389 N.Y.S.2d 952, 1976 N.Y. App. Div. LEXIS 15626 (N.Y. App. Div. 4th Dep't 1976).

Cost of replacing defective engine with working second-hand engine may be proved by invoice for purchase of engine since invoice is not bill for repairs or services rendered which requires testimony of third person. Carbo Industries, Inc. v Becker Chevrolet, Inc., 112 A.D.2d 336, 491 N.Y.S.2d 786, 1985 N.Y. App. Div. LEXIS 56477 (N.Y. App. Div. 2d Dep't), dismissed, Carbo

Indus. v Becker Chevrolet, Inc., 66 N.Y.2d 1035, 499 N.Y.S.2d 1030, 489 N.E.2d 1303, 1985 N.Y. LEXIS 18378 (N.Y. 1985).

The legislative intent is that recovery relating to a bill paid cannot exceed $300 but this limitation does not affect a plaintiff's $10,000 ad damnum clause. Under the rule a medical bill is prima facie evidence of the treatment of services rendered and also that the amount paid is the reasonable value thereof, limited to a recovery of $300. If any part of that offer of proof goes beyond itemization of treatment, services and reasonable value thereof it is inadmissible. Henderson v Marden Constr. Corp., 58 Misc. 2d 975, 297 N.Y.S.2d 180, 1969 N.Y. Misc. LEXIS 1865 (N.Y. Civ. Ct. 1969).

Where owner of automobile was not cross-examined on her testimony as to automobile's value immediately before and immediately after an accident and where the defendant did not call any witness of his own to testify with regard to damage sustained by plaintiff from the collision of the parties' automobiles, the amount of damage to which plaintiff testified would be accepted, and judgment would be entered accordingly even though owner had not had automobile repaired and produced no repair bills. Glazer v Quittman, 84 Misc. 2d 561, 377 N.Y.S.2d 913, 1975 N.Y. Misc. LEXIS 3175 (N.Y. J. Ct. 1975).

Where jury, in suit to recover on separate causes of action for wrongful death and for conscious pain and suffering, returned verdict on cause of action for conscious pain and suffering in the amount of $30,000 and on cause of action for wrongful death in the amount of $250,000, jury allocated 10.7% of the total recovery to the cause for conscious pain and suffering and, therefore, where some defendants had entered into lump-sum settlement for $165,000 during trial, 10.7% of the settlement sum of $165,000 was deducted from verdict against non-settling defendant which was returned solely on the pain and suffering cause of action. Hager v Hutchins, 91 Misc. 2d 402, 398 N.Y.S.2d 316, 1977 N.Y. Misc. LEXIS 2318 (N.Y. Sup. Ct. 1977).

Plaintiff's non-itemized automobile repair bill which does not contain the required verified statement that no part of the payment received therefor will be refunded to the debtor and that

the amounts itemized are the usual and customary rates charged for such repairs, is inadmissible in a small claims action for automobile property damage under CPLR 4533-a. In addition, plaintiff failed to serve a notice of intention to introduce such repair bill upon defendants at least 10 days before trial. Tobia v Loiacono, 93 Misc. 2d 689, 403 N.Y.S.2d 395, 1977 N.Y. Misc. LEXIS 2669 (N.Y. App. Term 1977).

Although an itemized bill for X-ray services once properly introduced under CPLR 4533-a, is prima facie evidence of the reasonableness and necessity of the bill, it is nevertheless incompetent evidence to satisfy the threshold requirements for bringing a negligence suit under the no-fault law for a “serious injury” where the “reasonable and customary charges for medical . . . services necessarily performed as a result of the injury” exceed $500 (Insurance Law, § 671, subd 4) without causal connection to the injury since a plaintiff is entitled to recover only those medical expenses which were necessarily incurred to correct an injury caused by the defendant. Except in the clearest of cases such as a crushed finger or amputated toe, it will usually be necessary to call the doctor as a witness to testify on the causation issue. Accordingly, since plaintiff introduced no medical testimony, the action is dismissed for failure to meet the threshold requirements of the no-fault law. Altman v Queens Transit Corp. (1978) Altman v Queens Transit Corp., 94 Misc. 2d 549, 405 N.Y.S.2d 212, 1978 N.Y. Misc. LEXIS 2273 (N.Y. Civ. Ct. 1978).

Should a party in a small claims action elect to establish the reasonable cost of necessary repairs by appropriate documentary evidence, compliance with CPLR 4533-a is not mandated in the absence of such a requirement by the Small Claims Part of the court in which the action is brought; the Small Claims Part is given wide latitude and discretion in the conduct of proceedings and should require such quantum of proof consistent with its statutory purposes. Murphy v Lichtenberg-Robbins Buick, 102 Misc. 2d 358, 424 N.Y.S.2d 809, 1978 N.Y. Misc. LEXIS 2920 (N.Y. App. Term 1978).

In an action in Small Claims Part based on property damage, plaintiff’s evidence, a repair estimate, is acceptable although it fails to meet with the requirements of CPLR 4533-a and

defendant's evidence is also acceptable, although hearsay, since in small claims hearings, the court is not bound by rules of practice, pleading or evidence (UCCA, § 1804); to require small claimants to follow CPLR 4533-a would defeat the purpose of the small claims act by causing inconvenience, increased costs and prolonged proceedings. In a conflict between the CPLR and the UCCA, the UCCA shall control. Lanni v Clark Disposal, Inc., 100 Misc. 2d 1023, 420 N.Y.S.2d 547, 1979 N.Y. Misc. LEXIS 2600 (N.Y. City Ct. 1979).

In an action by a tenant seeking to recover from her landlord $500 in attorney's fees she incurred in successfully defending two summary eviction proceedings, the attorney's bill, which was marked "paid," would be admitted into evidence, although the bill had not been verified and the landlord had not been given notice of the tenant's intention to introduce the bill, where CPLR § 4533-a, which established such conditions for the introduction into evidence of paid bills, would be considered as only a guideline in the small claims part of the civil court. Moreover, the tenant's having interposed counterclaims for the recovery of legal fees in both of the summary proceedings did not bar her instant action where the Housing Court judge who dismissed the two summary proceedings made no determination of the counterclaims. Gonzalez v CNLD Corp., 108 Misc. 2d 549, 437 N.Y.S.2d 910, 1981 N.Y. Misc. LEXIS 2237 (N.Y. Civ. Ct. 1981), aff'd, 115 Misc. 2d 151, 454 N.Y.S.2d 1015, 1982 N.Y. Misc. LEXIS 3647 (N.Y. App. Term 1982).

Compliance with the certification requirements of CPLR 4533-a is not mandated in the absence of such a requirement in the small claims court. Thus, in a small-claims action by a landlord, the court erred in rejecting evidence of itemized bills for repair and for painting of the apartment in question on the ground that the bills had not been certified, where the court only required a litigant to submit itemized paid bills and did not require such bills to be certified. Schnee v Jonas Equities, Inc., 109 Misc. 2d 221, 442 N.Y.S.2d 342, 1981 N.Y. Misc. LEXIS 2380 (N.Y. App. Term 1981).

In a personal injury action claimant, who allegedly sustained personal injuries as a result of her fall down a flight of stairs on the premises of defendant, would be permitted to offer as evidence

of her damages, an itemized bill executed by her physician containing a diagnosis of “Multiple Contusions” pursuant to CPLR § 4533-a, where the statute allowed such an itemized bill, receipted or marked paid, to be admitted as prima facie proof of the reasonable value and necessity of repairs or services, including professional services, in any civil action, and where the notation “Partial Payment Received . . . In Full Satisfaction Of Bill” satisfied the statutory requirement that the bill be marked paid. Rivera v State, 115 Misc. 2d 523, 454 N.Y.S.2d 408, 1982 N.Y. Misc. LEXIS 3722 (N.Y. Ct. Cl. 1982).

Small claims plaintiff adequately established damages to his car with presentation of photograph, one estimate for repairs, and his own credible testimony, where defendant did not dispute that photograph was accurate; statutory provision allowing prima facie establishment of damages through introduction of 2 estimates does not negate court’s ability to accept proof of damages through other means. DerOhannesian v Bergman, 134 Misc. 2d 540, 511 N.Y.S.2d 535, 1987 N.Y. Misc. LEXIS 2060 (N.Y. City Ct. 1987).

Plaintiff’s small claims action would not be dismissed simply because he failed to prove damages by producing itemized bill, invoice or receipt marked “paid” as provided in CLS CPLR § 4533-a; while such itemized bill or invoice is prima facie evidence of value, it is not exclusive method of proving damages in small claims actions, as court may conduct hearings upon small claims in such manner as to do substantial justice between parties. Webster v Farmer, 135 Misc. 2d 12, 514 N.Y.S.2d 165, 1987 N.Y. Misc. LEXIS 2170 (N.Y. City Ct. 1987).

On inquest to ascertain damages pursuant to CLS CPLR § 3215 and CLS UR NYC Civil Ct § 208.32, after defendants’ default in subrogation action for damage to automobile, affidavit of plaintiff’s automobile damage appraiser was admissible, as record prepared in regular course of business, in lieu of courtroom testimony to prove damages in excess of $2,000, since $2,000 limitation of CLS CPLR § 4533-a for admissibility of self-authenticating bill or invoice does not preclude submission of evidence of damages otherwise admissible under common-law and statutory rules. Travelers Indem. Co. v City of New York, 161 Misc. 2d 477, 615 N.Y.S.2d 220, 1994 N.Y. Misc. LEXIS 260 (N.Y. Civ. Ct. 1994).

Absent any evidence challenging plaintiff's proof as to extent of damage to his vehicle, reasonableness of charges specified in repair estimate or pre- and post-collision value of his vehicle, court accepted repair estimate as sufficient to establish reasonable cost of repairs; however, where there was no evidence that plaintiff paid any of those charges specified, there was no basis on which to include amount listed for sales tax as part of his damages. Tanmar Serv. Corp. v Yuen, 187 Misc. 2d 763, 722 N.Y.S.2d 357, 2001 N.Y. Misc. LEXIS 43 (N.Y. Civ. Ct. 2001).

Repair bills, one of which exceeded the $2,000 limit, and none of which had been properly certified, could not be admitted in evidence to prove a landlord's expenditures to repair damages caused by the tenants; since photographs taken by the landlord could also be used to prove damages, they would be the primary evidence at a new trial on damages. Andreani v Feygin, 812 N.Y.S.2d 740, 11 Misc. 3d 54, 2006 N.Y. Misc. LEXIS 182 (N.Y. App. Term 2006).

Research References & Practice Aids

Jurisprudences:

57 NY Jur 2d Evidence and Witnesses §§ 3., 109. .

58A NY Jur 2d Evidence and Witnesses § 979. .

2 3 Am Jur Proof of Facts 3d 243., Establishing an Adequate Foundation for Proof of Medical Expenses.

Law Reviews:

Proof of damages: a defendant's viewpoint. 38 Brook. L. Rev. 371.

Civil jury trial: your proof. 42 NYSB J 52.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4533-a, Prima Facie Proof of Damages.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Negligence § 3.35. Examining Role of Expert Testimony in Establishing Liability.

Matthew Bender's New York Evidence:

3 Bender's New York Evidence § 149.02. Scope of the Business Records Rule.

4 Bender's New York Evidence § 177.03. Damage to Personal Property.

Annotations:

Admissibility of evidence of subsequent repairs or other remedial measures in products liability cases. 74 ALR3d 1001.

Admissibility in personal injury action of hospital or other medical bill which includes expenses for treatment of condition unrelated to injury. 89 ALR3d 1012.

Admissibility of evidence of repairs, change of conditions, or precautions taken after accident—modern state cases, 15 A.L.R.5th 119.

Matthew Bender's New York Checklists:

Checklist for Introducing Documents and Information into Evidence LexisNexis AnswerGuide New York Civil Litigation § 10.05.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 4533-a:1 et seq.

LexisNexis Forms FORM 75-CPLR 4533-a:1.—Verified Statement as to Accuracy of Itemized Bill or Invoice for Services or Repair and as to Refund of Payment.

LexisNexis Forms FORM 75-CPLR 4533-a:2.—Certification as to Items Stated in Itemized Bill or Invoice.

LexisNexis Forms FORM 75-CPLR 4533-a:3.—Notice of Intention to Introduce Itemized Repair Bill or Invoice Into Evidence.

LexisNexis Forms FORM 75-CPLR 4533-a:4.—Notice of Motion for Order Directing Defendant to Accept Notice and Itemized Statement of Bill for Medical Services.

LexisNexis Forms FORM 75-CPLR 4533-a:5.—Affidavit in Support of Motion for Order to Compel Defendant to Accept Notice and Itemized Statement of Bill for Medical Services.

Hierarchy Notes:

NY CLS CPLR, Art. 45

Forms

Forms

Certificate for Itemized Bill or Invoice for Services or Repairs

Statement

[Title of court and cause] Index No._____

I certify that no part of the payment received for rendering the services [or making the repairs] itemized in the attached bill will be refunded to the debtor, _____ , and that the amounts itemized therein are the usual and customary rates charged for such services [or repairs] by me [or by _____ , my employer].

Dated: _____ , 20 _____ .

[Signature with name printed underneath]

_____

R 4533-a. Prima facie proof of damages.

STATE OF NEW YORK

COUNTY OF _____

ss.:

_____ , having been duly sworn, deposes and says:

That he is the person [or the authorized agent or employee of _____ , the person, firm, or corporation] rendering the services [or making the repairs] itemized in the attached bill and charging therefor; that he has read the preceding statement and knows the contents thereof, and that the same is true to the best of his knowledge.

[Jurat]

[Signature with name printed underneath]

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