



Accelerated Depreciation
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Accelerated depreciation occurs when a vehicle's value decreases after it is damaged during a collision; even if a vehicle is fully repaired after an accident, its trade value will typically decrease.

A recent *Globe and Mail* article told the story of a hardly driven 2009 Audi R8-V that was purchased for \$120,000.00 in January, 2012. In July, 2012, the driver was struck by a motorcycle, resulting in minor cosmetic damages that required replacements to the passenger door and side blade. Even though the driver ordered brand new parts from Germany to repair his vehicle, two different dealerships informed him they would only offer \$85,000.00 for his car, despite the repairs. Subsequently, his vehicle had diminished in value by approximately \$35,000.00 in 7 months. Although this article argues that acceleration depreciation is "one of the largest hidden secrets in the car insurance industry," these claims are often awarded damages in court.

With respect to compensation for diminished value claims, the guiding principle has been the same as in any tort case: to place the injured party in the position they would have been in if the damage had not occurred. Thus, the appropriate measure of compensation for negligent damage is the difference in its value immediately before and immediately after the act which damaged it.

Persuasive evidence as to the diminished value of the vehicle is necessary in order to be awarded damages for depreciation. For example, in *Miles v. Mendoza*, a plaintiff was not awarded for the accelerated depreciation of her vehicle after a car accident as the only evidence presented at trial was an assumption that every car that has been in an accident carries a stigma that depreciates value.

Similarly, in *Lee v. Hawkins*, accelerated depreciation damages were not awarded due to a lack of evidence, despite expert testimony that "it is virtually impossible to sell a vehicle displaying the damage declaration without discounting the price substantially".

In *Gunn v. Tritow*, the court refused to award depreciation damages because the only evidence of depreciation was the plaintiff's assumption that her vehicle had decreased in value. The court concluded that while a plaintiff may recover damages for diminution in the value of a vehicle, despite adequate repairs, depreciation cannot be assumed and has to be proven by appropriate evidence. This evidentiary requirement for depreciation damages was considered necessary

despite the fact that motor dealers had a duty to disclose to a purchaser that a vehicle had sustained prior damage when the damage exceeds \$1,000.00. Typically, assumptions that are devoid of substantial or persuasive evidence about a vehicle's diminished value will not result in compensation for accelerated depreciation.

Awards for accelerated depreciation damages are typically less difficult with regards to luxury vehicles or vehicles that have persuasive or expert evidence with respect to their depreciation in value. In *Turnbull v. Gammie*, the plaintiff demonstrated very specific expert evidence that a purchaser with knowledge of extensive repairs (amounting to \$18,000) to a six-week old Mercedes Benz would pay \$8,000 less for it than for the same car without an accident history and was subsequently awarded \$8,000.00 for depreciation damages.

There can be difficulties in deciding between awarding damages for either how much a property has diminished in value or how much it would cost to replace the property in order to put the injured party back in their original position. For example, the injured party may want his property in the same state before the tort occurred, but the amount necessary for this to occur is substantially greater than the amount that the property has depreciated in value.

Typically, the replacement cost of the property will be the starting point for property loss damages. In *Nan v. Black Pine Manufacturing Ltd.*, the plaintiff's 13-year-old home was destroyed by fire as a result of the defendant's negligent installation of a hearth heater. The house was completely rebuilt and the plaintiff was awarded the full replacement cost of the house. The defendant argued that the plaintiff had been overcompensated as he had received a brand-new house after his well-worn home had been destroyed. The court held that in most cases involving loss or damage to property, the replacement cost of the property is the starting point for damages; subsequently, any adjustments for pre-loss depreciation or post-loss replacement will depend on what is reasonable in the circumstances for both the plaintiff and the defendant. The court held that it was reasonable for the plaintiff to desire the reinstatement of their property; although the extra cost to the defendant was a significant factor, it was considered to be only one factor in calculating how reasonable the plaintiff's claim was. Ultimately, the only option that would place the plaintiff in the position they had previously been in was to rebuild their home and award replacement costs.

Although overcompensation can potentially occur when there is only one method in which to compensate a plaintiff, courts are still cautious to ensure that a plaintiff is not overcompensated, or placed in a better situation than they were before the loss. For example, an alternative to full replacement costs was awarded in *Upper Lakes Shipping Ltd. v. St. Lawrence Cement Inc.* The plaintiff incurred the costs of replacing a belt in its cargo vessel and spent money they would not have otherwise spent. The judge found that the plaintiff, who had no choice but to replace the belt, was bettered by 20% and the defendant was required to pay 80% of the cost of the belt. However, the court found that the plaintiff was forced to spend the remaining 20% 12 years earlier than would otherwise have been the case. As compensation for this loss, the court found that the plaintiff was entitled to interest on the remaining 20% for a period of 12 years.

Although not determinative, courts will often take into account the actual nature of the property, such as whether it was primarily commercial in nature or unique to the plaintiff. In *Philip v. Smith*, the Court of Appeal awarded the plaintiff damages for the diminished value of her property after a retaining wall caused a mud slide onto her property. The judge found it would not be reasonable to award damages based on what it would cost to return the property to its original condition as that was substantially more than the amount by which the property had diminished. A significant factor in this determination was the fact that the plaintiff purchased the property as a commercial investment without intending to build or live on it. However, although property of a commercial nature is often awarded diminution in value damages, courts have held that in cases where the property is a purely commercial facility, the facts may not permit diminution or reinstatement damages.

Full replacement costs have typically been awarded when the property has been unusual or unique; for example, in *Forsyth v. Sikorsky Aircraft Corp.* a helicopter owned by the plaintiff crashed after a failure of the spindle in the tail-rotor assembly produced by the manufacturer. The plaintiff sought to recover \$1,363,202 for the replacement cost of the helicopter and the defendant argued that the market value of the helicopter on the date of the loss should determine the extent of damages. However, the plaintiffs had modified the damaged helicopter to enable it to perform heli-logging operation, which increased the cost. Subsequently, replacement costs were awarded for the helicopter.

An award of replacement costs can also be justified in circumstances where there is no market value for the property destroyed. In *Goodyear Canada Inc. v. Wall Beresford Holdings Ltd.*, the court considered whether the plaintiff should receive full replacement costs for the loss of their tire-making machine. The plaintiffs converted a machine from one already in their warehouse, although the added costs to make the enhanced machine were relatively minimal. The tire-making machine was unique and there was no available market into which the plaintiffs could have gone to replace the lost tire making machine. They had no alternative but to either build one from scratch or, as they did in this case, convert one from a machine already in their warehouse. The court awarded full replacement costs but deducted the unreasonable enhancements of the machine.

As exemplified by the case law in the matter, the ultimate goal of awarding damages for diminished value claims in both motor vehicle and property claims is to place the injured party in the position they would have been in if the loss had not occurred. With respect to motor vehicle claims, persuasive evidence of a vehicle's depreciation is necessary to be awarded damages for diminished value. For property claims, a myriad of factors, such as the reasonableness of the plaintiff's request, possible unfairness to the defendant and the nature and usage of the property, are taken into account in determining damages and each case is determined by its factual circumstances.