

IN THE COURT OF CLAIMS OF OHIO

STEVEN VASTINE, et al. :
 1302 Woodburn Court :
 Batavia, Ohio 45103 : Case No. 2002-10305-AD

Plaintiffs : MEMORANDUM DECISION

v. :

STATE HIGHWAY PATROL :

Defendant :

: : : : : : : : : : : : : : :

For Defendant: Colonel Paul D. McClellan
 Ohio State Highway Patrol
 P.O. Box 182074
 Columbus, Ohio 43218-2074
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FINDINGS OF FACT

{¶1} 1) On October 9, 2002, an employee of defendant, Ohio State Highway Patrol, discharged a firearm which caused structural damage to the home of plaintiff, Steven Vastine.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$1,088.00, the total home repair cost, \$230.00 for work loss, \$75.00 for telephone expenses, and \$86.00 for work loss for plaintiff's spouse. Plaintiff has implied all these damages claimed resulted from the negligence of defendant's employee. Plaintiff acknowledged he received \$838.00 from his insurer to pay for the structural repairs to his home.

{¶3} 3) Defendant admitted liability for plaintiff's property damage, but disputed his total damage claim. Defendant has asserted plaintiff's damages should be limited to \$250.00, his insurance coverage deductible, plus filing fee reimbursement.

{¶4} 4) Plaintiff filed a response asserting he should be entitled to recover his insurance coverage deductible, filing fees, work loss for both he and his spouse, and telephone over use expense. Plaintiff also asserted he should recover a rate increase amount in his insurance based directly on his submission of a claim in connection with the events of October 9, 2002. Plaintiff produced a letter from his insurer establishing his insurance premiums were increased \$18.00 per year for a period of three years. Total insurance rate increase amounts of \$54.00. Plaintiff has not submitted sufficient evidence to show the necessity for excessive cell phone use as it relates to compensable damages. Plaintiff has not produced sufficient evidence to establish a causal connection between defendant's act and the total work loss claimed. The facts of this claim support justifying one day of work loss for plaintiff, Steven Vastine.

CONCLUSIONS OF LAW

{¶5} 1) Defendant was charged with a duty to exercise reasonable care for the protection of plaintiff's property in the performance of official acts. In regard to the facts of this claim negligence on the part of defendant has been shown. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶6} 2) R.C. 2743.02(D) states, in pertinent part: "Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant." Thus, plaintiff's claim for any expense paid by insurance is denied.

{¶7} 3) The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42. Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers* (1992), 82 Ohio App. 3d 148. Only reasonable certainty as to the

amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782.

{¶8} 4) The court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239. Plaintiff has failed to prove telephone expenses and the work loss of his spouse are compensable.

{¶9} 5) Plaintiff has suffered damages in the amount of \$529.19, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶10} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶11} IT IS ORDERED THAT:

{¶12} 1) Plaintiffs' claim is GRANTED and judgment is rendered in favor of the plaintiffs;

{¶13} 2) Defendant (Ohio State Highway Patrol) pay plaintiff (Steven Vastine) \$554.19 and such interest as is allowed by law;

{¶14} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

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