

Loss of Use – What is the Correct Compensation?

The general “rule of thumb” calculation for the compensation payable for the loss of the use of a car is £10 per day. The loss of use of a bus or a coach however is very different from the loss of use of a car and has significantly more seats than a car and the loss suffered from such a vehicle being unavailable for use is therefore significantly greater. How can the operator of the bus or coach company be compensated correctly?

With a taxi or private hire vehicle, it is generally accepted across the insurance industry that the cost of hiring a replacement is the compensation payable, so why should a bus or coach be any different? Third parties will seek to deflect claims brought by companies with a fleet of vehicles by arguing that the fleet operator could utilise one of the other vehicles from their fleet and if they did so then the fleet owner would, in their argument, have suffered no loss from the relevant vehicle not being available for use.

It is certainly true that fleet operators frequently have standby vehicles for emergencies or to cover vehicles when they are being serviced or maintained and it has been established in the 1970 case of *Birmingham v Sowsbery* that the provision of a standby vehicles is reasonable and necessary and that they are to be taken as being in operation at any one time. Not to have the use of a vehicle (a valuable chattel) as a result of a negligent third party would deprive the operator during the period their vehicle is off the road, for which they should be compensated for, regardless of whether there were other fleet vehicles available. The judge stated that “*where the Plaintiffs in a case such as this have had to hire a replacement vehicle, or where they are a profit making concern and can prove a financial detriment from the temporary loss of their vehicle, no difficulty arises. The precise figure can be claimed as special damage and will be recovered if proved*”.

The case went on to set out two alternative methods for calculating such a loss of use. The first method is to take the cost of maintaining and operating the vehicle as the basis for calculation, on the assumption that this figure must represent approximately the value to the operators when the concern is non-profit making. The second method is based on interest and capital and depreciation.

In the case of *Beechwood Birmingham Limited – v – Hoyer Group UK Limited* (Court of Appeal) earlier this year a Claimant was awarded loss of use damages rather than hire charges due to the number of vehicles that they had available to them and could have utilised from their fleet. The principles established in *Birmingham v Sowsbery* were accepted as valid methods of claiming loss of use today, which have reinforced the existence of formulas for both small and large operators.

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