

PERSONAL INJURIES

Survey of recent awards in South Australia

The present survey covers the period from July 1964 to October 1965, and includes summaries of all cases relevant to the topic reported in the Law Society Judgment Scheme during that period.¹

This collection of cases has been undertaken in the hope that it will provide a convenient and useful source of reference to the profession in South Australia. A further reason is the belief that the citation of previous awards in comparable cases provides a useful guide to judges who are entrusted with the performance of this most difficult task, and has the desirable consequence of promoting both uniformity and predictability in awards for similar injuries.²

The cases dealt with have again been classified under certain heads according to the injury or if there are multiple injuries, according to the major injury received. It has also been thought desirable to indicate whether the case came on for assessment only or whether it was contentious, and if so, whether the plaintiff's damages were reduced because of his contributory negligence.³

Head Injuries

£1,500 Spanish migrant carpenter aged thirty suffered a fractured skull. He suffers from a severe nerve deafness which is permanent, and renders his left ear practically useless. There

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1. For the period prior to July 1964 see 2 *Adelaide Law Review*, 226.
 2. The Privy Council has recently affirmed this proposition in *Singh (an infant) v. Toong Fong Omnibus Co. Ltd.* [1964] 3 All E.R. 925, especially 927. A most instructive case, although primarily concerned with the problems of jury assessments, is *Ward v. James* [1965] 2 W.L.R. 455, especially 470, 473. See also a comment on this case 'Juries and Personal Injury' (1965) 38 A.L.J. 393. A good illustration of the utility of comparing previous awards in comparable cases is afforded by the approach of Napier C.J. in *Burfitt v. Minister of Education* (1965) L.S.J. Scheme 496, especially 498, 499. The remarks of Bright J. in *Cooper v. Spender* (1965) L.S.J. Scheme 342, 343, are not, it is submitted, to be read as a denial of the utility and desirability of the comparative method of assessment. They merely serve to remind us that there are limitations in the making of any comparison. It is not within the scope of the present survey to deal with the criticism, frequently asserted and with some force, that the uniformity rule is an undesirable accretion to the law of damages, and one to be applied only with the highest degree of circumspection. For a most interesting introduction to this controversy see: Lowe: 'Some Recent Cases on Damages' (1964) 61 *Law Society's Gazette* 485, continued in (1964) 61 *Law Society's Gazette* 536; Grayson: 'Damages for Personal Injuries - A further Comment on Recent Cases', and correspondence referred to therein, (1964) 61 *Law Society's Gazette* 666.

3.* Assessment only.

† Contentious.

is tinnitus in the ear and attacks of nausea occur. The main residual disability is a serious giddiness resulting from damage to the balancing mechanism, which may be permanent. He has a fear of falling when working above ground. Attacks are momentary varying in frequency from three to eight times a day. There is a greater awareness of condition when relaxing.⁴

£1,800 Boy of twelve (now aged sixteen) was struck in eye by golf-ball. Severe intra-ocular haemorrhage. Subsequently a traumatic cataract developed over a period of months. Three 'needling' operations were performed and a fourth to deal with a complication known as 'secondary glaucoma'. Contact lens worn for a period, but later discarded. Sight of injured eye very seriously impaired, and cannot be made to see normally by use of the appropriate lens in conjunction with his good eye. It serves for side vision, but central vision is blurred and less than 10%. Loss of ability to use both eyes together is equivalent to the loss of 75% of sight of one eye, and for this damages are assessed at £1,500. Further £300 allowed for pain and suffering, necessity for periodic examinations, and the possibility of further trouble. Eye injury has not substantially interfered with his schoolwork or prospects in life.⁵

£2,000 Infant aged seventeen (thirteen at time of accident) suffered broken left leg and severe head injuries involving fractures to the skull. Major residual disability is a permanent paralysis of the muscle which turns the right eye outward, resulting in a substantial degree of double vision which will be permanent. Further treatment is impossible, and there is a deprivation of advantages of binocular vision, which is assessed at the equivalent of a 70% loss of vision of one eye. Good adaptation to injury. He appears able to read with reasonable facility and to perform other normal activities. Disability will deny a number of careers to him, and may limit his opportunities of employment in the future.⁶

£2,000 Female infant sustained fracture of the right occipital bone, and fracture of right clavicle, but the latter has left no permanent disability. As a result of the head injury, she has suffered and will continue to suffer considerably from head-

4. **Caravaca v. Mullighan* (1965) L.S.J. Scheme 201 (Hogarth J., April 1965).

5. **Burfitt v. Minister of Education* (1965) L.S.J. Scheme 496 (Napier C.J., September 1965).

6. **Ball v. Gamblings Pty. Ltd.* (1964) L.S.J. Scheme 597 (Chamberlain J., September 1964).

aches. There is a serious and permanent interference with the sense of smell and, because of an impairment to the olfactory nerve, an apparent and, from her point of view, a real impairment of the sense of taste. She further complains of a continuous unpleasant smell, sufficient to induce nausea and even vomiting on occasions. She is shy in company, believing that others can smell this odour, and associate it with her. She is otherwise able to lead a normal life, but her enjoyment of life is substantially affected through her sensory loss.⁷

£4,500 Farmer aged forty-one suffered a head injury which has left him with an inco-ordinated right arm, accompanied by a very pronounced tremor. There is a substantial effect on activities involving use of both arms, with left hand virtually useless for fine actions. Minor inco-ordination of left leg. His memory of recent events is affected, but he is otherwise able to give a coherent and sensible account of himself. He tires easily, and tends to become moody and irritable. Damage may be more diffuse than originally suspected with the possibility of an epileptic condition developing which may respond to drugs. He is still able to work, but a number of activities are beyond his capacity, with a consequent dependence on paid labour.⁸

£9,000 Female aged seventeen suffered concussion and contusion and laceration of the brain. This damage is severe and will never permit anything like a full recovery. Before accident she was of slightly above average intelligence, but this is now sub-normal, approximating to that of a child between eight and ten years. There has been a substantial inhibition and frustration of personality, and she is emotionally labile, the slightest of stimuli producing happiness or distress. She is able to perform simple and menial tasks in the family bakehouse at about half the normal pace. She expects to marry, but her limited intelligence and chronic irritability militate against a successful marriage. She suffers from a terror of sex and isolation, and may be prevented from overcoming either because of her diminished powers of comprehension. Damages must be substantial because she has suffered brain damage converting her from a state of independence to one of semi-dependency.⁹

7. **Anderson v. Trenerry* (1964) L.S.J. Scheme 752 (Hogarth J., October 1964).

8. †*Siviour v. Paech* [1965] S.A.S.R. 65; (1965) L.S.J. Scheme 158 (Chamberlain J., March 1965). (Damages reduced by 50%.)

9. **Vriends v. Aistrope* (1964) L.S.J. Scheme 599 (Bright J., September 1964).

- £17,500 Twenty-year-old man sustained severe brain damage, which could not be availed by surgical treatment. For two months no expectation of recovery such as has followed was expected. As it is he is left with residual signs of a severe brain injury. These include a gross defect in articulation, a considerable disturbance in mentality, and gross impairment of intelligence. His performance in identifying patterns (Revin test) is distressingly bad. His motor functions show co-ordination of the hands, but disturbance in the reflexes suggests damage to the spinal tracks. His memory is substantially impaired. Employment is more likely to be of psychological than remunerative benefit to him. The damages must be substantial to compensate for his drastically altered future life.¹⁰
- £17,500 Infant female, aged two at time of accident, suffered fractured skull with injury to her brain and her right side middle ear with concussion and abrasions. She was unconscious for two weeks, and has the following permanent disabilities: deformity of the feet, with consequent impairment of balance and co-ordination; slowness of movement; impairment of her intellectual processes which will adversely affect her opportunities for education and training for employment. Her disability will continue during her adult life, and she will require someone to be with to attend to her when necessary. She will be unable to support herself, and it seems improbable she will ever marry. There is no reason to expect her life to be shortened.¹¹
- £24,000 Final year pharmacy student at University of Adelaide suffered a fractured skull and compound fracture of left mandible with severe brain damage. Unconscious for four months and in hospital for over two years, undergoing three operations. He is left with a spastic and virtually useless left arm and hand, spastic left leg and an asymmetrical jaw. Considerable and varying difficulty in articulation. There are severe effects on temperament and personality, and he is permanently unfit for any useful employment. He is incapable of most of the pleasures of life. He retains some powers of mental and physical activity, and is able to read and write and perform some personal tasks and so does not require nursing so much as supervision. Destruction of his prospects of a full and happy life. He faces instead the prospect of futility and lone-

10. **Clarke v. O'Dea* (1965) L.S.J. Scheme 109 (Mayo J., March 1965).

11. **Asher v. Tyler* (1965) L.S.J. Scheme 500 (Mayo J., September 1965).

liness, alleviated by his limited ability to look after and entertain himself, and by the illusions which enable him to live in an unreal world. His liability to accident must constitute a threat to a normal expectation of life.¹²

£25,000 Male infant aged four suffered severe head injuries, including brain damage which has affected his intellect and to a lesser but appreciable extent, his motor ability. The intellectual retardation is grave, and it is unlikely that from an intellectual and emotional point of view he will progress beyond the standard of a child of ten. There is, moreover, a permanent bitemporal loss of field of vision, and within this field of vision, a considerable loss of acuity of vision. It is estimated that he only has 50% of normal acuity of vision in the right eye, and 20% of normal acuity in the left eye. In the area in which both eyes are operable, vision is between 20% and 50% of normal. As to his loss of motor ability there is permanent impairment of agility and co-ordination in his left leg which is attributable either to the head injury or to his period of immobilisation. His disabilities in combination render him practically unemployable on the general labour market, although he can perform the ordinary daily tasks of clothing and feeding himself. He will be unable to manage his financial affairs. He exhibits a strong desire to do his work well and to get on well with his fellows. These qualities may enable him to find employment of a limited kind in a sheltered environment. He is aware of his enfeebled intellect, and this leads to emotional outbursts and will continue to cause frustrations for the rest of his life. It is unlikely in the extreme that he will ever be able to make a home and family. He seems ultimately destined for the care of an institution. His disabilities mean a grave loss of the amenities of life.¹³

12. **Black v. Mount* (1965) L.S.J. Scheme 170 (Chamberlain J., April 1965). Chamberlain J. in dealing with the head of damages 'loss of amenities of life' at p. 187 said: 'To award him a large sum in addition [to damages for pain and suffering] would be a mere gesture of sympathy which would do nothing to compensate him for his loss. It seems to me to be futile to attempt to do what no sum of money, however large, could even begin to do. . . . It may be that this case will provide an opportunity for an authoritative statement on this much debated topic.' This opportunity has been passed over; it is submitted that there is in this sort of case, much force in the views of Chamberlain J. His approach to the problem of assessing damages to compensate for an injury as grave as that suffered by the plaintiff in this case is similar to that of Harman L.J. in *Warren v. King* [1963] 3 All E.R. 521, 528 letter I, a case in which the plaintiff, a girl of nearly seventeen, was, as a result of a road accident, rendered a permanent quadriplegic. For a recent discussion of this head of damages, see McGregor: 'Compensation versus Punishment in Damages Awards', (1965) 28 M.L.R. 629, 649-653.

13. **Miles v. Silvestri* (1965) L.S.J. Scheme 246 (Hogarth J., June 1964).

Spinal and Neck Damage

- £1,500 Plaintiff plant operator suffered injury to his back involving the crushing of his fourth cervical vertebra, and damage to some of the joints of the neck. There is a consequent limitation of the movement of the neck, both in rotation to the right and in hyperextension, and pain in the lower back. Manipulation of the neck under anaesthetic was performed to disperse adhesions, which provided temporary relief in this area. The condition of the back will gradually improve and eventually disappear, as there is full range of movement in that area. The neck injury constitutes a permanent disability, and varying degrees of pain will continue to be suffered with concomitant headaches which will diminish in severity. He is permanently unfitted for heavy work, and his leisure activities will continue to be interfered with, although less drastically as time goes on.¹⁴
- £1,800 Opal miner suffered an injury to his neck involving the nerve roots in the cervical spine, and an injury to his lower back. These injuries continue to impair his capacity for hard manual work, and caused or contributed to a neurotic condition. Injuries were aggravated by an ill-advised attempt to continue mining.¹⁵
- £2,000 Salesman aged forty-eight suffered an injury to the fourth lumbar disc producing compression on the left fifth lumbar nerve root. He has suffered, as a result of these injuries, fairly continuous pain of varying intensity, including periods of extreme pain when he became immobilised. This condition will gradually improve, with some residual discomfort and pain. Possible that surgery in the form of laminectomy or even fusion of the three vertebrae may become necessary if the pain increases. Little time has been lost from work, and the injuries do not constitute any significant disability in the performance of his work, although they place him at a disadvantage should he have to compete on the general labour market.¹⁶
- £3,500 Woman police constable aged thirty-one suffered fracture of second cervical with some forward displacement. She underwent treatment designed to put traction on her neck and for this purpose, holes were made in her skull, calipers inserted and weights hung. Treatment was continued for six weeks,

14. **Dickson v. Jones* (1965) L.S.J. Scheme 608 (Hogarth J., October 1965).

15. **Mazik v. Lloyd* (1964) L.S.J. Scheme 745 (Chamberlain J., October 1964).

16. **Ryan v. Cook* (1965) L.S.J. Scheme 618 (Hogarth J., October 1965).

after which the weights were removed, and replaced by a heavy fracture collar, which was worn for some three months. Thereafter she wore another collar for six weeks. Throughout this period she experienced considerable pain, and had to relearn to use her neck. Her residual disabilities are a restriction of neck rotation (about half) and stiffness in that area which will be permanent to a degree. Pain in right side of head which will continue. Diminution of powers of physical endurance. Possible degeneration at the site of injured joints, and the possibility of arthritis in the future. Remote possibility of irritation of spinal cord. Some irregularity in her menstrual periods, but childbearing capacity not impaired. Diminution of her enjoyment of sporting activities. Pain and discomfort experienced in her work necessitating wearing of a collar two to three times per week.¹⁷

£15,000 Married woman aged fifty-one (forty-eight at time of accident) sustained injuries to her cervical spine which have resulted in a very serious incapacity. Injury diagnosed as an injury to the spinal cord, consisting of bruising to the cord and tearing of some of the nerve roots in the lower part of the neck. This condition is irreparable, and some further deterioration is expected. Bone graft to cervical spine has been performed to prevent further deterioration in that area, but she continues to experience severe pains in the arms. She is permanently deprived of a great deal of the use of her hands and legs. Great impairment of sensation and function of hands. Contracture in some fingers of the right hand make any degree of dexterity impossible. Weakness of legs and manifest spasticity, which makes walking slow and ineffectual. Normal activities as a housewife are impossible of performance. In short she is reduced to a condition of almost complete helplessness from which no improvement but rather deterioration may be expected.¹⁸

£21,100 Boy aged sixteen was the victim of a shooting accident, the bullet travelling through his spine and lodging close to the heart. He is completely paralyzed from a point high up in his spinal column, and will have to spend his life in a wheel chair. His intellectual powers and use of his arms and hands are unimpaired, and he is able to bath and dress himself, to drive a specially equipped car, and to undertake limited types

17. **Pocock v. Pope* (1964) L.S.J. Scheme 552 (Mayo J., August 1964).

18. **Heusler v. South Australian Railways Commissioner* (1964) L.S.J. Scheme 757 (Hogarth J., October 1964).

of employment. His intelligence is quite good and he should be able to make something worthwhile of his life, despite his disabilities.¹⁹

Cosmetic Injuries

- £75 Married woman suffered some ragged cuts on her left cheek and above her left eye, and on left leg and thigh—stitches later inserted, and, after removal, scars on face were very noticeable. Scars are now inconspicuous, and there is no resultant disability. In view of this damages could not exceed the sum awarded.²⁰
- £1,750 Infant female suffered concussion, facial and other lacerations and a fractured lumbar vertebra. The latter has caused and will continue to cause intermittent backache, with the possibility of arthritic changes developing in contiguous joints. Difficulty in childbirth a possibility. No present impairment of social and sporting activities. The facial disfigurement is not great, but is noticeable on her forehead. Fact that the defendant intends to marry her is irrelevant to this head of damage.²¹

Injuries to Hand and Arm

- £1,500 Motor-car repairer sustained broken nose, facial lacerations and bruising, and concussion, but apart from headaches there is no residual disability. His major disability results from bony damage to the left shoulder. He now suffers pain and there is a limitation of movement which may improve but which will be offset by supervening osteo-arthritic changes which may already have begun. There is loss of power and crepitus in the joint. In relation to employment, the arm is a constant discomfort and imposes limitations on his exertions, but is not a major disability.²²
- £2,500 Male plaintiff suffered severe injuries to right arm with considerable pain and discomfort. He also sustained compound fracture in the right elbow, fracture near the wrist, and lacerations to the fourth and fifth fingers. He is left with disabilities

19. **Harris v. Ryan* (1965) L.S.J. Scheme 121 (Chamberlain J., March 1965). (Note that the sum of £21,100 includes the amount of special damages proved, claimed at £1,016 7s. 2d. in the Statement of Claim.)

20. **Passmore v. Nott* (1965) L.S.J. Scheme 579 (Chamberlain J., September 1965).

21. **Morgan v. Aunger* (1964) L.S.J. Scheme 808 (Mayo J., November 1964).

22. †*Quire v. Coates* (1964) L.S.J. Scheme 488 (Bright J., August 1964). (No apportionment.)

and limitations of movement which will be permanent and are likely to deteriorate. Present loss of function is estimated at 40%, and this is likely to increase.²³

Leg and Pelvis Injuries

- £1,500 Carpenter aged thirty-two sustained fracture of left tibia and fibula. Fracture of tibia was compound, and did not unite. Thereafter it was necessary to perform a bone-grafting operation to promote union which was successful. He is left with about $\frac{1}{2}$ " shortening of the leg, putting some extra strain on the spine. Reduction of 5° knee flexion, and some limitation of ankle movement, both in dorsi-flexion and plantar flexion, also by about 5°. It is unlikely that full range of movement will be regained, with a consequent predisposition to osteoarthritic changes. Slight foot and ankle pain will continue, and a feeling of instability will be present when walking on some surfaces. Swelling of limb in hot weather may persist.²⁴
- £2,000 Bricklayer suffered fracture of left tibia and fibula with mild concussion and laceration of scalp and strained neck ligaments. Fracture was reduced and a sliding bone graft operation performed. As a result of injury he is more accident-prone than before. Muscle wasting of the thigh and calf has occurred. His leg is a little shortened and liable to swell at the end of the day. Ankle and knee movements are somewhat restricted. No reason why he cannot carry on his occupation as bricklayer, though with some discomfort.²⁵
- £2,500 Pastoralist aged fifty-eight sustained compound fracture of the right knee-cap, concussion, bruising and various lacerations. Severe pain and discomfort associated with the knee fracture. Operations for the removal of broken pieces of the knee were performed, and subsequently treatment at the hospital and physiotherapy were necessary. Some degree of mobility recovered. There is a reduction of flexibility in the knee—only 90°. $\frac{1}{2}$ " muscle wastage in the right thigh, and a limp which restricts his movements. He is unable to kneel on right knee, to mount and ride a horse, or to hold a sheep for shearing. These and other similar defects have impaired performance of his normal work.²⁶

23. **O'Donohoe v. Miller (Nominal Defendant)* (1965) L.S.J. Scheme 273 (Travers J., June 1965).

24. †*Wurtle v. Holmes* (1964) L.S.J. Scheme 827 (Hogarth J., December 1964). (Damages reduced by 33%.)

25. †*Kusciunas v. Wait* (1965) L.S.J. Scheme 167 (Chamberlain J., April 1965). (Damages reduced by 25%.)

26. **Pick v. Wynes* (1964) L.S.J. Scheme 540 (Mayo J., August 1964).

£2,600 Apprentice sustained fracture of left leg below the knee involving compound fracture of the tibia. The wound required suturing, and a sliding bone graft operation was performed which has resulted in satisfactory bone union. Leg is of normal shape and length but is $\frac{1}{2}$ " less in circumference at both thigh and shin. Some loss of knee flexion. Ankle extension is of almost normal range, but there is a considerable loss of flexion and limitation of movement at the ankle of about 35° . Leg is permanently scarred and indented and is unlikely to improve. Increased likelihood of osteo-arthritis, although not of early onset. Injury is a serious though not a major interference with his efficiency as a tradesman in that the limb tires more quickly and prevents his working in cramped conditions or steep places. These limitations will restrict his earning capacity in the future.²⁷

£2,750 Forty-year-old man suffered injury necessitating removal of both knee-caps. Good deal of pain at the time. Present disability consists of a weakness in both knee-joints—slight limitation of flexion in each and a feeling of unsteadiness. His perseverance has enabled him to combat his disability. Continued equal vigilance in the matter of exercise will have to be shown for the rest of his life or his legs will stiffen and become weak. He cannot go about his daily life without having to think constantly of his legs. Crepitus is present in one joint, and there is a likelihood of arthritic changes in his knees at an earlier age than is normal. Earning capacity not seriously affected because of his accommodation to his injuries.²⁸

£3,200 Metal polisher sustained fracture of upper end of left thigh bone. Operation performed to fix the splintered fracture with a metal plate and screws. He walked with aid of crutches for three months and stick or sticks for six months, undergoing physiotherapy at the same time. He is permanently unfit for work requiring agility of foot or the handling of heavy weights. Fracture has healed with some deformity. Left leg shortened by $\frac{3}{4}$ ". There are periodic attacks of pain, especially in cold weather, which may necessitate removal of the plate. Earning capacity reduced by £2 to £3 per week because of inability to do overtime.²⁹

27. **Kemp v. Thomas* (1965) L.S.J. Scheme 458 (Bright J., August 1965).

28. **Cooper v. Spender* (1965) L.S.J. Scheme 342 (Bright J., July 1965).

29. †*Massolino v. Noppel* (1965) L.S.J. Scheme 142 (Napier C.J., March 1965). (Damages reduced by 30%.)

£3,500 Man aged thirty-five suffered compound comminuted fracture of left tibia with considerable tissue and skin damage, loss of blood and shock. Skin graft was required, and the leg was immobilised in plaster for eight months. He is left with a shortened and damaged left leg with 25% loss of function. He is permanently unable to lift heavy weights or to play sport. He has pain in the leg and back, with swelling and discolouration of the leg after walking or standing. There is a loss of muscle bulk with thin numbed skin which is abnormally susceptible to damage. There is a limitation of foot movement, some curvature of the spine and rotation of the pelvis. Arthritic changes have begun to occur in the leg.³⁰

£4,000 Female aged twenty sustained concussion, fractured left pelvic bone, a centrally dislocated hip and multiple lacerations and abrasions. She was in hospital for thirteen weeks, for nine of which she had a steel pin through the shin while traction was applied in the form of a 20 lb. weight to reduce the pelvic fracture. Left leg is permanently shortened by 1½", in some measure due to her putting weight on the leg contrary to instructions. Lessening of the pelvic orifice will prevent natural childbirth, and her childbearing capacity is probably limited to three. Her future seems to be as a wife and mother, and she will be able to cope with those duties, although with some pain and inconvenience and osteo-arthritis.³¹

£4,000 Male plaintiff suffered very severe compound comminuted fracture of lower right leg. This necessitated five operations, including a bone graft and an extensive skin graft. He is left with a misshapen and, at times, painful leg, restricted ankle movement and a tendency to a minor degree of arthritis. His inability to do overtime has resulted in a permanent diminution of his earning capacity.³²

£5,800 Orchardist aged fifty-one at time of accident suffered a severe and permanent injury to his left leg. This involved fractures of the left femur, and the left tibia and fibula, with

30. †*Sharrock v. General Motors-Holden's Pty. Ltd.* (1964) L.S.J. Scheme 680 (Chamberlain J., October 1964). (Damages reduced by 40%.)

31. †*Harvey v. Woods* (1964) L.S.J. Scheme 707 (Bright J., October 1964). (No apportionment.)

32. †*Zuk v. Hodges* (1965) L.S.J. Scheme 427 (Chamberlain J., July 1965). (Damages reduced by 50%. An appeal to the Full Court on the question of apportionment was dismissed in a judgment delivered on 4 October 1965.)

injury to ankle and knee joints. A sliding bone graft operation had to be performed. Ankle movement is now restricted to half of normal range. The damaged leg has wasted and is $\frac{1}{2}$ " less in circumference than the other, and the leg is left $1\frac{1}{4}$ " shorter because of the fractures. There is some limitation of movement in the ankle, knee and big-toe, and arthritic changes are taking place. He is able to walk smoothly with the aid of built-up shoes. He is in a condition in which, as an orchardist, he would experience difficulties in walking over rough or hilly terrains, and in climbing ladders or trees. There must be some allowance for the loss of the pleasure of maintaining an orchard, and for the loss of profits from the time of the accident to the time when it must have appeared obvious that the orchard could no longer practicably be maintained.³³

- £5,900 Man aged twenty-three suffered a crushed leg necessitating amputation 2" to 3" below the knee joint. Considerable pain during period in hospital and while convalescing. Several skin grafts were necessary to promote the healing of the stump, leading to ulceration in the places of contact. Difficulties encountered in the fitting of an artificial leg because of the proximity of the amputation to knee joint. Chafing and irritation of stump causing skin abrasion followed its fitting. Probability of recurring trouble with the stump and the need for further surgery to remove a part of the fibula to prevent its cutting into or adversely affecting skin on stump. His future earning capacity is open to grave doubt. He will suffer recurring pain for the rest of his life and his artificial leg will require constant repair and replacement.³⁴

Nervous Disorder

- £10,000 Semi-trailer driver aged thirty-five sustained severe tearing of the soft tissues of the neck accompanied by bruising and swelling from base of skull to shoulder region. Limitation

33. **McCarron v. Harrison* (1965) L.S.J. Scheme 627 (Travers J., October 1965).

34. **Walch v. Minister of Mines* (1964) L.S.J. Scheme 563 (Mayo J., August 1964). This case went on appeal to the High Court of Australia, and was heard in Adelaide on 30 September and 1 October 1965 before McTiernan A.C.J., Kitto, Menzies, Windeyer and Owen JJ. No argument was put on the question of damages and the High Court was not therefore called upon to consider the trial judge's method of assessment. On 1 October 1965 an order was made by consent allowing the appeal with costs and varying the order of Mayo J. to alter the figure £6,489 7s. 3d. to £8,800. This represents an increase of over £2,000 on the figure originally allowed for general damages, and appears to be much closer to the proper figure for such a severe disability.

of movement in all directions of about 50% of normal. He can do a fairly arduous day's work, but it not free from pain and discomfort. His major disability is that he now suffers from 'an anxiety depression of moderate severity', which constitutes a permanent disability. He is and will continue to be unable to drive a semi-trailer because of this disorder. He has suffered a severe financial loss through his inability to resume in the trucking business.³⁵

Miscellaneous Injuries

- £300 Russian aged sixty-two suffered 'mild' concussion and an extensive laceration of the scalp. Wound sutured under general anaesthetic, and despite some early infection the wound healed satisfactorily. He returned to work after 2½ months treatment and convalescence. No residual disability apart from slight post-concussional and/or neurotic headaches. (N.B. Award as follows: £50 for pain and suffering following accident; £50 for period of convalescence; £150 for headaches.)³⁶
- £1,250 Married woman aged twenty-four suffered shock, concussion, lacerations to scalp and face, damaged teeth and fractured femur. Lacerations sutured and fracture reduced. Femur pinned and wired and plaintiff immobilised for two months. Kidney stone operation subsequently performed owing to an infection contracted during period of immobilisation. She now suffers periodic pain and discomfort in the affected leg and headaches and nervousness. She has large operation scars on her thigh and abdomen which cause embarrassment when wearing shorts or bathers. Scars are no real disability, and the headaches and nervousness should disappear.³⁷
- £1,500 Man aged twenty-three (nineteen at time of accident) suffered concussion, shock, compound fracture of right elbow, and compound fracture to bone of right little finger. Laceration right ring finger. Compound fracture left side of pelvis in region of buttocks with large wound extending

35. **Buchanan v. Reading & Bates (Australia) Pty. Ltd.* (1964) L.S.J. Scheme 815 (Travers J., November 1964).

36. **Pietrowicz v. Miller* (1965) L.S.J. Scheme 594 (Napier C.J., September 1965). The case is interesting for the mention of specific sums in respect of the various heads of damage. This 'breaking-down' of the overall amount is, obviously, of much interest and assistance to those who are faced with the computation of damages.

37. **Richards v. Lake* (1965) L.S.J. Scheme 515 (Chamberlain J., September 1965).

to near the anus across the back of the thigh, causing bruising to front of body, including private parts. Blood transfusion necessary. Little finger amputated. Four operations on buttock wound to remove dead pieces of bone. Satisfactory healing with scar tissue and loss of bulk. Injury to minor nerves has meant a loss of skin sensation, but no appreciable discomfort in sitting. Main disabilities are the loss of little finger, and some loss of use of ring finger, especially a loss of power. No significant interference with his employment or sporting and social activities.³⁸

£1,750 Malaysian woman aged twenty-nine suffered injuries in a road accident in which her husband was killed. These included concussion, fractures of the mandible, left wrist, a rib, fracture of the second cervical pedicle and displacement of the second and third vertebrae. She was later readmitted with toxæmia of pregnancy and a ruptured spleen. Pre-eclampsia not related to the accident, but it could be inferred that spleen injury was so related. She is left with neck pains, some difficulty with her jaw, weakness in her left wrist, leg pains and she complains of sleeplessness. These should disappear 'in six months or so'.³⁹

£2,000 Plaintiff suffered a fractured rib. This aggravated a pre-existing condition of osteo-arthritis, senile type, which aggravation is permanent. Good deal of pain from the neck, causing headaches which are a constant discomfort. Stiffening of back and neck is an acceleration of degeneration which would have inevitably occurred, although not so soon, nor with so much pain. Only substantial subject of compensation is pain and suffering in the form of headaches. An allowance of £2,000 is as much as the evidence warrants.⁴⁰

£2,500 Roumanian aged forty-one suffered concussion, compound fracture of lower end of right ulna and of right tibia and fibula. Fractures were reduced and immobilised in plaster. He was in hospital for four months and in plaster for a further seven months. He is left with a painful and angulated right leg; he walks with a limp, which may induce a tendency to arthritis in the ankle. His right wrist is weak-

38. **Marsh v. Nurton* (1964) L.S.J. Scheme 778 (Hogarth J., November 1964).

39. **Li Lian Tan v. Durham* (1965) L.S.J. Scheme 401, especially 404, 405 (Chamberlain J., July 1965).

40. **Wittber v. Linnett* (1965) L.S.J. Scheme 636, a judgment of the Full Court reducing an award of general damages of £2,750 made by Bright J. ((1965) L.S.J. Scheme 345).

ened and becomes painful under stress. He is suffering from a degree of deafness, estimated overall at about 35% which could be slightly improved by using a hearing aid. He is not as strong or as active as formerly and some regard must be had to his reduced earning capacity.⁴¹

£3,000 Plaintiff aged fifty-three suffered very severe injuries from which he might well have died. These were a fracture of the sternum, a collapse of the left lung, bleeding into the pericardium, and a fracture of the upper end of the tibia and fibula of the right leg just below the knee. There was severe shock, and transfusions were necessary. There was impairment of kidney function, and severe lung infection necessitating a tracheotomy. The fracture of the sternum developed a disease in the bone ends, and further treatment was necessary. Large abscess developed on front of chest which continued to discharge for about a year. There was considerable pain associated with the operations on his chest and difficulty in breathing, which are now considerably improved. He is left with a large and noticeable depression of the breast bone. The leg fracture has united strongly, but with some deformity, giving the leg a bowed look. There is no loss of rotational movement of the leg, although there is evidence of early arthritis on the inner side of the knee joint, which will slowly become more painful. Plaintiff is now unable to perform work involving heavy lifting, but is employed as a first gardener by the City Council, with a reduction of £2 10s. per week from his pre-accident earnings. There will be some allowance for diminished earning capacity in assessing general damages.⁴²

£3,700 Girl aged nineteen (sixteen at time of accident) suffered severe injuries in a car accident. These included collection of blood in both eyes, an enormous laceration of the scalp, fractured cheek-bone with damage to antrum, jaw fractures on both sides, and a displaced fracture of the nasal bone, with other minor injuries. Treatment was prolonged and distressing and she is still not fully recovered in her health. Scalp wound has responded to plastic surgery, but she is still acutely conscious of what was but is no longer a serious disfigurement. The scars are not very noticeable and may

41. †*Aleman v. Buxton* (1965) L.S.J. Scheme 113 (Chamberlain J., March 1965). (Damages reduced by 50%.)

42. †*Demasi v. Fraser* (1965) L.S.J. Scheme 613 (Hogarth J., October 1965). (Damages reduced by 60%.)

be concealed by her hair. Some tenderness of the scars will be present for some time, and other minor disabilities associated with the jaw and cheek fractures will persist. Her principal injury calling for compensation is the anxiety-state from which she still suffers, but from which she should with courage be able to recover.⁴³

M. C. HARRIS*

COMPANY LAW

Contracts made by promoters on behalf of companies yet to be incorporated

It is a well-settled principle of English and Australian law that a company cannot validly ratify contracts made in its name by promoters or agents prior to its incorporation. Some American courts have held corporations liable in such situations on a principle of 'adoption';¹ others have taken the more cautious view that a contract made with a non-existent company is merely a 'continuing offer' and the 'ratification' by the company after its creation an acceptance.² Although this latter approach seems consistent with established principles of Australian contract law, it has not as yet been expressly adopted here. Even if it were to receive recognition, it would create only an insecure expectation of future liability of the prospective company, since it would make the transaction subject to the rules on the termination of continuing offers. Thus, the position of pre-incorporation contractors *vis-à-vis* companies is likely to remain unsatisfactory. Such persons will continue to look to the promoters for the fulfilment of their contractual expectations. For this reason, the legal nature of such claims against promoters is a matter of considerable practical importance. A recent decision of the Full Court of the Supreme Court of New South Wales was concerned with this problem.

In *Smallwood v. Black*³ the plaintiffs purported to enter into an agreement for the sale of forty-four acres of land at Ingleburn, N.S.W., to the 'Western Suburbs Holdings Pty. Ltd.'. Under 'signature

43. **Enwright v. Knight* (1965) L.S.J. Scheme 382 (Napier C.J., July 1965). (An appeal to the Full Court against this assessment was dismissed in a judgment delivered on 12 November 1965, which has not, at the date of going to press, been reported.)

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1. 18 *American Jurisprudence* (2nd ed.) 'Corporations', sec. 120, nn. 6-9.

2. *Id.*, at nn. 10, 11.

3. [1964-1965] N.S.W.R. 1973; see also the decision of Jacobs J. in [1964] N.S.W.R. 1121, *sub nomine Black v. Smallwood and Cooper*.