RECENT CASES

PERSONAL INJURIES

Survey of recent awards in South Australia

The present survey covers the period from October 1965 to September 1966 and includes summaries of all cases relevant to the topic reported in the Law Society judgment Scheme during that period¹.

The aims of this survey remain those outlined in a previous survey². Moreover it seems pertinent to observe that there appears to have been an increased willingness on the part of judges to articulate the value to be derived from a consideration of previous awards in comparable cases³. The present judicial attitude in South Australia towards the comparative method of assessment may, it is submitted, be summarised as follows⁴. That insofar as the law of damages requires that a judge deal in incommensurables and attempt to weigh imponderables, for example, when assessing an amount for pain and suffering or loss of enjoyment of life, it will invariably be impossible to establish an exact relationship between any two injuries⁵. Notwithstanding this axiomatic proposition, it remains equally true that it is in the interests of justice that courts, whether sitting at first instance or on appeal, should strive to produce a substantial measure of consistency in their awards, and that this can only be achieved by a full, unfettered and frequent use of the reasons for awards in comparable cases. Finally, while in no way attacking the theoretical impossibility of a "normative solution" of the problem⁶, it is clear that judges are sustained and assisted in the process of computing damages by their ability to see significant relationships between different injuries. In other words, while they reject the possibility of an exclusively normative solution, they very often arrive at a figure by adhering in varying degrees to certain normative standards⁷. It is in the knowledge that both judges and practitioners

^{1.} For previous surveys see 2 Adelaide Law Review, 226; 2 Adelaide Law Review,

^{2.} See 2 Adelaide Law Review, 373.

^{3.} See, e.g., the remarks of Chamberlain J. in Pistiolas v. Tubular Steel Industries Ltd. (1966) L.S.J. Scheme 492, at 494, 495.

^{4.} For a most informative and interesting discussion of the significance of previous awards in assessing damages for personal injuries, see the judgment of Asprey J. in Thurston v. Todd (1965) 83 W.N. (Pt. 1) (N.S.W.) 335, at 337-342.

See, e.g., the remarks of Windeyer J. in his dissenting judgment in Thatcher v. Charles (1961) 104 C.L.R. 57, at 71, 72.

^{6.} Per Windeyer J. in Thatcher v. Charles, supra, n. 5.

Per Windeyer J. in Thatcher v. Charles, supra, n. 5.
E.g., Attick v. Minister of Education (1966) L.S.J. Scheme 224, at 225, per Mitchell J.; Dwiar v. S.A. Railways Commissioner (1966) L.S.J. Scheme 204, at 205, per Bright J.; McLean v. Ansett (1966) L.S.J. Scheme 175, at 178, per Chamberlain J.; Pistiolas v. Tubular Steel Industries Ltd., supra, n. 3; Rutkowski v. Daminato (1965) L.S.J. Scheme 685, at 686, per Bright J.; Sutcliffe v. Victorian Automobile Chamber of Commerce Insurance Co. Ltd, (1966) L.S.J. Scheme 330, at 331, per Chamberlain J.; Turale v. Kuzub (1966) L.S.J. Scheme 292, at 293, per Bright J.; Waclawik v. Baker (1965) L.S.J. Scheme 723, at 725, per Bright J.; Young v. Lutteman & Martin Ltd. (1966) L.S.J. Scheme 206, at 221-223, per Mitchell J. In all the foregoing cases, the indees avowedly derived assistance from looking at previous awards. judges avowedly derived assistance from looking at previous awards.

broadly support the view that uniformity and predictability of awards are desirable ends that this survey is offered.

The classification of injuries remains the same as before, as does the mode of indicating whether a particular assessment was or was not subject to some apportionment because of contributory negligence⁸.

Head Injuries

\$1,600 Infant plaintiff aged eight (now aged fifteen) was the victim of an assault by defendant (then aged fourteen) who threw lime into his face and eyes. As a result he suffered an injury resulting in intense pain, both at the time of and for two weeks after its infliction, and thereafter a great deal of discomfort for a considerable period. The lime caused caustic burns to the skin surrounding the left eye, and to the eye itself, extending to its cornea. An operation under anaesthesia was performed to remove particles of lime embedded in the eyes, and to remove dead tissue from the left eye caused by the burning action of the lime. Following this and subsequent operations, the position in relation to the left eye is that the corneal scarring has thinned, there are no signs of adhesion, and the loss of vision is estimated at between 10% and 15%. With the aid of spectacles he is able to perform his work as a woodplaner at no disadvantage. If he persists in his present employment there is no reason why in time he should not be able successfully to follow the trade of a carpenter or some similar trade.

\$3,000 Infant plaintiff pedestrian aged thirteen suffered very severe facial injuries involving a fracture of the maxilla (upper jaw), a compound fracture of the nose, and severe concussion. The jaw fracture was extremely severe in that the whole of the upper jaw had been freed from its surroundings, the fracture passing vertically up each cheek into the eye orbit, and across the root of the nose joining the two orbits. These fractures were repaired while she was still unconscious. In addition she suffered an injury to the right side tear duct, which cannot now be freed as a result of bone growth following repair of the nasal fracture; there is a resultant loss of efficient function. Moreover, the tear sac was found to have become fibrosed through injury, and was removed to prevent further infection. The accident has resulted in a substantial loss of her sense of smell, and injury to her two upper central front teeth, one of which was repaired and the other replaced. Fortunately her major injuries have healed satisfactorily; jaw fractures have healed in good condition; there is a small bony protrusion at site of nasal fracture, and a small lump on her lower lip; both conditions could be improved or removed by a comparatively minor operation: which she is unwilling to undergo. She has a noticeable but not unsightly scar on her nose, and suffers periodically from headaches which can be relieved by aspros. Her schooling was substantially affected for the year following the accident, but has not affected her future career to any

^{8. *}Assessment only. †Contentious.

^{9. *}Tsouvalla v. Bini (1966) L.S.J. Scheme 377 (Walters A.J., June 1966).

extent. She is married and expectant, and it is unlikely that she will continue with her modelling career. Damages assessed are for pain and suffering experienced and residual disabilities described¹⁰.

- \$6,000 Married woman with three children suffered a probable fracture to the left scaphoid bone, an injury to the right fifth nerve, which supplies the function of sensation to the whole face, and a fracture of the right maxilla. Main injury was to a major branch of the fifth or infra-orbital nerve, and in order to alleviate the pain four operations were performed, none of which was successful; unfortunately damage was caused to the seventh nerve during the last operation inducing facial palsy and resultant asymmetry of the face, a condition which has by no means regenerated. Position is that she has suffered pain in the region of the right cheek and back of the head for six years (the latter will in all probability be the more permanent and disabling of the two pains) and will probably continue to suffer from it for an indefinite period. Taste for food has been affected. Although she has been able to work, her enjoyment of life has been seriously affected, and she has become to some degree emotionally unstable because of the suffering she has undergone. No question arises of loss of earning capacity¹¹.
- \$6,000 Plaintiff suffered an injury in the course of his employment to his right eye causing a loss of vision of between 80% and 90%. His other eye is unimpaired, and he is able to perform efficiently a job involving reasonably good eyesight. He has a serious disability in the form of an hysterical "overlay", and is convinced that he is going blind, and is in fact impaired in his vision at times. No organic cause exists to explain this condition, but it is accepted that it is a real condition involving real distress and suffering. Prognosis for this condition, with its concomitant manifestations of sleeplessness, irritability, frequent spells of dizziness and nausea, and depression, is good, and he should recover completely. Nevertheless what he has suffered and may suffer merits a substantial award¹².
- \$7,000 Infant plaintiff aged sixteen suffered an injury to his left eye, consisting of a rupture of the sonule attaching the lens to the ciliary body; the left pupil became grossly dilated (a condition known as traumatic mydriasis), and he is left with a perceptibly larger pupil than that of the right eye. The eye moves normally in its socket;

^{10. †}Paech v. Bourne (1966) L.S.J. Scheme 368 (Hogarth J., June 1966). (No apportionment.)

^{11. *}Seychell v. Rogers (1966) L.S.J. Scheme 361 (Mitchell J., June 1966).

^{12. †}Pistiolas v. Tubular Steel Industries Ltd. (1966) L.S.J. Scheme 492 (Chamberlain J., September 1966). (Damages reduced by 50%.) At 493-495, his Honour discussed two related matters which from this writer's point of view seem to be of particular interest and significance for practitioners. The first relates to the extent to which English assessments for similar injuries ought to be regarded as useful by Australian courts. In discussing this, Chamberlain J., while noting the warning of the High Court issued in Halley v. Chudleigh (1963) Argus L.R. 616, at 617, concludes (at 495) that: "... help is still to be derived, so long as the High Court's warning is borne in mind, from English authorities". The second matter relates to the advantages of reasonable adherence to standards set in previous assessments for similar injuries. In relation to this, his Honour unequivocally recognizes the desirability of fixing and adhering to standards, so far as may be possible, in the matter of computing damages.

he has no central vision in the eye, but there is some peripheral vision giving him early warning of objects approaching him from the left. Condition is permanent, and constitutes the equivalent of a loss of 95% of total vision. Compensation should be awarded on the basis of almost total loss of an eye, not associated with any great pain, nor involving any great disfigurement. He has been affected in his capacity to perform things he did efficiently before, such as play soccer, and one must take into acount the general contraction of the field of employment open to him. His position is better than that of the two plaintiffs in Young v. Lutteman & Martin Ltd. and Attick v. Minister of Education in that he still has his natural eye, albeit with an almost total loss of sight in that eye.

- \$8,000 Carpenter's improver aged twenty sustained an injury in the course of his employment in consequence of which it was later necessary to remove the eye. An orbital implant was fixed in place, and an artificial eye was inserted. Until the eye was removed, he had suffered considerable pain which he had borne with considerable fortitude. He complains of irritation caused by dust particles in the eye socket, which is predictable, having regard to the nature of his work; the eye becomes dry on occasions and he is unable to close it properly; certain amount of recurrent infection; his judgment of distance in performing some functions is impaired, but he should be able to adjust to this problem. The eye itself will have to be replaced perhaps every five to six years. Loss of one eye puts him at a disadvantage when attempting to obtain employment in competition with a carpenter with both his eyes, and of course he has no reserve in the event of injury to his remaining eye¹⁶.
- \$8,000 Infant plaintiff aged ten suffered an injury to his right eye while at school which subsequently required excision one month later. A corneal implant was performed and an artificial eye was subsequently inserted. Socket is in good condition, as is the implant. He has very good vision in the left eye, but has a degree of limitation of full vision resulting from the loss of the eye which is estimated at about 40% less on the right side than if he had two eyes. There are, of course, severe disadvantages associated with the loss of an eye, but he has faced his difficulties stoically. He has made good progress at school since he returned, and there is no reason why he should not realise his ambition to become a qualified carpenter¹⁷.

^{13.} See infra, n. 16.

^{14.} See infra, n. 17.

^{15. *}Turale v. Kuzub (1966) L.S.J. Scheme 292 (Bright J., May 1966).

^{16. †}Young v. Lutteman & Martin Ltd. (1966) L.S.J. Scheme 206 (Mitchell J., April 1966). (No appointment.) Her Honour's judgment (at 221-223) contains a not inconsiderable review of the authorities involving assessment damages for eye loss or inury. An injury as sharply defined as the loss of an eye is, of course, especially amenable to the comparative process, in that the imponderables to be weighed occur not so much at the physical level as at the level of assessing economic loss. Her Honour's approach to an assessment concerned with the loss of an eye was approved by Bright J. in Turale v. Kuzub (supra, n. 15).

^{17. *}Attick v. Minster of Education (1966) L.S.J. Scheme 224 (Mitchell J., April 1966). It is submitted that her Honour's adherence (at 226) to the High Court's warning as to the limited assistance to be derived from perusing English assessments in Halley v. Chudleigh (1963) Argus L.R. 616, at 617, should be read in the light of the remarks of Chamberlain J. on this admonition in Pistiolas v. Tubular Steel Industries Ltd. (supra, n. 12).

- \$12,800 Infant female pedestrian aged thirteen was very severely injured, sustaining fractures of the right humerus and both bones of the lower leg, and "gross damage" to the brain. Tracheotomy was performed and she remained unconscious for more than a month. She has made a remarkable recovery, but further substantial improvement is unlikely. Her principal disability is the brain injury, which has caused her to lose two years of schooling at a time when it is of inestimable value. Although there has been no substantial personality change, nor reason to suppose that she will be unable "to cope with the ordinary things" that a woman has to cope with, her loss is real and substantial. It is not so much in mental capacity as in a diminished power of concentration, and this coupled with the lameness and loss of dexterity in the use of the left hand are the most serious disabilities. In addition there are other aggravations in the form of scars, loss of taste and smell, slight deafness and headaches and head noises18.
- \$24,674 Infant plaintiff suffered a severe brain injury which resulted from "a very severe closed head injury", rendering him unconscious and paralysed down his left side for a period of three weeks. He gradually recovered consciousness and the paralysis disappeared. He is left with a permanent and very gross disturbance of motor co-ordination affecting all limbs, and to a lesser extent his speech. His balance is much impaired, and he is unable to walk without the assistance of an elbow-crutch. Although he has made no attempt to find employment, there can be no doubt it would be extremely difficult, and that his employment potential will not materially improve in the future. He has lost approximately 70% of his employment potential. As to economic loss, he has no special qualifications or training; he was a youth of unstable personality, he had a not inconsiderable criminal record for crimes of dishonesty which might have been an obstacle to his obtaining employment in the future, and it was a reasonable assumption that he might very well have experienced a good deal of trouble with the law in his future lifetime had there been no accident. The matter must accordingly be faced on the basis that had there been no accident, he would not have averaged more than about the basic wage, year in year out, in the future. In addition to his economic loss, actuarially calculated at \$22,000, there must be an allowance for loss of physical capacity and social amenities of an obvious kind which need not be detailed¹⁹.

Spinal and Neck Damage

\$1,500 Plaintiff had previously sustained an injury to his back which required an operation for the removal of an intervertebral disc at the lumbo-sacral level. He has never been fit since that accident. At the date of the accident in respect of which the present claim was brought it was considered necessary to perform a further operation for the stabilization of his lumbar spine and that without further treatment he was likely to be permanently disabled to 50% of total

^{18. †} Sarapuu v. Dempsey (1966) L.S.J. Scheme 189 (Napier C.J., March 1966). (Damages reduced by 33½%.)

^{19. *}O'Leary v. Woods (1965) L.S.J. Scheme 764 (Travers J., December 1965).

working capacity. Main effect of this accident was to exacerbate his pre-existing disability. His back was shaken up, and gave him additional pain, discomfort and disability for some period. No permanent increase in his disablement, although there was considerable aggravation of his injury for two or three months after the accident which continued in an abated degree for a further six months or so, and which ceased thereafter. In respect of loss of wages, he has made no great efforts to find work since the accident, and is making the most of his disability. The events of the accident did no more than increase for a limited period and to a limited extent an existing disability which was not "critical", converting him from an employable into an unemployable person²⁰.

- \$2,500 Female plaintiff aged twenty-two suffered a whiplash injury to the spine while a passenger in a car. X-ray of the spine disclosed no fracture, but that there was l'gamentous damage in the area of fourth, fifth and sixth cervical vertebrae. As a consequence she suffered pain in the nape of the neck and back of the head necessitating the wearing of a cervical collar for some weeks; on occasions she had a burning pain with pins and needles in the left shoulder and down the left arm. She still has pain in the neck and occasionally the burning sensation and numbness in the left shoulder and arm. It is likely that it will recur from time to time and although it has decreased in severity, it will probably endure in the form of an inconvenience rather than a real disability. There is some possibility that arthritis could develop in the cervical spine. For three years following the accident her injury caused her absence from work for approximately three weeks in each year, but this year she has only lost four days²¹.
- \$3,000 European migrant aged fifty-four suffered a compressed fracture of the twelfth dorsal vertebra and disc lesion between the eleventh and twelfth thoracic vertebrae. He experienced pain in both the neck and lumbar back as a result of the jarring and tors on received. Although the fracture has healed, he has experienced pain in his back ever since the accident, not at the fracture site but in the peck with consequent occipital headaches, and in the lumbar region. The disability associated with the lumbar region is not wholly to be attributed to the accident which in all probability aggravated a degenerative condition already present in the lumbar spine, rendering him more susceptible to incidents quite unconnected with the accident, for example, being jolted in a bus, which would have the result of increasing pain in the lumbar region where the degenerative process was at work. He has, moreover, been led to exaggerate the degree and extent of his disabilities, not by a conscious desire to mislead the court, but because he is suffering from a form of "compensation neurosis". It is predictable that much of his pain will disappear on the conclusion of the case²².

^{20. *}Kontopoulos v. Nelson (1965) L.S.J. Scheme 748 (Bright J., December 1965).

^{21. *}Hofmeyer v. Mezic (1966) L.S.J. Scheme 301 (Hogarth J., May 1966).

^{22. *}Plavcak v. Duke (1966) L.S.J. Scheme 387 (Hogarth J., June 1966). (On the plaintiff's admission of contributory negligence, the parties agreed that damages be reduced by 20%.)

- \$3,600 Plaintiff sustained concussion and a laceration to the back of the head which required suturing. He suffered immediate post-concussional headaches, and some weeks after the accident began to experience pain in the neck, which subsequently extended down between the shoulder-blades and thence into the right arm. This pain was associated with an injury affecting two spinal vertebrae which was probably attributable to nerve root pressure rather than to instability in the disc. He was advised that surgery consisting of fusing the two vertebrae together on either side of the disc damage would provide relief from the pain. Pain in these areas persists, and becomes worse when he exerts himself. His sleep has been disturbed since the accident, and his enjoyment of life to some extent affected, although he has tended to exaggerate his disabilities. In assessing damages it was relevant to have regard to the fact that, were he to undergo surgery, he would in all probability obtain permanent relief from the pain. Damages ought therefore to be assessed on the assumption that he will undergo the surgery advised²³.
- \$4,500 Married woman aged twenty-seven suffered an injury to the soft tissue in the region of the fifth and sixth cervical joint. She underwent treatment by halter-traction and physiotherapy. Recovery was delayed by pregnancy during which she suffered from nausea and which was made more uncomfortable than would have been the case had there been no accident and resulting injury. Physically she has recovered, except that she will have pain from the neck injury at times of physical stress, which will persist for some years. In addition to the physical disability, she suffered a psychological disturbance, resulting from the accident, in conjunction with her pregnancy, in consequence whereof she has suffered and will continue to suffer from headaches, pains in the left shoulder and back, a pumping pain in the arm and leg and pins and needles in the hands and feet, for all of which no organic cause exists, but which for her are genuinely experienced. These should disappear with treatment²⁴.
- Migrant sheet-metal worker suffered an injury which accelerated a \$6.800 pre-existing spondylitic condition of his spine, causing considerable pain in the back of the neck. Pain has persisted during four years following the accident and will in some degree continue. He suffers mainly from headaches, but these have improved and will improve further. He is in a tense, depressed, and anxious state, and has been unable to find any substitute for his former musical activities in the Salvation Army which makes him more aware of his pain than he would be if he were engaged in some diversion. No significant limitation of neck movement, but he complains of some loss of sexual ability. On the other hand it is necessary to take into account the pre-existing spondilitis. He has been working regularly throughout the pre-trial period, except for a short period after the accident. There will nevertheless be some financial loss in the form of medical and physiotherapy expenses, a continuing inability to work overtime, and perhaps an occasional day off. The determination of the litigation may be of some help to him²⁵.

^{23. *}Meneghetti v. Renwick (1965) L.S.J. Scheme 688 (Mitchell J., November 1965).

^{24. *}Owen v. Lockwood (1966) L.S.J. Scheme 120 (Mitchell J., March 1966).

^{25. †}Hodge v. Dobrijevic (1965) L.S.J. Scheme 643 (Travers J., October 1965). (Damages reduced by 40%.)

\$7,000 Male plaintiff aged thirty-five sustained an injury to his back in the course of his employment. For two-and-a-half years following the accident he was unfit for any kind of work, and during this period he underwent physiotherapy and manipulative treatment and a course of prescribed exercises. He now runs a taxi-truck business on his own account, but has suffered a loss of approximately 30% of earning capacity in the general labour market. His main residual disabilities which are likely to be permanent are a scoliosis to the left and degeneration of the joint between the fourth and fifth lumbar vertebrae and of the lumbo-sacral joint with a considerable loss of mobility and lumbar spasm. He suffers from persistent headaches which are probably the result of emotional disturbance, rather than physical disability. It was relevant that he had suffered a previous injury to his back which to some extent predisposed him to an injury of the sort sustained in the present accident²⁶.

\$30,000 Female wine-tasting officer aged forty-four sustained a whiplash type of injury, causing damage to the ligaments in her neck. X-rays showed a loss of normal cervical curve and degenerative changes in the lower cervical regions, with a narrowing of the spaces anteriorly between the fifth and sixth cervical vertebrae, with lipping of the opposing bony margins of the sixth and seventh cervical vertebrae. No evidence of bone injury. During the next two-and-a-half years she continued to work, but finally was forced to give up because of the deterioration in her condition. Her treatment has included two major cervical neck fusions, a discogram examination, a myelogram examination which involved considerable discomfort, two manipulations under general anaesthetic, and two series of cervical traction treatments in hospital involving a halter round the neck with weights. Nevertheless she continues to suffer from the sensation of weights bearing down on her shoulders, and a burning sensation down her arms, with headaches and periods of vomiting. There is little if any prospect of alleviation of these conditions in the future. She is incapable of any form of consistent work, and will continue permanently to be so incapable although her temperament was previously suited to the full, congenial, busy type of life which her occupation made available to her. In short she has been transformed from an active and attractive woman into a semi-invalid with little or no prospect of being able to earn her living. Moreover she has suffered and will continue to suffer a great deal of pain and discomfort²⁷.

Injuries to Hand and Arm

\$ 7,500 Married woman aged twenty-eight suffered an injury in the course of her employment when her hand was crushed in a press. As a result she required amputation under general anaesthetic of two joints of her index finger, the middle finger and two joints of the ring finger of the right hand; the little finger of that hand was severely lacerated and crushed. She suffered shock, and has suffered and will

^{26. *}Hedges v. Anchor Products Ltd. (1966) L.S.J. Scheme 115 (Travers J., March 1966).

^{27. *}Leak v. Gronert (1966) L.S.J. Scheme 13 (Hogarth J., January 1966).

continue to suffer pain and discomfort. At present she has good range of mobility in the stump of the index finger, and the operative scars are quite stable. The stumps of the middle and ring fingers are stable, but in both cases there is a small implantation nodule in the scar. The little finger has healed in a position of 45% of flexion at the proximal interphalangeal joint, and cannot be extended beyond this position; full extension is limited by a few degrees, and sensation is normal. Fortunately the thumb is not affected, but there is an estimated loss of 50% of function in the hand. She has faced her disability with courage, and can perform most household duties, although such things as ironing, sewing, carving and opening tins are beyond her. In addition there must be an allowance for her diminished employability, although she probably would have worked only for so long as it was necessary to alleviate the financial burden of bringing up children. Her disability has dissuaded her from having any more children, since she feels she would be unable to handle them with confidence²⁸.

\$8,000 Woodcutter aged fifty was injured in a road accident in which he sustained an injury to the chest and broken ribs, but these have left him with little disability except some shortness of breath. His main residual disability results from an injury to a nerve which runs from the neck to the fingertips on the right side. He is left with a right arm of little value, and with no hope of further recovery. The grip is reasonably firm between the ball of the thumb and the ring and little fingers, but the ability to lift anything with this arm is very limited indeed. There is practically a total sensory loss in the arm, and the condition is little better than if he had lost the arm entirely. He is unable to follow his previous occupation, and clearly the categories of jobs open to him have been severely restricted. His income from woodcutting and other activities had not been sufficiently high to be taxable for the several years immediately preceding the accident. The money paid to him by way of invalid pension since the accident represents the high-water mark of his recent income, and it would not be proper to assess his loss of earning capacity on the basis of physical loss alone. A significant factor, necessitating a low assessment, was his attitude towards work and earnings which consisted in the view that it was unprofitable to do more than was required to provide for the day-to-day necessaries of life. Under the head of contingencies it must be said that had he not suffered the accident, it appears unlikely that he would have bettered his economic situation, or would have sought to improve it. Further one must not ignore the fact that he still retains some earning capacity of an indeterminate quality²⁹.

\$8,000 Wood-machinist aged forty-two suffered bruising over the shoulder and right of the chest near the area of the sterno-clavicular joint, and a fracture disclocation of the right shoulder, together with various abrasions and lacerations of the hands and arms. An operation was necessary to reduce the shoulder fracture, which caused a good deal of pain. He was thereafter compelled to wear a frame for one

^{28. *}Typuszak v. Tubular Steel Industries Ltd. (1966) L.S.J. Scheme 313 (Hogarth J., May 1966).

^{29. *}Fischer v. Polst (1965) L.S.J. Scheme 677 (Travers J., November 1965).

month, and in addition received physiotherapy treatment for four months. He is left with a range of arm movement at the shoulder which is grossly and permanently restricted, elevation being possible only to about 90° actively and little better passively. External rotation is restricted to 20°, as compared with 80° in the other arm. Internal rotation is restricted by about 10°. He is permanently unfit for work which requires him to raise his arm above shoulder level. His ability to cope with his employment as a wood-machinist is decreased, and with his disability he will continue to be vulnerable from the point of view of employability, as evidenced by his being put off by a company with which until the accident he had worked for over ten years. He has suffered a permanent loss of earning power of about \$5 per week. Moreover he is affected in his ability to play tennis and cricket which formerly were a part of his recreational and social activities³⁰.

Leg and Pelvis Injuries

- \$3,500 Snack-bar owner suffered a comminuted fracture of the lower pole of the right patella, necessitating an operation for removal of small pieces of bone and a consequent period of painful convalescence and physiotherapy treatment. There was also a 1½" wastage of the quadraceps muscle. The main disability is an estimated 10-20% loss of function in the knee and there are some radiological signs of early osteo-arthritis. In view of the arthritic condition and accompanying pain, it may be necessary for him to undergo surgery for the removal of the patella, although this may in turn cause a reduction in mobility. Damages are assessed on the basis of pain and inconvenience which he has suffered and will probably continue to suffer, and the expense he may incur in having further surgery^{\$1}.
- \$3,500 Apprentice motor-mechanic aged nineteen suffered a fractured pelvis, rupture of the urethra, rupture of the middle ligament of cruciate ligaments of the left knee, and a third degree Potts fracture of the left ankle. He underwent three operations for repair of the urethra, for screwing of the medial malleolus of the ankle, and for repair of the medial ligament of the knee respectively. Urethra and pelvis have completely healed and are symptomless, although in relation to the urethra there is some possibility of future complications. Has full extension of leg, but flexion of leg is permanently limited by about 30°. Although ankle is at present almost painless and has good function, it will in later years develop some degree of posttraumatic osteo-arthritis, with a consequent degree of disability. Taking these things into account, it is estimated that overall function of left leg has been permanently diminished by about 15-20%. Generally speaking has made a good recovery from serious injuries, but is now precluded from engaging in athletic and gymnastic pursuits as he did formerly³².

^{30. *}Schenscher v. Ferrier (1966) L.S.J. Scheme 383 (Hogarth J., June 1966). (On the plaintiff's admission of contributory negligence, the parties agreed that damages be reduced by 20%.)

^{31. †} Papadopoulos v. Loader (1966) L.S.J. Scheme 158 (Mitchell J., March 1966). (Damages reduced by 60%.)

^{32. †} Richards v. Smith (1966) L.S.J. Scheme 244 (Hogarth J., May 1966). (Damages reduced by 50%.)

- \$3,600 Pedestrian sustained a fractured right tibia and fibula in the lower third with considerable displacement. Closed reduction proved unsuccessful, and subsequently a Kirschner wire was passed through the calcaneus, traction was applied, the fracture reduced and plaster applied. Union was slow and leg remained in plaster for some seven months. He experienced considerable pain in the ankle on recommencing heavy work, but has now made a good recovery and is left with no significant disability, nor is there reason to suppose that he will develop any in the future as a result of this accident³³.
- \$4,000 Welder aged forty-four suffered compound comminuted fracture of right tibia and fibula, and minor lacerations to scalp which were cleansed and sutured. Leg fracture was unstable and was fixed with a plate. Tremendous swelling of right leg necessitated a relaxing incision in calf of right leg and a skin graft in that area. months later plate was removed and leg again encased in plaster. Wound healed well, but he required manipulative treatment under general anaesthetic to ankle to break down adhesions. He is left with a permanent loss of about 50% of subtaloid movements of the right ankle and walks with a slight limp. Some clawing of the right toes which may require minor operative treatment in the future. Some muscle wasting of the right thigh, and considerable loss of tissue at the fracture site which causes him embarrassment when at the beach. He has faced his injuries with courage and is presently employed as a first-class welder with the Engineering and Water Supply Department. He is able to do this work, but with more difficulty and fatigue than is normal³⁴.
- \$4,500 Female pedestrian aged sixty-three suffered severe permanent injuries. She was deeply shocked and unconscious for about ten months. She sustained fractures of considerable severity involving both sides of the pelvis, and a compound fracture of the right shin. Six bottles of blood were required. Haematoma on left side of forehead had to be aspirated. An inter-medullary nail was used to fix the shin, and a split skin-graft placed over fracture area. Very large haematoma formed about the left buttock which was evacuated under anaesthesia; proved unsatifactory as sinus with a foul discharge at its site persisted, necessitating an operation for excision of a great deal of tissue; this has healed satisfactorily, but with considerable loss of bulk and hyper-sensitivity in the area. Fractures have united satisfactorily, but she is left with a right leg shortened by \(\frac{1}{2}\); ankle swells if she is on it all day; she has an unnatural posture causing pressure on her great toe; she takes tranquillizers to relieve pain in the leg. Previously she was active in the house, but is now restricted in her activities. Has suffered and will continue to suffer pain, limitation in her activities and inconvenience of a permanent nature³⁵.

^{33. †}Bartolme v. Brown (1966) L.S.J. Scheme 441 (Bright J., July 1966). (Damages reduced by 25%.)

^{34. †}Poczopko v. Dessimone (1965) L.S.J. Scheme 703 (Hogarth J., November 1965). (Damages reduced by 50%.)

^{35. †}Bertram v. Gurr (1965) L.S.J. Scheme 782 (Bright J., December 1965). (Damages reduced by 20%.)

\$5,000 Pedestrian suffered concussion, a severely lacerated scalp and a severe compound fracture of right lower leg involving both tibia and He required two pints of blood on admission to hospital. Scalp laceration was approximately 6" long and went to the bone; required twenty to twenty-five stitches, and subsequent aspirations to dispurse collections of blood were performed. He is left with a scar and bald line some 6" long by 1/3 cm. wide; small cyst and noticeable bald patch in that area; these cause him discomfort when combing his hair because of nerve damage, and are a source of embarrassment to him. Leg fracture was slow to heal, but there is now a satisfactory uniting of the bones with little residual disability in movement. Most serious permanent disability is a scar on front of lower leg, some 2-3 cms. wide and 10 cms. long; scar tissue is very thin and adherent to the bone; if damaged it is abnormally susceptible to infection in the form of ulceration and underlying bone infection. In the nature of his employment, he runs such a risk of damage. The real danger of infection through damage to the scar is a substantial matter in assessing his damages³⁶.

\$7,000 Iron-moulder aged fifty-seven suffered an injury to both knees and an injury to the right shoulder. Only residual disability is in respect of knee injuries. Patella was removed from left knee. After operation, he remained in plaster for about one month, and walked with aid of crutches for approximately two months, and with a stick for a further six weeks. Considerable thickening of capsule and synovial membrane of joint of right knee, efflusion of fluid in the joint with gross grating on movement. With regard to left knee from which patella was removed, passive movements are practically normal, but squatting and rising cause pain. Some obvious wasting of muscles which extend left knee joint. Osteo-arthritic changes have occurred in both knees, although it appears that injuries suffered aggravated and accelerated a condition already present. Condition will worsen and cut short his working-life by two to three years. He has continued in his trade as iron-moulder, but only with assistance of his mates who spare him the heavier work. Notwithstanding this, he becomes very tired, and is unable to perform a number of functions associated with his job without pain, fatigue and instability. He is, moreover, limited as to his participation in social activities which formerly were pleasurable to him. In short, he has lost his zest for things which formerly were part of his life; he has suffered and will continue to suffer continual pain and discomfort; there has been a substantial loss of enjoyment of life³⁷.

\$10,000 Shipwright aged thirty-six suffered a severe injury to his left leg as a result of a fall through a hole in the deck of a ship under construction. Sustained compound comminuted fracture of tibia and fibula involving ankle joint. Fracture passed into the ankle-joint, splitting it open, fracturing surface of tibia which forms part of ankle joint. Following manipulation, a pin was passed up fibula under anaesthetic, and leg immobilised in plaster from toe to upper thigh. Bone graft operation later performed on tibia and after six months pin was

^{36. †} Carne v. Miller (1966) L.S.J. Scheme 499 (Mitchell J., September 1966). (Damages reduced by 20%.)

^{37. *}Williams v. Tickell (1965) L.S.J. Scheme 755 (Hogarth J., December 1965).

removed. Leg remained in plaster for a further ten months, during which period he was on crutches, and for a period after removal of Considerable physiotherapy accompanied by pain was required to mobilise leg and joints after so long a period of immobility. Leg is shortened by \(\frac{1}{4}'' \); there is some backward and outward bowing at site of fracture and severe limitation of movement of ankle joint, estimated as being only 15°-20°. He found considerable difficulty in pursuing his former occupation of shipwright, which required, inter alia, walking over irregular surfaces, climbing and bending. He experienced both pain and insecurity in doing these things, and has since been employed by the defendant in a clerical capacity. He is left with a permanently shortened leg with an estimated 50% loss of function in the lower leg, and arthritis in the ankle which is constantly painful and will continue so, with accompanying arthritic changes. In the social sphere, he will never be able to lead a normal life. Although he has suffered no great economic loss because of the accident, and is now in a more advantageous position financially and from the point of view of security of tenure, this will only be so for as long as he remains in the defendant's employ. He would be at a disadvantage on the general labour market, and the field of available employment has been considerably diminshed. There are physical limitations imposed by his disabilities even in the performance of clerical duties³⁸.

\$10,000 Infant plaintiff aged nine at date of level-crossing accident in which both his father³⁹ and mother⁴⁰ were injured, suffered shock, multiple lacerations and abrasions, depressed fracture of right temporal region, his left foot was severed and lower part of leg grossly mangled necessitating amputation 4½" below the knee. Stump has healed well; there are no ill-effects from the skull fracture, and he is able to walk satisfactorily with an artificial leg. Apart from requirement of two trimming operations as the bone grows, the principal complication is that of skin infection of the stump in hot weather; this can be treated and should diminish in significance as the skin hardens. He has adjusted to his disability with courage and good sense, he has not been affected in his school career; he has a remarkable range of activity in the circumstances, and there is no reason why he should not make a satisfactory career for himself with the inevitable limitations that his disability imposes⁴¹.

\$10,000 Crane porter aged thirty-four suffered an injury to both groins with considerable bruising, a compound fracture of the left tibia and a fractured pelvis. An operation was performed to fix both fractures with screws. The pelvic fracture has healed with close apposition, but there remains a permanent pelvic separation of about ½" which will deteriorate and cause a lessening of muscular power in that region as he ages. Leg fracture has united but with a good deal of bowing, and 1" shortening of the limb. There is a large scar on the

^{38. †}Heron v. Broken Hill Pty. Co. Ltd. (1965) L.S.J. Scheme 646 (Bright J., November 1965). (Damages reduced by 20%.)

^{39.} See infra, n. 51.

^{40.} See infra, n. 52.

^{41. *}Sutcliffe v. Victorian Automobile Chamber of Commerce Insurance Co. Ltd. (1966) L.S.J. Scheme 330 (Chamberlain J., June 1966).

left shin, and a substantial loss of muscle bulk behind the shin bone. Some limitation in ankle friction. Has lost an estimated 33½% of function in the leg. This disability in conjunction with the effects of the pelvic fracture precludes him from ever doing heavy work again, and it is estimated that his working capacity has been reduced by 50%. In addition to these major disabilities he suffered intense pain and discomfort from a variety of other lacerations, some of which required skin grafts and took months to heal. Leg continues to cause him pain and discomfort in hot weather, with pain and swelling of the ankle, and in times of weather change. He will never be able to return to the trade of carpenter for which he was trained; his earning capacity has been reduced, nor will he have the same security of employment that he had prior to the accident; he is at a disadvantage on the general labour market, and faces a possible prospective economic loss as he becomes older⁴².

\$11,000 Widow aged fifty-seven suffered injuries in an accident in which her husband was killed involving a supra-condylar fracture of the left femur, a fracture of the lower third of the right tibia, fractures of the pelvis, and a fracture of the right clavicle. Caliper was fitted to her left leg, and some nine months after the accident, it was reported that the fractures were all well-healed. She is left with a number of disabilities including severe aching in the left leg in winter and cramp in both legs at night; she limps and experiences a feeling of insecurity. She has bad varicose veins in both legs which existed before the accident but which have considerably worsened since. Stiffness and restriction of neck movement. Finally accident has brought about an anxiety state with a resultant pronounced tremor in both hands. It may be that psycho-therapy will assist the neurotic state, that the cramps can be controlled by tablets, and that surgery will relieve the varicose condition, so that she will eventually get back to somewhere near normal. It remains true, however, that the accident has had a serious effect on her enjoyment of life as well as on her capacity to earn her living, and that she is therefore entitled to substantial compensation⁴³.

\$13,000 Carpenter aged forty-one sustained a fracture in mid-shaft of the left femur and numerous abrasions. Some amnesia and loss of consciousness, but no skull fracture and no permanent organic brain damage. Femoral fracture was treated by the introduction of a Steinmann pin in conjunction with a Thomas splint—physically and emotionally a most uncomfortable and distressing form of treatment. Femur healed, but with some medial angulation and shortening, and was accordingly broken again and re-set. He resumed work some five months later, and performs his tasks adequately, but within a restricted scope. Position is reasonably secure, and physically his sole residual disability is some shortening of the leg and resultant scoliosis. Chief residual disability is a true hysteria, manifesting itself in "terrible" pain which originates in the fingers of each hand and radiates thence through the arms and shoulders to the head, causing headaches. There is no organic cause for this condition

^{42. †}Crescitelli v. March (1966) L.S.J. Scheme 397 (Walters A.J., June 1966). (Damages reduced by 10%.)

^{43. *}Selkrig v. Watson (1965) L.S.J. Scheme 761 (Chamberlain J., December 1965).

which in addition increases his limp and scoliosis. Possibly this condition will improve but it is unlikely that this will be soon or be very pronounced if and when it does happen; it cannot therefore be found that on the balance of probabilities the hysterical condition will improve. In any event he will be left with pronounced physical residual disabilities which are likely to deteriorate. True he is able to work and earn full wages, but his range of working activities has been permanently restricted, and while the hysteria persists his usefulness in the broad sense is greatly diminished for all purposes⁴⁴.

\$15,000 Tradesman foreman suffered an injury to his left leg necessitating amputation below the knee. He was in hospital for thirty-two days, and required morphine injections every four hours for the pain. For a considerable period after his discharge he received a good deal of physiotherapy, and occupational therapy five days per week. During this period a second operation was performed on the stump, followed by a week in hospital, with considerable pain. He has so far had three artificial legs, none of which has been satisfactory; a fourth is being made, but it is by no means certain that this will overcome the major problem of pressure on the stump. He suffers from numbness and pain in the region of the right knee caused by lacerations received in the accident, with the result that he suffers unnoticed knocks to the knee, which cause swelling and pain later. He suffers pain and fatigue in the back. He has undergone various operative procedures on the stump, and is able to wear an artificial leg which causes discomfort and fatigue by the end of the day. Leg will need renewal every five years or so. Residual pains in his back and right knee are likely to be permanent, while stump of left leg is likely to be a source of continuing pain. In short he has been severely affected in his general way of life, having led a vigorous and healthy life before the accident. He has done his best to accommodate himself to his disabilities, but has suffered a great deprivation. He has suffered financial loss in that his chances of promotion are negligible. His loss of efficiency in his employment is a very serious deprivation for him since it places him in a position of jeopardy so far as security of employment in the future is concerned⁴⁵.

\$15,000 Fitter and mechanic aged thirty-five was injured in an accident in the course of his employment so that the lower part of his leg was almost severed. Immediate amputation below the knee was performed, and an artificial leg fitted some five months later. A further amputation was performed in order to obtain a better stump and because of suspected bone disease and infection. His pain has two components, a cerebral cause referable to the part of the brain that registers sensations from the leg giving him a phantom pain, and a local cause in the nature of tender nerve endings in the stump, the latter constituting the major problem. He is now fit only for a sedentary job but should in time be able to engage in various forms of light exercise, and walk without more than minor discomfort for

^{44. *}Rutkowski v. Daminato (1965) L.S.J. Scheme 685 (Bright J., November 1965).

^{45. †}Waclawik v. Baker (1965) L.S.J. Scheme 723 (Bright J., November 1965). (Damages reduced by 10%.)

up to half a mile. He is a courageous man who has done his best to minimise the inconvenience and deep sense of privation in the loss of a limb, with the consequent inability to continue in the sort of work in which he was trained and in which he was experienced. His present employment is less remunerative and offers less security of tenure than his former employment⁴⁶.

\$48,000 Seaman was very gravely injured in a winching operation when certain wire ropes were set in violent motion damaging his legs, and resulting in their amputation above the ankle. In the accident each leg was severed through the lower third of the tibia, one foot actually having been amputated by the wire. Each leg is now amputated at a point 6" below the knee. He was fitted with a type of patella tendon prostheses, and suffered considerable pain and inconvenience during fitting and tuition in their use. He has suffered allergic dermatitis of the left stump, and breakdowns of the scar tissue at the stump ends requiring operative and other treatment occurred frequently during the year following the fitting of the prostheses. These breakdowns are likely to occur in the future. Arthritic changes may take place in the hips and knee joints because of the abnormal stresses imposed by the use of the prostheses. He is confined to a sedentary occupation and is restricted to no more than two to three hours walking per day. From time to time he will require medical treatment, and the fitting of fresh artificial limbs. In short he has suffered a very severe injury, involving great pain and discomfort which has left him permanently disabled and has meant a grave loss of the amenities of life despite the courage with which he has faced his adversities. In addition he has sustained a severe past and prospective economic loss in consequence of his injuries⁴⁷.

Nervous Disorders

\$5,000 Italian plasterer aged thirty-nine suffered an injury to the right shoulder and some minor lacerations and bruises, and was unconscious for a brief period. Injuries were considered of little significance at the time, and he was discharged from hospital three or four hours later. Shoulder, however, remained stiff after extensive physiotherapy, and some three months later he was sent to an orthopaedic surgeon, who found noticeable wasting and slackening of the right shoulder girdle, and, althought he was right-handed, 1" wasting of the biceps of the right arm compared with the left side. He complained his arm felt numb, and that he could not lift it; he also complained of his eyes. Accordingly he is left with a condition of the right shoulder which causes him pain and which renders the right shoulder and arm of little use to him. There is no physical or organic cause for this disability which is attributable to a partial paresis of an hysterical nature resulting from the acci-

^{46. †}Dwiar v. South Australian Railways Commissioner (1966) L.S.J. Scheme 204 (Bright J., April 1966). (Damages reduced by 15%.)

^{47. *}Baynes v. Coast Steamships Ltd. (1966) L.S.J. Scheme 443 (Walters J., July 1966).

dent. This condition should disappear after the emotional disturbance of the litigation ceases. If paresis persists thereafter it must be viewed as a result of his matrimonial problems. Main item of general damages is loss of wages, assessed at \$3,000. Moderate allowance under head of pain and suffering must be made in the absence of satisfactory proof justifying a substantial award⁴⁸.

Miscellaneous Injuries

- \$100 Male pedestrian suffered sore ribs on his left side and required stitches for a leg wound caused by a protruding bone from his wife's broken leg. Slightly shocked, but apart from a temporary loss of equilibrium, he has suffered no permanent disability⁴⁹.
- \$150 Male plaintiff suffered shock, abrasions and a stiff and swollen left knee and a dislocated shoulder. He suffered considerable nervous tension, with sleeplessness for some time, no doubt due to his son's condition rather than his own⁵⁰. He is now back to normal with no after-effects⁵¹.
- \$1,500 Married woman suffered severe shock, a fractured right clavicle and multiple abrasions and lacerations, especially of the lower limbs, requiring a small skin-graft operation on her foot. It was later found that she had also suffered fractures of the left transverse processes of three lumbar vertebrae. These injuries have left her with a number of minor resultant disabilities which do not interfere with any activity except heavy work such as digging the garden. She suffered some nervous disorder for a period after her return from hospital, again no doubt due to her son's condition rather than her own⁵².
- \$2,000 Infant male plaintiff aged fourteen, whose mother and father were also injured when a semi-trailer overturned in front of their car, suffered a broken jaw and lost eleven or twelve of his front teeth. He has thus been condemned to wear dentures from age of fourteen, and has a rather prominent scar on his lower lip. This was caused by a wound which severed a nerve, and has left him with a twisted smile; the condition could be improved by a relatively minor operation. But for the accident he could have expected many years of freedom from dental trouble. However, apart from the expense of denture renewal, say, every four years, the wearing of dentures is a disability to which the victim usually adapts himself without any serious effect on his enjoyment of life⁵³.

^{48. *}Viscariello v. Sammartino (1965) L.S.J. Scheme 742 (Bright J., December 1965).

^{49. †}Bertram v. Gurr (supra, n. 35). (Damages reduced by 20%.)

^{50.} See supra, n. 41.

^{51. *}Sutcliffe v. Victorian Automobile Chamber of Commerce Insurance Co. Ltd. (1966) L.S.J. Scheme 330 (Chamberlain J., June 1966).

^{52. *}Sutcliffe v. Victorian Automobile Chamber of Commerce Insurance Co. Ltd. (1966) L.S.J. Scheme 330 (Chamberlain J., June 1966). See supra, n. 41.

^{53. *}McLean v. Ansett (1966) L.S.J. Scheme 175 (Chamberlain J., March 1966).

- \$4,000 Charge-hand aged forty-seven suffered multiple abrasions and bruising of right side of the chest, fractures of the right second to tenth ribs, several in two places, with associated large right side pneumothorax fractures and displacement of both hip bones. He has made a remarkable recovery, but is left with four main disabilities: (1) a chronic right sacro-iliac strain which is likely to progress and impairs and causes pain in such normal activities as walking, bending or lifting; it is unlikely to become disabling, and could be relieved by use of a corset; (2) mild instability of the right ankle, which could be corrected; (3) osteo-arthritis of the right acromio-clavicular joint; this involves pain and limitation of the movement of the arm and is likely to deteriorate further, but could be improved by an operation; (4) cervical spondylosis aggravated by the accident causing pain and stiffness of neck movement; this is likely to progress, but is not regarded as a major disability. Although unlikely to interfere with his capacity to earn a living, these disabilities represent a substantial interference with his enjoyment of life⁵⁴.
- \$4,000 Married woman suffered shock, multiple lacerations to the scalp, forehead, nose and tongue. Compound fractures of both bones of left forearm close to the wrist and a disclocation of the left sterno-clavicular joint. Tenderness over right side of chest and evidence of an underlying pneumo-thorax. It was necessary to perform open reduction and plating of the forearm fractures. Her residual disabilities consist of: (1) limitation of movement and pain in the left forearm and wrist; this imposes limitations on the activity of hairdresser which she carries on at home, and has meant the abandonment of plans to open her own shop, and clearly involves some financial loss; (2) she suffers from a low back pain which is a substantial disability, caused by degenerative changes in the disc spaces between the fifth lumbar and first sacral vertebrae; this is likely to progress and a fusion operation may become necessary; (3) she is abnormally sensitive about forehead scarring, but this does not detract from her appearance. There are other minor difficulties of a nervous sort which will improve with the passage of time and the conclusion of litigation⁵⁵.
- \$7,500 Draftsman aged sixty, an employee of the Department of Lands and part-time lecturer at the Institute of Technology in Surveying Laws, suffered mild concussion, a fracture-dislocation of the right shoulder, a fracture of the pelvis and a compound fracture of both bones of both legs below the knee. He was treated for shock, his wounds were attended to, and the fractures set; his arm was placed in a sling-splint, and both legs in plaster of paris. His condition gradually improved after blood-transfusions, and a re-setting of the position of his left leg under general anaesthetic. Some three months after the accident he had an operation performed under general anaesthetic to release pressure on the ulnar nerve in the right arm, and manipulation of the right shoulder to improve the range of movement. After removal of the leg plaster, he was able to walk with the aid of crutches and continued to employ them on his return to work some seven months after the accident, and was able to walk

^{54. *}McLean v. Ansett (supra, n. 53).

^{55. *}McLean v. Ansett (supra, n. 53).

with the aid of a stick some twelve months after the accident. His left leg in particular continued to cause him pain, and he developed eczema on this leg requiring the attentions of a skin specialist. He is still receiving physiotherapeutic treatment and continues to improve slowly. He has some numbness in the right hand, and persistent swelling of both lower legs, particularly the left, and accompanying pain. He was an active man before the accident, but is now severely limited in his activities. He will continue to be employed with the Department of Lands. There cannot be an allowance for prospective loss of salary from his lecturing duties, since on the evidence it may well be that a request for his position back would be granted. Further allowance for sick-leave entitlement and further necessity of physiotherapy⁵⁶.

\$11,000 Male plaintiff came into collision with car while riding his motor-scooter. He suffered shock, concussion and severe cerebral irritation, skull and staphoid bone fractures, loss of blood, and considerable facial laceration, laceration and maceration of two terminal phalanges of index finger of right hand, injury to ring finger, a fracture involving the tibia and fibula of the right leg, as well as abrasions of the left leg. These injuries have not prevented him from working, but have resulted in impaired capacity with a resultant loss of \$14 per week for the remainder of his working life (nine years). General damages including pain and suffering fixed at \$11,000 in all⁵⁷.

M. C. HARRIS*

COMPANY LAW

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

In Smallwood v. Black¹ Walsh J. suggested that Kelner v. Baxter² stood for a strict rule of law making promoters of companies personally liable on contracts they have made on behalf of the proposed companies. Critical note of this suggestion was made in the last issue of this review (2 Adelaide Law Review 388-393). Walsh J. was inclined to hold the defendants in Smallwood v. Black liable on the strength of this principle, but decided that doing so would amount to a refusal to follow Newborne v. Sensolid (Great Britain) Ltd.³ He considered that the Court of Appeal, in Newborne's case, had

^{56. †}Connor v. D'Agostino (1965) L.S.J. Scheme 718 (Hogarth J., November 1965). (Damages reduced by 33\frac{1}{3}\%.)

^{57. †}Sadauskas v. Reckitt & Coleman Pty. Ltd. (1965) L.S.J. Scheme 775 (Mayo J., December 1965). (Damages reduced by $33\frac{1}{2}\%$.)

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^{1. [1964-1965]} N.S.W.R. 1973.

^{2. (1866)} L.R. 2 C.P. 174.

^{3. [1953] 1} All E.R. 708, C.A.