

PERSONAL INJURIES

AWARDS IN SOUTH AUSTRALIA, 1969-1970

This survey covers the period from 26th September 1969 to 30th September 1970, and includes summaries of all cases involving claims for damages for personal injuries which have been reported in the Law Society Judgment Scheme during this period.

The cases have been classified according to the injury, or, if there are multiple injuries, according to the major injury received. The damages are stated on the basis of full liability, with no reduction for any contributory negligence. Information relevant to the assessment of loss of earning capacity has been included where available to provide some basis for ascertaining the respective extent of the economic loss and of the non-economic loss in the figures awarded by way of general damages.

Where there has been an interim award of damages in accordance with section 30b of the Supreme Court Act 1932-1969 (S.A.), that fact has been recorded in the footnotes.

Head Injuries

- \$75,000 Die setter and part time cleaner aged forty-nine sustained severe head injury involving a two inch scalp laceration above the left ear and severe concussion due to cerebral contusion. His condition was slow to improve. He underwent rehabilitative treatment and was able to walk with the aid of a stick fourteen months after the accident. The following permanent disabilities prevent him from returning to ordinary employment: severe inco-ordination in left arm and right leg and severe degree of unsteadiness, can walk only slowly with the aid of a stick, lost sensation over right side of trunk, right arm and leg, mild right-sided deafness, mild emotional changes and some defects in memory and intellectual power. He has difficulty expressing himself and his behaviour is more infantile and his personality more unstable. His maximum earning potential now in a sheltered workshop is \$2-\$3 per week. He would have earned in excess of \$17,000 from the accident to the judgment but for the injury. There is a possibility that he may need nursing aid if he lost his wife¹.
- \$55,000 Revenue clerk aged fifty sustained severe head injury, injuries to both shoulders and bruises and abrasions. His left side was paralysed due to brain damage but he slowly recovered consciousness and some movement; after nine months he was able to walk slowly with the aid of two people. His memory and comprehension and speech were greatly affected but slowly improved. He now has a spastic left arm and leg, but has some minor control of the leg and is able to walk short distances with the aid of a tripod. He is able to feed himself but more complicated personal tasks are beyond him so that he requires constant aid which is presently given by his wife, but which could be required from outside the family in the future. He has also suffered gross psychological and intellectual impairment: his speech is slow and slurred, his memory is greatly affected and he is far less tolerant than previously. He can watch television or read for only brief periods, and apart from listening to radio, there is little he can do to enjoy life. His capacity to earn is completely destroyed: this figure can be reflected in general damages to the extent of about \$25,000. In addition he would have earned in excess of \$8,000 to the judgment date,

1. *Revesz v. Orchard* (1970) L.S.J. Scheme 76 (Hogarth J.). This is a final award of damages, following an interim award of the same judge in 1969: see (1969) L.S.J. Scheme 611.

and would have received about \$6,000 superannuation. He is also faced with future medical expenses in excess of \$1,400².

\$22,500 Female pedestrian aged eight was struck by a car sustaining brain damage. She now has a permanent degree of spasticity of all her limbs, affecting her ability to learn or write, or even to perform any skilled manual task. She has to wear special boots and a leg caliper and there is a possibility of having to undergo a foot operation in the future. She is required to have regular medical attention, but is quite active and able to attend to her personal needs. It is unlikely that she would be able to cope with marriage. She is fit only for work in a sheltered workshop or in some similar work and so has been deprived of most of her potential earning capacity³.

Back Injuries

\$50,000 Warehouse manager aged fifty-two sustained fractured skull, extensive lacerations to scalp, destruction of area of bone at front of skull, concussion and fractured dislocation of spine above chest. The main injury is the spinal fracture which caused severe paraplegia. During hospitalisation he suffered various bouts of infection resulting in a skin graft on the right leg, a bladder operation producing total loss of bladder control and impotence. His treatment was painful and he was discharged from hospital after six months. He is now confined to a wheelchair and requires constant nursing attention; he is unable to dress, etc., and has lost all control of his bowels and bladder. He is able to do a small amount of house work and cooking for himself. He is a widower presently looked after by his daughters, but it is likely that he will need nursing help in the future and that he will be hospitalised prior to his death; for this item he was allowed \$5,000. His expectation of life was shortened by eight years, he has an unsightly frontal bone defect and a disfigured lower right leg, he suffers double vision which can be corrected, and he has undergone a personality change; these things have considerably affected his enjoyment of life. His earning capacity is completely destroyed; his loss of earnings to the trial were about \$7,045 and his future loss of earnings was estimated at about \$22,000⁴.

\$25,000 Unskilled labourer aged 47, sustained a laceration to the head and fractures of the 6th and 7th thoracic vertebrae. History of previous ill health included pancreatitis and moderately severe spinal degeneration shortened his working life expectation to ten years. The fractures healed soundly but the trauma aggravated his general spinal deterioration. He had limited education and has now no present capacity to work as he is virtually unemployable; there is no suitable work which would be available to him. His probable weekly wage loss was estimated at \$35.00, and he was awarded \$20,000 for loss of his earning capacity. For loss of enjoyment of life and for pain and suffering he was awarded \$5,000⁵.

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2. *Belleli v. McSkimming* (1970) L.S.J. Scheme 197 (Bray C.J., Chamberlain and Wells J.J.) allowing an appeal from an award by Hogarth J. reported (1969) L.S.J. Scheme 674. The majority judgment given by Chamberlain and Wells J.J. accepted actuarial calculations based on an income rate of 5 $\frac{3}{4}$ % rather than the 3 $\frac{3}{4}$ % adopted by Hogarth J. The amount awarded by Hogarth J. for pain and suffering and loss of enjoyment of life, which was estimated at \$25,000, was also reduced by the Full Court.
 3. *Davies v. Williams* (1970) L.S.J. Scheme 80 (Chamberlain J.). It was noted by His Honour that the present value of the net earnings of a nursing sister working from age 21 to age 60, would be in the vicinity of \$23,000.
 4. *Whallin v. James* (1969) L.S.J. Scheme 539 (Walters J.).
 5. *Schiller v. The Minister of Lands* (1969) L.S.J. Scheme 584 (Hogarth J.).

- \$7,500 Male sustained crushed fractures to 5th and 12th dorsal and 1st lumbar vertebrae, and injuries to the right shoulder, lower knee, calf and heel. He is now left with 40% loss of use of his back but has returned to his pre-accident job with no wage loss. He is much less employable in the general labour market. There is a likelihood of future treatment and the possibility of a fusion operation on the back. He lost some enjoyment of life in that he plays less sport and finds the corset which he is now obliged to wear discomforting⁶.
- \$6,750 Casual rigger aged twenty-eight sustained fractures of the pubic bone, multiple abrasions, cut left arm and injury to sacrum and lumbo-sacral joints. He was hospitalised for one month and was fit to return to work after two months. The residual pain justified him in ceasing to work as a rigger, with a wage loss of \$8.16 per week and with no overtime. His working life as a rigger would have been for a further twenty years only, with some risk of unemployment and accident. His loss of earning capacity was therefore estimated at \$6 per week for twenty years. He will suffer pain from time to time which will be severe after heavy work and there is a possibility that his back condition will deteriorate⁷.
- \$4,200 Garage attendant aged seventeen sustained fractured right femur, fractured bone in foot, severe compression fracture of 5th lumbar vertebra and fractured 3rd and 4th lumbar vertebrae. The fracture of the leg was secured by the insertion of a pin which was later removed and it has healed satisfactorily with only minor pain and numbness on weather changes. There is also occasional minor pain in the foot from time to time. There is mild scarring at operation sites. The back disability is severe, preventing him from doing former job. He now works for dry cleaners with no wage loss, but the work is less congenial. He suffers frequent pains which are temporarily incapacitating on occasions and his activities are restricted. There is prospect of future trouble with the back, which might render a corset support necessary, or even a fusion operation (needing six months incapacity and with no guarantee of success). The loss of earning capacity allowed for in the judgment is minor⁸.
- \$3,550 Fitter and turner aged twenty-nine sustained severe strain to ligaments and joints in the lumbo-sacral region of his back producing pain in the area. Approximately fourteen months after the accident he developed pain also down the back of both legs, especially the left one, as a result of the injury. He will make a full recovery in three years from the judgment but requires physiotherapy treatment on occasions in the meantime. He lost some enjoyment of life due to the pain and particular aspects of his treatment were painful. There is some slight loss of earning capacity; he is presently earning at a slightly lower rate than before the accident working as an insurance salesman, but there are prospects of his income increasing; for three years he will be unable to resume employment as a fitter and turner⁹.
- \$3,200 Painter aged sixteen sustained fractured right femur, back injury, lacerations and abrasions, black eye, lost tooth. A nail was inserted at the fracture site and later removed. There is now no residual disability in the leg apart from some crepitus in the knee. The back injury, which involved a fracture of one

6. *Stacey v. S.E. Land & Mercantile Ltd.* (1970) L.S.J. Scheme 378 (Zelling J.).

7. *Stephens v. Hefferan* (1970) L.S.J. Scheme 247 (Mitchell J.).

8. *Nathan & James v. Vos* (1970) L.S.J. Scheme 122 (Bray C.J.). This is an interim award of damages and does not take into account in damages loss of earning capacity in the event of any deterioration in the lad's condition and any consequential increase in his pain and suffering and loss of enjoyment of life.

9. *Butcher v. Clayton* (1970) L.S.J. Scheme 418 (Wells J.).

of the lamina of the first lumbar vertebra has not completely united and he suffers intermittent pain, especially after walking or standing still. There is mild scarring of the thigh and buttocks. He also has a minor loss of earning capacity as he will require occasional days off with pain and is less able to compete on the overall labour market¹⁰.

Neck Injuries

\$3,750 Male sustained ligamentous neck injury affecting whole of his back, some ligamentous injury to lumbar spine and exacerbation of existing elbow injury which will settle down. Some loss of enjoyment of life; unable to do work around house, more irritable, depression for a time and less able to enjoy intercourse. He suffers some pain especially while driving and occasional headaches which can be controlled by tablets. There is a minor disability of economic loss in the future through his general slowing down from the injury and his change in temperament¹¹.

\$3,300 A boilermaker's assistant aged thirty-two sustained a cracked fracture of tip of right elbow, laceration across bridge of nose and severe ligamentous strain of neck. He suffered moderate pain and suffering during his treatment and recovery. The elbow had recovered after six months with only minor tenderness on palpitation. He has a visible but not disfiguring scar on his nose and the laceration affected a nerve producing headaches from time to time behind his eyes which will be cured by treatment within six months of the judgment. He suffered headaches in the back of his head and tenderness and restriction of movement in his neck, but these symptoms gradually recovered over a period of three years. He was obliged to postpone an overseas trip for six months. He was fit for light work only for up to three years after the accident, so his earning capacity was reduced to that extent only, although he elected to have various periods of unemployment¹².

\$1,000 Female passenger suffered a whiplash injury producing pain in the neck and left shoulder and some weakness of the arm. She was obliged to wear a collar for a time and underwent physiotherapy for about eight months. She now has minimal disabilities¹³.

Arm and Hand Injuries

\$29,500 Pine feller aged forty-two was right-handed and suffered injury requiring amputation of his right arm in the course of five operations. He suffers phantom pains now and has trouble sleeping. He has adapted well to his injury, and now has the offer of a job with a wage loss of \$30 per week. He has lost many of the amenities of life: he can no longer play the accordion, make boats, play billiards etc. He finds it very frustrating to fix the prosthesis, which is uncomfortable. He is able to drive a specially fitted car. The non-economic aspects of his loss were fixed at \$9,000. For substitution of the prosthesis from time to time, \$1,000. For the economic aspects of his loss (including about \$4,150 loss of income to the date of trial) he was awarded \$19,500¹⁴.

10. *Nathan & James v. Vos* (1970) L.S.J. Scheme 122 (Bray C.J.).

11. *Hackett v. Kain* (1969) L.S.J. Scheme (Zelling J.).

12. *Sare v. Milchanovic* (1970) L.S.J. Scheme 407 (Wells J.).

13. *Panici v. Pica* (1969) L.S.J. Scheme 689 (Chamberlain J.).

14. *Staschik v. Stowood Holdings Ltd. and Lavia* (1970) L.S.J. Scheme 302 (Zelling J.).

\$16,000 Welder aged thirty-six sustained crushed and lacerated right forearm, severe compound fracture of right forearm, and fractured elbow. Dead muscle was subsequently removed and a plate inserted at fracture site. The fracture did not unite and a bone graft was performed. He remains with considerable loss of function in forearm and hand, restriction in function of finger movements and no muscle to flex the terminal joint of the thumb. There is also marked weakness in the right wrist and finger and thumb movements, some restriction of full movement of wrist and impaired grip. He suffers swelling and pain from time to time. He is now unfit to do his welding work and has a secure but lighter job at \$18 per week wage loss; he is also less employable on the overall labour market¹⁵.

\$11,000 Female factory hand sustained fractured radius lower arm. She suffered persistent pain and stiffness and had trouble sleeping. She underwent an operation after twelve months to enlarge carpal tunnel (in forearm), relieving the pain and numbness. She is left with significant residual stiffness involving 20% loss of function of the lower arm below the elbow. She developed a psychoneurotic reaction following the operation resulting in continued pain in the wrist and depression and anxiety. She underwent shock treatment in hospital on two separate occasions and is still under treatment. The depression was triggered off by her inability to work partly as a result of this injury and partly from another unrelated cause. She is now able to do all but heavy work, but will not be able to return to work as an unskilled factory hand as previously. She has lost some enjoyment of life and will continue to suffer some pain¹⁶.

Leg Injuries

\$32,000 Railway steward aged forty-one sustained comminuted fracture of right femur, fracture of upper of left tibia involving the knee joint, fractured neck of left 2nd metacarpal, fracture at base of 5th right metacarpal with comminution, concussion and laceration over right eye. He suffered considerable pain and discomfort. He is left with a slight scar over the right eye, thickening of the back of right hand and only minor pain in left thumb. Right leg injury produced pulmonary embolism one month after the accident, with subsequent chest pain and respiratory embarrassment. The fracture failed to unite and a nail was inserted at the fracture site and a skin graft performed. He was discharged after seven months, walking with a caliper on his right leg. He was hospitalised for a further two months when the nail was removed, as infection occurred, and then discharged on crutches and wearing caliper. The leg was refractured eighteen months after the accident, requiring a further six months hospitalisation with pin traction and he was discharged with the caliper on his leg. After a further twelve months a bone graft was performed. He then gradually discharged the caliper, underwent treatment including physiotherapy and operations to the leg and to release scarred thigh muscles. This involved significant pain and considerable discomfort. He suffers from lethargy, insomnia, rashes and marked teeth decay, the right leg is shortened by $\frac{3}{4}$ in., pain in both knees, right hip and foot and left leg and limitation of movement of right knee which has a tendency to bow outwards. He now uses a walking stick. He had not returned to work five years after the accident and will not be able to do so for a further twelve months. To the judgment his income, but for the

15. *Russo v. Rech* (1970) L.S.J. Scheme 295 (Bright J.). It was noted that an annuity of \$1 per week to a man aged 36 until age 65 or prior death was valued at \$626.

16. *Nikias v. Beer* (1970) L.S.J. Scheme 324 (Mitchell J.).

accident, would have been approximately \$11,700. He will remain much less employable than previously and will probably resume employment, although not totally satisfactory employment, with a wage loss substantially in excess of \$13.00 per week¹⁷.

\$31,000 Tuna fisherman sustained fractured right femur, fractured left leg, fractured dislocation of right ankle, chest injury, concussion and minor lesions. He was in considerable pain for three weeks and his treatment was unpleasant. His left leg was subsequently amputated through the knee and he underwent further amputation for fitting a prosthesis. He underwent operations on the right ankle to remove some dead bone and to fuse the base of the tibia to the heel bone. His right knee lacks 15° of bend. He now walks with the aid of a stick and with a rolling gait. He is obliged to acquire an artificial limb every five years at a cost of \$200. He now has a secure job but with a weekly wage loss of about \$20, but he would not have continued as a tuna fisherman until aged 65. He lost four years income prior to the judgment, quantified at \$6,000¹⁸.

\$13,550 Married woman in fifties sustained fractured left tibia, fractured pelvis on both sides, two fractured ribs, concussion and lacerations. She underwent long and painful treatment involving periods of hospitalisation for a bone graft and for the insertion and removal of nails to secure the fractures. She is unable to walk safely without the aid of a stick. She has permanent pain in her left leg. Her pre-disposition to psychiatric damage was triggered by the accident so that she is now unable to look after herself alone. Her ability to do housework is greatly diminished, and her memory and enjoyment of life are significantly reduced. For the loss of enjoyment of life and for her pain and suffering she received \$8,000. She now needs assistance in her home and faces the possibility of having to enter an institution; this amount was quantified at \$5,000. She received also \$400 for loss of expectation of life and \$150 for a wheelchair¹⁹.

\$13,000 Male student aged sixteen sustained fractures of both legs, concussion, abrasions and lacerations. His condition developed considerable complications and he almost lost his right leg, which was in plaster for five months after an operation to correct a deformity of the foot. The left leg healed satisfactorily. He has lost 20° of flexion of right knee and there is considerable scarring behind the knee, the right foot is not deformed but it is very stiff and there is scarcely any movement of the ankle; the right foot sensation is grossly impaired, and the right leg is $\frac{3}{4}$ in. shorter than the left. The muscles of the right leg have suffers a cramping type of ache on standing for long periods. There is a possibility of arthritis in the ankle and knee in the future. He missed one year's schooling and has given up the idea of being a sports master, but there is no direct economic loss except for one year off school. However, he was consequently delayed one year in entering his profession, and is restricted to a minor degree in the extra-curricular activities of a teacher. For the economic aspects of his loss \$3,000 was mentioned, and \$10,000 for the non-economic aspects to make the global award²⁰.

17. *Pajubiidik v. Wright* (1970) L.S.J. Scheme 665 (Bray C.J., Chamberlain and Hogarth JJ.) allowing an appeal from Mitchell J. reported in (1970) L.S.J. Scheme 243, increasing the award from \$26,000.

18. *Casanova v. Mitchell* (1970) L.S.J. Scheme 66 (Bright J.).

19. *Wyld v. Bertram* (1970) L.S.J. Scheme 88 (Bray C.J.).

20. *Mends v. Casanova and Mitchell* (1970) L.S.J. Scheme 507 (Bray C.J., Bright and Wells JJ.) allowing an appeal from Chamberlain J. reported in (1970) L.S.J. Scheme 239, increasing the award from \$10,000. The Full Court estimated that the award of Chamberlain J. for the non-economic aspects of the loss was \$7,000 and increased that figure to \$10,000. The loss of earning capacity is represented, therefore, by about \$3,000 of the global award.

- \$12,000** Male student aged fourteen at the time of the accident in 1962 sustained a crush injury to right foot and two cracked front teeth. His treatment included skin grafts to the foot and amputation of all toes but the little toe. The foot has not grown normally and the skin is considerably discoloured and liable to ulceration. He has lost much of the mobility of the foot and this restricts him in all activities including walking. He could wear a prosthesis but does not do so, and this might assist his mobility. He manages the family farm but requires more assistance than he otherwise would. Although he has suffered no economic loss to date, such loss is likely in his farming activities and the range of other jobs available to him is greatly restricted²¹.
- \$10,400** Toolmaker aged forty-four sustained fractured leg, shoulder injury and laceration to head. He underwent long and painful convalescence for thirteen months involving operations to pin the bone and for bone grafts to the leg. The fracture united well but he is now unable to work on concrete floors and suffers episodes of pain and swelling and some limitation of ankle movement. There is some permanent pain and limitation of rotation of the shoulder. He has substantial scarring on his legs, and a head scar. In addition, he suffers now from some loss of memory and of confidence, and this, with his leg disabilities, affects his enjoyment of life. There is some loss of earning capacity in the likelihood of periods off work and in the restricted range of jobs, especially as he is now unable to do toolmaking or any overtime work; this was estimated at \$12 per week. The award of general damages includes \$3,400 for lost earning capacity during the convalescence²².
- \$8,000** Female sustained severe fractures of both legs and of the right zygoma. The fractured zygoma was elevated under operation but she remains with a somewhat sunken right cheek which exaggerates her pre-existing squint. The fractures of the left leg were reduced with screws and the Kuntschner nail and healed satisfactorily. The fracture of the right femur was also reduced with screws and a plate but infection delayed the recovery and she was hospitalised for five months. She was then discharged wearing a caliper on the leg and walking with crutches but required further operative treatment about sixteen months later, and a recurrent infection in the right knee required further hospitalisation again. She now has no active movement of the right knee joint which is considerably deformed and unstable. She lives alone and can manage her housework with considerable difficulty and can only walk short distances and gets very tired; she has given up her pleasures of going to films and of active participation in Salvation Army activities. She suffered considerable pain and discomfort and will continue to do so. Her loss of enjoyment of life is only partly produced from the injury. There is no significant economic loss²³.
- \$3,000** Driver aged fifty-one sustained penetrating wound to right knee and right shoulder injury. The cartilage of the knee was removed and subsequent physiotherapy treatment was carried out. He is left with some tenderness and loss of muscle tone in the right knee with a slight restriction on bending; there is minor osteo-arthritic change which is likely to slightly deteriorate in the future. He suffers some pain on movement of his right arm above his head resulting from mild tendon degeneration. He was off work for seven months and this

21. *Monfries v. M.T.T.* (1970) L.S.J. Scheme 451 (Bright J.).

22. *Manning v. Rook* (1970) L.S.J. Scheme 193 (Zelling J.).

23. *Newbold v. Nalpantidis* (1969) L.S.J. Scheme 691 (Chamberlain J.). This plaintiff suffered a heart attack subsequent to the accident, and unassociated with it; this illness also contributes to the restriction upon her activities.

was reflected in special damages. He gained employment as a garage attendant following the injury with a wage loss of \$1.83 per week and with the necessity of working an extra $3\frac{3}{4}$ hours per week. There is no prospect of this loss being increased. He was obliged to give up dancing and judo teaching and his leg tires on long walks²⁴.

- \$2,000 Spray-painter aged sixty sustained fracture of lower end of right tibia and fibula. The leg was in plaster for three months and he underwent an operation to strengthen the ankle joint affected by fractures. He has now 10%-15% disability of the lower leg preventing him from doing heavy labouring work, but he has satisfactorily resumed his pre-accident employment with no loss of earnings; he is however less able to compete on the open labour market. He suffers intermittent pain, especially after exercise and on changes of weather, and stiffness in the ankle joint. There is some prospect of hastened arthritic deterioration²⁵.

Cosmetic Injuries

- \$70,000 Welder aged forty-five sustained severe burns to 75% of his body except his back, feet and part of his arms. He underwent nine skin graft operations and now has grafted skin all over his body except his back, face, hands, feet and part of his arms. Grafts from a dead person were rejected and replaced from healed areas. He suffered intense pain for five months at least, which was excruciating after the operations. Severe contractures of skin were also relieved by operation. The operations were extended over a period of seventeen months. The whole of his body is scarred. He has anaesthetic sensation on the grafted areas; his legs are numb on sitting; he is unable to stand for long and his legs swell; minor abrasions heal slowly; he is unable to have intercourse; there is a danger of burns as he has no skin perception of heat. He is sensitive about his appearance; he has lost the tops of his ears, he has massive scarring under his chin, some facial scarring and considerable loss of hair; his appearance is not really unsightly now, but is not as good as before the accident. He is embarrassed to wear swimming trunks. His earning capacity is seriously diminished. He is unable to work as a welder but was fit for light work after seventeen months. He got a job as a wardsman about three years after the accident but was obliged to give it up because of swelling. After eighteen months he got work in a rehabilitation workshop earning \$10.85 per week and commenced to study a four year management course which might increase his earnings in the future. To the hearing date he had lost wages amounting to \$13,909.55²⁶.
- \$20,500 Surveyor's assistant aged twenty-one sustained severe burns to his face, hands, arms, chest and legs and was hospitalised for four months with severe pain and undergoing painful and uncomfortable treatment including skin grafts. After his initial treatment he had severe facial scarring and his face was deformed and facial movements restricted, in addition to other severe scarring. He subsequently underwent six operations which relieved the situation somewhat. Nevertheless, he has substantial disfigurement with scarring still present near shoulder blades, on his chest, arms, hands and legs. His arms and hands

24. *Woodbridge v. Crook* (1970) L.S.J. Scheme 538 (Chamberlain J.).

25. *Kereskeny v. Horstman* (1970) L.S.J. Scheme 477 (Judge Ward, Local and District Criminal Court).

26. *Monaghan v. Wardrope & Carroll Pty. Ltd.* (1970) L.S.J. Scheme 250 (Mitchell J.). The value of an annuity of \$1 per week to this plaintiff to age 65 or prior death was noted to be \$575.

also have patches of wrinkled and discoloured skin. The left side of his face is still substantially discoloured and there is irregularity of the upper left lip and below the lower lip. He suffered intense pain and his treatment was prolonged and distressing. The facial skin is now sensitive to sun and wind so that he has been obliged to give up many of his activities although previously he was most interested in out-door activities. As a result of this sensitivity he was also obliged to stop working as a surveyor and ceased a surveying course which he was studying part time. He has now obtained a commercial pilot's licence and is receiving comparable income; his working life expectancy in this job is 10-15 years less than as a surveyor and he is restricted in the range of work available to him both at the present and after he has ceased working as a pilot. Nevertheless, he has a good temperament and he is still fit and active²⁷.

\$6,000 Labourer sustained severe burns to scalp, face, neck, right shoulder and to both arms and legs. He was hospitalised for twelve weeks and suffered severe pain and discomfort. He underwent three skin graft operations and his right ear stump was removed and an artificial ear fitted; he is also obliged to wear a hair piece. He is conscious of the hair piece and ear although they are not disfiguring. He has somewhat unsightly scarring on his body and limbs and these areas are susceptible to injury and must be protected from direct sun light. There is no damage to his earning capacity and the agreed special damages included his actual loss of wages²⁸.

\$2,000 Male aged 17 sustained substantial facial lacerations requiring hospitalisation and subsequent plastic surgery. He suffered considerable pain and embarrassment from disfiguring scarring for some months. He remains with noticeable though not disfiguring scarring on the left side of his face. He had occasional twitching of the left cheek, which sometimes becomes swollen and tender, but produces minimal embarrassment. He suffered no loss of earning capacity²⁹.

Eye Injuries

\$5,000 Store clerk aged twenty sustained depressed fracture of the right cheek bone, fractured skull, broken nose, lacerated injury to the right eye and a torn cartilage in the left knee. He suffered double vision which gradually restricted itself to when he looked to the left in certain positions, and he needs to wear glasses to correct this refractive error. His eyes tire more easily and he finds it harder to read or concentrate. His jaw was painful for some time and his diet restricted. The cheek bone was raised during an operation and now presents minimal cosmetic disability, but he suffered severe head pains for some time. For three years the knee has been painful and restricted his activities, but he can undergo an operation which will limit his disabilities but inevitably produce arthritis in ten to fifteen years and he is required to undergo that operation. He suffers some minor facial numbness over his right eyebrow, minor headaches and some discomfort from increased nasal discharge. He has lost no earning capacity save that part time study for job promotion was delayed for four years. He now plays little sport and his concentration is limited; he gave up active participation in the naval reserve as a result of his eye disability³⁰.

27. *Thomson v. Helicopter Utilities Pty. Ltd.* (1969) L.S.J. Scheme 622 (Bright J.).

28. *Nicholls v. The Commonwealth and Elizabeth Constructions Ltd.* (1969) L.S.J. Scheme 580 (Chamberlain J.).

29. *Madigan v. Petrovic and Lawrie* (1969) L.S.J. Scheme 660 (Bray C.J.).

30. *Muxlow v. Honey* (1970) L.S.J. Scheme 528 (Wells J.).

Miscellaneous Injuries

\$16,500 Fitter and turner aged forty-two sustained painful injuries to his left knee and shoulder, lacerated chin, whiplash injury to neck, fractured left side of jaw bone, perforated left ear drum and eight teeth knocked out. For six weeks he was unable to open his mouth and was unable to move his head. He had a limp and his leg injury was painful and sensitive to further contact but had fully recovered after seven months. He developed headaches and continued to suffer pain on movement of his head, earache, pain in the left ear, inability to chew and pain in the jaw and the neck. His teeth were removed and a full set of dentures fitted, but he still suffered significant pain. His neck was manipulated under general anaesthetic with no significant improvement for some time. Some eighteen months after the accident, the perforated ear drum was successfully operated on and a skin graft performed. Nevertheless, he continues to have pain in his left ear and his hearing is markedly reduced in efficiency due to disturbance from background noise which he cannot eliminate; he also has an impaired sense of balance which results in him being susceptible to intermittent attacks of mild giddiness. Arthritic deterioration of the jaw has reduced the opening of the jaw to 50% of normal and he still suffers pain on biting and chewing and his diet is accordingly limited. His range of neck movements is restricted and degenerative changes accelerated by the accident produce neckache and headache from time to time after full flexion of the neck and after concentration. His working capacity has been greatly reduced; he now no longer is able to work as a fitter and turner, nor at heavy work, nor work at height. He is forced to work at a significant wage loss (about \$1,175 per annum estimated) and his prospects of advancement are reduced. Prior to the accident he was active and enterprising. His enjoyment of life is greatly affected as his activities are restricted; he can no longer play with his children or work around the house and has lost much enjoyment of reading, watching television or eating. However, he will be able to adapt and receive reasonable enjoyment of life in the future. He also is faced with the prospect of future dental and medical expenses and tablets. He also received compensation for his pain and suffering and for the mental anguish produced by his injuries³¹.

\$15,900 Comptometriste aged fifteen sustained fractured left tibia and fibula, compound comminuted fracture of right tibia and fibula with gross skin loss of front and sides of most of lower leg and foot, gross muscle damage to front of legs and serious head injuries producing partial paralysis of left side. She was unconscious for three weeks. She underwent a tracheotomy operation and also skin grafts on the right leg, the front of her thighs and on her abdomen. She developed an embolism which caused respiratory embarrassment. She also had a subsequent operation to reduce the deformity of her right leg and was in all hospitalised on six occasions and had thirteen major and minor anaesthetics, and suffered considerable pain. The left leg healed without disability. The partial paralysis produces inco-ordination of the left arm and hand, and this seriously affects her typing ability. There is extensive scarring to the right leg and at the graft sites, which are sensitive to injury; movement of the right ankle is limited to about 30° and the right foot is permanently swollen—these restrictions prevent such activities as running and limit her employment opportunities. For pain and suffering and lost enjoyment of life in that she now plays no games nor does dancing or horseriding etc., and for the extensive scarring on her legs, face, hands, neck, breasts and hip, for the grossly disfigured right knee, and for slight restriction on her marriage pros-

31. *Lux v. Tonkin* (1970) L.S.J. Scheme 140 (Wells J.).

pects, she was awarded \$9,600. Her ability to type is restricted, but she is fit for process work at about \$6 per week wage loss. The loss of earning capacity was fixed at \$6,300 including \$4,500 for the future³².

\$15,000 Labourer aged forty-five was struck on the right temple by the metal end of a hose, producing attacks of giddiness and headaches. It was ascertained that he had an imbalance in the labyrinthine system of the right ear which could, in normal circumstances, be corrected by operation. He developed a psychological neurosis which would have to be controlled before the operation could be performed. There was a conflict of medical opinion as to whether this neurosis would disappear within twelve months of judgment or would last for some time; it was not probable that he would never work again. He was off work for one year prior to the judgment, when his income would have been about \$3,200³³.

\$7,500 Female accounts clerk, unmarried, aged twenty, sustained concussion, injuries to both knees, facial lacerations and black eyes. As the result of polio suffered as a child her left arm was rendered useless and the upper right arm was partly disabled; this condition accentuated her suffering from the accident. She returned to work after about two months but resigned after eighteen months and was out of work for ten months until she found a more suitable and remunerative position. The resignation and subsequent unemployment was attributable to the accident, being the consequence of depression brought on by the accident. This condition has now resolved. She suffered some pain and remains with weakness in both knees, especially the right knee on which there is also an obvious bony prominence. She has mild scarring of both knees and hips, and faces the possibility of arthritis in the future³⁴.

*J. R. Mansfield**

32. *Watson v. McHale* (1970) L.S.J. Scheme 282 (Walters, Zelling and Wells JJ.) allowing an appeal from Bray C.J. reported in (1970) L.S.J. Scheme 95, increasing the award in respect of the non-economic aspects of the plaintiff's loss from \$6,000 to \$9,600. Walters and Wells JJ. formed the majority, and Zelling J. concurred although His Honour would personally have increased that figure to \$8,000 only.

33. *Pipikos v. W. Brown & Sons Pty. Ltd.* (1970) L.S.J. Scheme 497 (Bray C.J., Bright and Wells JJ.) allowing an appeal from Chamberlain J. reported in 1970 L.S.J. Scheme 241. The Full Court unanimously held that the learned trial Judge should have decided between conflicting medical opinions, as those opinions differed significantly as to whether the plaintiff would be able to return to work fully. Bray C.J. then decided the case should be reheard. Bright and Wells JJ. found they were able to balance the conflict on the evidence, and increased the award for loss of earning capacity to \$5,000. Bray C.J. approved a figure of \$2,725 as reasonable for the non-economic aspects of the plaintiff's loss.

34. *Jones v. Ching Thim Chow* (1970) L.S.J. Scheme 81 (Chamberlain J.).

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