

PERSONAL INJURIES

AWARDS IN SOUTH AUSTRALIA 1972-1973

This survey covers the period from 31st October, 1972, to 31st November, 1973, and includes summaries of selected cases involving claims for damages for personal injuries which have been reported in the Law Society Judgment Scheme during that 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 in the figures awarded by way of general damages.

Head Injuries

\$29,000 Male, railways ticket collector, aged 41, sustained multiple fractures of the skull at the upper frontal area and around the eyes, lacerations to the left ear, mild concussion, and broken right collar bone. He had significant psychological disability affecting his earning capacity which pre-existed this accident. Permanent disabilities involved the loss of sight in his right eye, permanent scars on his forehead, loss of sense of smell, some loss of sexual capacity and a low risk of epilepsy, and heightened psychological disability which he will probably largely overcome in near future. He would have limited job opportunities in the future because of the combination of his physical and mental disabilities. Loss of earning capacity to date of trial separately assessed¹.

\$20,000 Schoolboy, 17, with good scholastic results and sporting ability likely to proceed with tertiary education sustained retrograde and post traumatic amnesia as a result of a moderately severe brain injury. He suffered concussion, scalp lacerations, abrasions of the left shoulder and the left knee, and a fracture of the nasal bones without displacement. He made a slow but uneventful recovery from these external physical injuries. He has permanent defects in memory and intellect and concentration power with a slight continuing risk of epilepsy. He now has permanent double vision when looking sideways producing headaches and fatigue after work. He has permanent loss of enjoyment of life though still plays some sport, etc., and his brain damage and impaired field of vision prevent him from now completing any tertiary qualification and various clerical work and other work requiring full range of vision².

Back Injuries

\$25,000 A pedestrian sustained a fractured heelbone with associated bruising and some pain in the buttocks. This however caused a degeneration and prolapse of the lumbo-sacral disc. He refused unreasonably to have a laminectomy and spinal fusion which would give him a greatly increased capacity for work and remove the pain and disability. Damages were assessed on the basis of the plaintiff having undergone such an operation. General damages included allowance for substantial pain and suffering over previous two years and in the future (\$7,000). Loss of earning capacity to trial (\$8,392), and for future loss including cost of the operation (\$700) and the time off work of up to 12 months with some restriction of earning capacity in any event in the future³.

\$10,000 Sales representative suffered permanent minor but painful injuries to his back and lower left leg, a fracture of his nose and a permanent blockage of his

1. *Ranieri v. Ranieri* (1973) 60 L.S.J. Sch. 107 (Sangster J.). Special damages included \$6,000 for loss of earning capacity to date of trial.
2. *Komisars v. Guardian Insurance* (1973) 59 L.S.J. Sch. 281 (Walters J.).
3. *Polidori v. Staker* (1973) 61 L.S.J. Sch. 128 (Zelling J.).

nasal passage. Although he had a relatively short hospitalisation, he needed physiotherapy treatment on his back for two months which failed to eliminate the pain. This chronic strain of the lumbo-sacral joint prevented him from gardening and enjoying sport, and he now experiences pain during and after intercourse. He is now unable to sing in public because of the nasal obstruction as a result of hypertrophy of the left inferior turbinate bone. For the non-economic aspects of his loss, \$4,000 was allowed and \$6,000 for loss of earning capacity including loss of earnings as part-time singer of \$1,500 to date of trial and \$4,500 thereafter; no actual loss of earnings in full-time work though some risk of it in view of persisting disabilities⁴.

\$2,500 Railcar driver sustained shock, lacerated hand and musculo-ligamentous back strain which required physiotherapy treatment and some traction. He wore a spinal support fairly continuously for a year. Back pain still recurs on occasions and reduces his enjoyment of life, but he will be able to continue his work until retiring age⁵.

\$2,250 Male aged 17 suffered fractured pelvis, a fracture of the superior and inferior pubic rami on the right side and a fracture of the pubic bone on the left side made a good recovery. However, he suffered continuing back pain after moderate to heavy exercise due to strain of the lumbo-sacral joint, which meant a restriction on his sporting activities, and will mean he will sometimes suffer short periods of pain, which can be relieved by analgesics⁶.

Neck Injuries

\$10,000 A market gardener was injured by a falling sack which accelerated and exaggerated his pre-existing neck disability. But for the accident he would have been completely unable to carry on heavy work within ten years. However the accident caused him to come to a very considerable, sudden and permanent diminution in his physical efforts which compelled employment of other labour, prevented a possible transfer and expansion of his market garden activities. It also inhibited quite a large number of other possible employments. His enjoyment of life was, of course, reduced through the pain and suffering, but his pre-accident activities were very restricted anyway by choice⁷.

\$6,500 Housewife sustained damages to the ligaments and discs of the cervical vertebrae. She has suffered and will continue to suffer for an indefinite period pain in the neck, headaches and intolerance to noise. She is impeded in her duties as a housewife and mother and her own enjoyment of life. A small allowance was made for loss of earning capacity regarding any employment where there is more than a moderate amount of noise, even though she had no intention of working after her first child was born 18 months since the accident⁸.

Arm and Hand Injuries

\$45,500 Press operator, aged 41, sustained a severe injury to his right hand. The radial half of the hand was amputated. He lost the thumb, forefinger and part of the carpal bones of the wrist. There is a 20% loss of flexion in the second finger and 85% loss of the function of his hand. The mutilated remnant of the hand appears unsightly and he is embarrassed by it. His hand remained hypersensitive to touch due to adhesions of nerves in the scarring and this was

4. *Reid v. Newell Lanor* (1973) 60 L.S.J. Sch. 459 (Walters J.).

5. *Dier v. Murray Lanor* (1971) 61 L.S.J. Sch. 35 (Judge R. H. Ward).

6. *Charter v. Wilson* (1973) 60 L.S.J. Sch. 542 (Judge White). Special damages included agreed loss of wages.

7. *Ivanoff v. Holbrook & Sons* (1973) 61 L.S.J. Sch. 11 (Sangster J.).

8. *Bawden v. Soia* (1973) 61 L.S.J. Sch. (Bray C.J.).

9. *Soukoulis v. Simpson Pope Ltd.* (1973) 61 L.S.J. Sch. 195 (Bray C.J.).

likely to be permanent. As a result of his physical injuries and a psychological reaction he had no earning capacity to the date of trial nor for 3-5 years thereafter. He would then probably be left with the physical disability described, and a phobic anxiety of similar work places. He would face considerable difficulty in gaining employment of any form in the future. Non-economic aspects of the loss attracted \$11,000 damages with \$7,000 for lost earning capacity to judgment and \$27,500 for future loss of earning capacity⁹.

- \$32,500 Truck driver 43, lost 75-80% of the function of his left hand after it was crushed. He can still perform some simple functions, but can no longer play the bagpipes or operate a high/low ratio gear lever although he can drive an automatic car. He suffered severe pain from the injury and the surgery and physiotherapy arising from it, and will continue to suffer permanent pain of an aching nature and risk of pain from knocking or jarring. He will need drugs to offset that and will continue to be seriously impeded in most ordinary activities such as dressing, eating and all manual activities. His sleep will continue to be affected, and his mental condition has deteriorated mainly as a result of the accident, but partly due to a pre-existing cause. His earning capacity has been substantially reduced, but he has failed to adequately exploit that which remains¹⁰.
- \$10,500 Carpenter's assistant 15, who went on to become an apprentice sustained severe injuries to his right hand and fingers. He suffered extensive lacerations, a compound fracture of the middle phalanx of the middle finger involving the loss of both extensor and flexor tendon tissue and other soft tissues, damage to the distal phalanx of the middle finger and a traumatic amputation of the ring finger through the middle phalanx. He now has permanently lost half the efficient use of his right hand, and experiences considerable pain if his hand is accidentally knocked. He is left handed. The injury diminished his enjoyment of recreation, was a source of embarrassment and would handicap him in competition with other carpenters and put him at greater risk of injury¹¹.

Leg Injuries

- \$21,500 Male, then 13, was admitted to hospital with three fractures of the right leg, abrasions over both shoulders and one hip, some injury to his back and possibly some minimal injury to his head. Fractures healed well, but he has been left with some residual difficulties. He needed a corrective osteotomy to correct a turning of the leg, and six years after the accident he had a spinal fusion and operation for the removal of a Bretal blade plate from the femur. He has to wear built-up shoes because his leg has shortened $\frac{3}{8}$ in. He is no longer able to play sport and a desired military career as an infantryman is no longer open to him; he is however satisfactorily employed. His permanent loss of function of the whole of the right leg which includes a substantial limitation of movement in the right hip is of the order of 10%. \$12,500 damages allowed for pain and suffering and loss of amenities, \$1,000 for costs of future treatment and drugs, and \$8,000 for loss of earning capacity, including inability to perform heavy work or much overtime, and which was divided 50/50 between past and future loss of earning capacity¹².
- \$19,000 Female student laboratory technician aged 18, received substantial and very painful injuries including concussion, a compound fracture of the right thigh, a dislocation of the right elbow, bruising of both elbows, injury to the lateral ligaments of the left knee and bruising of the right leg. The fractured femur was pinned but it did not unite and a second operation became necessary. She has been left with her right leg at least one inch shorter than the left. She

10. *McKernan v. Afford* (1973) 61 L.S.J. Sch. 405 (Sangster J.).

11. *Fleet v. Henley Joinery Pty. Ltd. (No. 1)* (1973) 59 L.S.J. Sch. 269 (Walters J.).

12. *Kouimanis v. Riddle* (1973) 61 L.S.J. Sch. 350 (Zelling J.).

has tilting of the pelvis, and 30% loss of use of the right leg. The right knee has 10% loss of full flexion compared with the left, and there is a considerable crepitus behind the left knee and some crepitus in the right elbow. She does not wish to wear a built-up shoe, and there is a considerable prominence of the pelvis noticeable in bathers. As well she is considerably scarred on the right leg. She can no longer dance or play tennis, and is self-conscious about swimming. She will probably need future operative treatment at a cost of \$1,500; \$11,500 was allowed for pain and suffering and loss of amenities and the balance for past and future loss of earning capacity as she was maintaining her employment with some physical impediment¹³.

- \$7,000 Schoolboy 14, was injured by flying metal fragments sustaining a severe wound of the right lower leg resulting in a comminuted fracture of the distal fibula and damage to strictures in the peroneal compartment, a penetrating wound of the left knee leaving a fragment of metal embedded in the patella and a compound fracture of the second metatarsal of the left foot with damage to tendons, to medial plantar nerve and to the dorsal digital nerves to the medial three and a half toes. As a result he was deprived of enjoyment and participation in sports even though he had not been previously successful in a competitive sense at these sports. The loss of function of his right lower leg was assessed at 5% and to the left leg 25%. He had one chance in ten of arthritis in 10 years hence. No substantial award was made for cosmetic injury as his scars were normally covered by clothing. He was also compensated for a diminution of his capacity to qualify for a practice as a veterinary surgeon¹⁴.
- \$4,000 Shopkeeper 62, who up to the injury had been leading a most active life, fractured his left hip which required replacement with an artificial hip. He now has a slightly shorter leg and slight permanent limp, and is unable to enjoy the strenuous recreational activities which he had previously pursued. He was also unable to dance and as a result his enjoyment of life had been considerably curtailed because he was the type of man who could get very full enjoyment of life in retirement. No loss of future earning capacity was asserted¹⁵.
- \$3,500 Cleaner tore the left medial ligament in his knee and strained his right shoulder. The shoulder injury cleared up in a few weeks and an orthopaedic surgeon recommended a menisectomy of his cartilage. He had continued to put off this planned operation, which was expected to leave him with 10% loss of function in his leg. Damages were assessed as if he had undergone a successful operation, and was back to full capacity for work in eight months¹⁶.

Eye Injuries

- \$5,000 Matriculation student sustained a blow-out fracture of the orbital floor of the left eye. For three months he suffered a 100% loss of efficiency through double vision, and thereafter he found that double vision did not occur when he looked straight ahead. However, he had lost efficiency of the eye of 70%, and treatment and recovery to a point of reasonable vision had so interfered with his matriculation year that he decided to leave school and take on work as a sales clerk. Double vision interferes with his capacity to play some sports and engage in some activities, though he performs his work satisfactorily. His left eye tends to remain horizontal when he moves his right eye, constituting a cosmetic disability¹⁷.

13. *McMahon v. Morris* (1973) 61 L.S.J. Sch. 389 (Zelling J.)

14. *Duluk v. Commonwealth of Australia* (1973) 61 L.S.J. Sch. 6 (Sangster J.).

15. *Ayres v. Karavas* (1973) 59 L.S.J. Sch. 194 (Judge White).

16. *Faver v. Foura & Another* (1973) 59 L.S.J. Sch. 494 (Senior Judge Ligertwood).

17. *Smith v. Whitney* (1972) 58 L.S.J. Sch. 998 (Senior Judge Ligertwood).

Miscellaneous

- \$8,500 Female aged 7 sustained concussion and bruising and ear injuries resulting in severe loss of hearing in the right ear amounting to a binaural handicap of 22.5%. Damages of \$7,500 were allowed for pain and suffering, permanent disability and impairment of amenities and \$1,000 for potential economic loss¹⁸.
- \$1,500 An itinerant worker suffered back strain after a road accident in which he also sustained cuts to the forehead which left somewhat inconspicuous facial scars. He has had no feeling in his thumb or index finger since the accident, and did experience a throbbing pain in the area of the forearm muscles which lasted for a year after the accident. X-rays disclosed a healing fracture of two of his ribs, which meant discomfort for about six months after the accident, and he also experienced discomfort in the legs and buttocks. Negligible loss of earning capacity¹⁹.
- \$1,000 Male aged 5, fell from a horse and ruptured his left kidney. One third of the kidney substance became detached from the blood supply. He was treated conservatively for a month, and has made a complete recovery with the ruptured kidney operating normally. There is a possibility, albeit extremely unlikely, of development of high blood pressure. He suffered much pain and for a period became temperamental and over dependant. He is now a happy confident child making good progress at school²⁰.

*J. R. Mansfield**

18. *Chan v. Fong* (1973) 60 L.S.J. Sch. 212 (Walters J.).

19. *Donaldson v. Harris & Hamood* (1973) 59 L.S.J. Sch. 173 (Wells J.).

20. *Cockram v. Thomas* (1973) 60 L.S.J. Sch. 536 (Senior Judge Ligertwood).

* LL.B.(Hons.)(Adel.); Barrister and Solicitor of the Supreme Court of South Australia.