

PERSONAL INJURIES AWARDS IN SOUTH AUSTRALIA 1973-75

This survey contains summaries of selected cases involving claims for damages for personal injuries which have been reported in the Law Society Judgment Scheme during the period from 1st December, 1973 to 31st October, 1975. 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. The stated age of the plaintiff is that at trial as, almost invariably, pre-trial and post-trial loss of earning capacity are separately specified.

HEAD INJURIES

- \$90,000 Specialist refrigerator salesman/value analyst, 52, admitted to hospital unconscious (and remained so for 8 weeks) with severe brain damage, double vision which has resolved, inability to blink the right eye which has substantially recovered, various substantial lacerations and abrasions, a flaccid left arm, fractured thoracic vertebra, multiple bilateral rib fractures, a contused left lung, a crack fracture in the parietal region, a fractured pelvis bone, palsy and denervation of the right facial muscles and a left hemi-paresis. He underwent extensive surgical procedures. His brain injuries have permanently impaired his ability to react competently to problems and his adaptability so he is unfit for both positions referred to. His face is deformed and suffered permanent denervation; he has permanent weakness in his left leg and his left arm, which makes him clumsy and causes great difficulty in writing at all; his speech has been affected and he suffers psychosomatic pain in the chest and a substantial personality change involving introspection and attitudes varying from depression to euphoria. He is now fit only for selected undemanding work, but faces substantial periods of unemployment in the future. He was likely to have worked past 65. Loss of earning capacity to trial was assessed at \$25,000. Special damages total \$2,493 and interest was fixed at \$17,000¹.
- \$80,000 Schoolboy, 16, sustained a severe head injury, a compound fracture of the right tibia and fibula, fractures of the right clavicle and of the left wrist, and lacerations. His brain injuries caused right sided hemiplegia from which he made a gradual partial recovery. On one subsequent occasion he fell fracturing his right forearm through weakness. His disabilities include residual gross weakness of the right arm with spasticity, painful cramps and effectively 100% loss of use of his arm, weakness in the right leg preventing running and causing cramps. Significant impairment of intellect from average to borderline retarded preventing him from completing his schooling; from a capacity to qualify as a tradesman earning \$120 per week he is now only fit for work in a restricted atmosphere earning about \$40 per week. An annuity of \$1 per week capitalised at \$784. His personality has changed and he has become depressed. He will need future medical and psychological care, and there is a very small risk of epilepsy. Special damages total \$2,243.05².
- \$65,000 Army corporal, 24, sustained a grossly comminuted depressed frontal fracture and brain damage affecting both frontal lobes and both optic nerves and oculo-motor nerves and destroying the olfactory nerves; extensive facial lacerations, and fractures of both femurs which were fixed with nails and healed satisfactorily. He was hospitalised four weeks. His permanent disabilities are total loss of sight in his left eye, 25% only visual field of right eye, loss of

1. *Rust v. Needham* (1974) 65 L.S.J. Sch. 361 (Bray C.J., Wells & Sangster JJ.). Total permanent loss of earning capacity for the future would have attracted an assessment of \$45,000, but as the plaintiff had some residual capacity the maximum reasonably allowable on this head would be \$40,000.

2. *G. v. S.* (1974) 65 L.S.J. Sch. 455 (Zelling J.). Damages were reduced by 25% for contributory negligence.

sense of smell and taste, drooping left eyelid, risk of epilepsy requiring continual controlling medication, slight risk of certain brain diseases, substantial facial scarring, 15% loss of function right leg, 10% loss of function left leg, impairment of memory and concentration, and erratic euphoria. He is unfit for all but selected light manual labour away from moving objects and cannot drive or do many active things. He requires three further operations costing \$1,400. Loss of earnings to trial, by which time he would have been a sergeant earning \$127.18 net weekly, is \$4,453.60. Special damages not including loss of earnings \$8,859.40, and interest \$6,900³.

\$45,000 Bank clerk, 25. sustained concussion, fractured pelvis, compound fracture of her left tibia and fibula, head injuries involving severe primary brain injury, facial lacerations and a laceration to her right leg. She had long and extensive treatment. Her left leg now has a large and unsightly scar on her calf, some extended contour and some weakness. The fractured pelvis has displaced her right leg 3 cm upwards causing a twisted stance and causes backaches and uncomfortable prominence of the coccyx; she wears selected shoes with a raised right heel. Her facial lacerations healed well. Her brain injury resulted in double vision, inability to read for long, headaches and susceptibility to glare, some hearing loss, poor memory and major personality change involving dependence, nervous tension, irritability, depression and phobic anxiety and she has little interest in sexual activity. She is now unfit for her former work and is probably an odd lot, but she would have worked only 4-5 years (say to the trial date); her loss of earnings to trial were \$10,189.53. Special damages total \$3,365.82⁴.

BACK AND NECK INJURIES

\$90,000 Student, 21, sustained injuries resulting in paraplegia with special risks of infection with slight diminution of life expectancy, and requiring intermittent medical and hospital care; his prospects of marriage have been very greatly diminished. His slight prospects of qualifying for some professional or skilled occupation have been delayed and his options are now restricted; his performance in any such occupation will now be limited and will be interrupted by the need for future treatment. He is also impeded in but not prevented from some other occupations available to him. Loss of earnings in the future was assessed on the basis that \$1 per annum capitalised at \$12.50 and future medical expenses on the basis that \$1 per annum capitalised at \$13. Some allowance was made for the cost of modifications to his home. Special damages total \$6,041.37⁵.

\$30,000 Taxi driver, 58, suffered a whiplash injury to his neck producing severe headaches and occipital neuralgia. The accident also contributed to some loss of sexual activity, to an anxiety state, and to acceleration of diabetes and other minor complaints. He is now unfit to work as a taxi driver, but has residual capacity in selected work which would not be easy to obtain. His loss of earnings to trial were assessed at no more than \$8,000; and \$11,000 each for future loss of earning capacity and non-economic loss was not excessive⁶.

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3. *Fearnley v. Griffiths and State Government Insurance Office (Queensland)* (1975) 66 L.S.J. Sch. 109 (Zelling J.). An invalidity pension payable under the Defence Forces Retirement and Death Benefits Act 1973-74 (Cth.) was not taken into account.
 4. *Venning v. Chin* (1974) 63 L.S.J. Sch. 26 (Hogarth J.). The judgment went on appeal to the Full Court (Bray C.J., Bright & Jacobs JJ.) but not on the question of damages: (1974) 65 L.S.J. Sch. 245.
 5. *Koufidis v. Eveniadis* (1975) 68 L.S.J. Sch. 259 (Sangster J.). The question of the effect of Medibank upon the allowance to be made for medical and hospital expenses to be incurred in the future was also discussed.
 6. *Ruma v. Christoff* (1974) 65 L.S.J. Sch. 25 (Bray C.J., Hogarth & Jacobs JJ.), dismissing an appeal against the assessment of damages by the defendant. An annuity of \$1 per week to the plaintiff from trial to age 65 was valued at \$258.

- \$17,000 Nurse/receptioniste, 71, in good health was hospitalised for two months, sustained multiple injuries involving great pain and discomfort and resulting in permanent disabilities; spinal disability, restricted neck and upper spine movement, slight shortening of her right leg, some loss of vision in her right eye and some loss of co-ordination in the sight of both eyes. She will suffer further pain and discomfort and substantial loss of amenities. She was working part-time and lost all her earning capacity; her loss of earnings to trial were \$4,316 and she would have worked for between 0-4½ years after the date of judgment earning \$2,700 per year. Her loss of future earning capacity was assessed at \$5,000. Special damages total \$2,482.87⁷.
- \$7,300 Bus operator and gardener, 48, sustained lower back injury resulting in a partially incapacitating accident neurosis which would resolve within about six months of settlement; his action should have been completed by about November 1972 and he would thereafter have only slight loss of earning capacity. Damages for loss of earning capacity were assessed at \$4,800. Special damages total \$273.27⁸.
- \$5,700 Shop manageress, 45, sustained a whiplash injury to her neck involving no organic injury other than some initial soft tissue strain; but through a neurosis she had persisting weakness in her right arm and some neck and right arm pains which will gradually disappear after settlement. She also sustained injury to her jaw requiring after a time removal of all her teeth, the fitting of dentures which must be replaced periodically, and inability to chew tough food without pain. She was unfit for work for about 10 months during which time she would have earned about \$1,270, but thereafter had minimal loss of earning capacity. Special damages total \$1,552.85⁹.

ARM AND HAND INJURIES

- \$13,500 Carpenter, 35, sustained a severe left wrist injury, concussion, minor head injury, and a mid-lumbar back injury with some residual effects. He had four operations to the wrist including a bone graft and an arthrodesis which has left him with a 25% loss of the use of left wrist. He is left-handed, and his work as a carpenter and his skill as a cabinet-maker are impaired. His wrist and hip is scarred and there is a protuberance near the site of the injury. He still has some pain and is unable to play sport. He has permanent employment without wage loss but is slightly sheltered in his job and cannot compete equally on the labour market. Loss of wages (above compensation payments) of \$2,000 was included in special damages¹⁰.
- \$6,000 Retired sheet metal worker, 68, sustained a fracture of the left scapula, the right clavicle, his right lower ribs and his pelvis, a bruised right testicle, and abraded nose and left upper eyelid. After an unsuccessful effort to return to work, he had a graft from his right tibia to his right clavicle and the fracture then united but with some protuberance of a fixing screw and pain on extreme movement. He has limitation and pain on extreme movements of his left shoulder, moderate neck pain, and scars on his nose and eyelid. His loss of earning capacity was assessed at 20%, but apart from \$2,124.30 lost during incapacity he returned to his job until retirement, although he still has a slight loss of earning capacity. Special damages total \$1.655¹¹.

7. *O'Brien v. Hiller* (1975) 66 L.S.J. Sch. 160 (Bray C.J., Walters & Wells JJ.). The plaintiff's damages were increased on appeal on the ground that the award of damages by the learned trial judge were manifestly inadequate.

8. *Marziale v. Hathazi* (1975) 68 L.S.J. Sch. 237 (Sangster J.). Damages were reduced 15% by agreement for contributory negligence.

9. *Chapman v. Heritage and anor* (1973) 61 L.S.J. Sch. 454 (Bray C.J.).

10. *Rigter v. J. C. Taylor Constructions* (1974) 64 L.S.J. Sch. 489 (Zelling J.).

11. *Gow v. Twilley* (1975) 68 L.S.J. Sch. 72 (Mitchell J.). Damages were reduced 25% for contributory negligence.

- \$5,000 Typiste, 21, sustained injury to her left eye resulting in 10% loss of sight in the left eye, loss of five upper front teeth requiring her to wear a denture with some discomfort, a sprained right wrist, permanent damage to the larynx and scarring to the face and knee which has left some moderate to minimal facial disfigurement. The wrist injury causes permanent weakness manifesting itself in aching and tiredness, particularly after prolonged typing with therefore some minor future loss of earning capacity. The left vocal cord and the adjacent cartilage sustained damage and as a result the tone of her voice is coarse and husky, she cannot shout or sing, and she is liable to coughing fits and occasional ulceration. Special damages total \$1,204.47 including actual loss of earnings to trial¹².
- \$4,000 Female matriculation student who was a brilliant pianist sustained a strained left wrist which caused pain for some four months and has left her with permanent slight weakness. She is restricted in practising music and could not follow her chosen career as a music teacher. She became a nurse with no actual loss of earning capacity, and she has only slight difficulties in performing that work. Special damages total \$64.35¹³.

LEG INJURIES

- \$42,000 Fitter, 58, sustained right foot injuries resulting in amputation of all toes of his right foot at operation, and a painful spicule of bone on his foot. He developed a neurotic depression to which he was pre-disposed and which might have developed from some other incident, which with his physical injuries rendered him unfit for work to trial. Physically he is permanently unfit for prolonged standing, heavy lifting, working on rough ground, climbing and squatting; psychologically he could return to suitable work in limited circumstances. Loss of earning capacity to trial was probably about \$14,000, non-economic losses were probably about \$10,000, and future loss of earning capacity probably about \$18,000¹⁴.
- \$40,000 Secretary, 45, with chronic osteomyelitis in both lower legs since about the age of 15 which would have caused 25% loss of use of her legs in any event, sustained fractures of the left tibia and fibula of the left femur, of the right scapula, and of two ribs on the right side with some collapse of the adjacent lung, and lacerations and abrasions. All injuries but the leg injuries healed, but with some arthritic effect and 20% loss of abduction in the right shoulder. Normally the leg injuries would recover satisfactorily within 3-6 months, but the fractured femur affected the chronic osteomyelitis leading to sepsis and non-union so that the left leg was amputated above the knee; with difficulty an artificial limb was fitted. She has as a consequence pelvic tilt causing some back pain. She is now unable to engage in most activities that she previously enjoyed. Her residual difficulties include the likelihood of falling when walking, inability to shower, and difficulty using the toilet. She is fit for limited part-time typing work at home, and although she has completed a land broking course her pre-existing disability would largely preclude her from that work. She was hospitalised seven months. Loss of wages to trial of \$10,863 was included in general damages. Special damages total \$4,964.14 and interest was fixed at \$6,000¹⁵.

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12. *Collins v. MacDonald* (1974) 65 L.S.J. Sch. 344 (Bray C.J., Zelling & Wells JJ.), allowing an appeal by plaintiff against the assessment of damages.
 13. *Carmody v. Nation* (1974) 63 L.S.J. Sch. 483 (Judge White). The plaintiff's damages were reduced 45% for her contributory negligence.
 14. *Chrysler Australia Ltd. v. Skrypek* (1975) L.S.J. Sch. 303 (Bray C.J., Walters & Wells JJ.), dismissing an appeal by the defendant against the assessment of damages. On the basis of future total permanent incapacity for work, allowing for contingencies, future loss of earning capacity would have been assessed at \$25,000.
 15. *Murphy v. McCarthy* (1974) 64 L.S.J. Sch. 419 (Zelling J.).

- \$28,500 Chef, 38, sustained a severe fracture dislocation of his right hip and severe bruising of the tissues of his right leg. The fractured hip was fixed with a screw and totally incapacitated him for six months, and thereafter he worked as a chef with persisting disability until degeneration occurred producing further pain and limitation of movement, rendering him unfit for all but very light work. He could undergo an arthodesis operation which will restore his lost earning capacity in a relatively short time but which would leave him with a stiffened joint and restriction of movement and consequent inconvenience; damages were assessed on that basis. He would then be totally unfit for four months and incur expenses of \$2,000; he could but for his injuries be earning \$150 per week at judgment. Economic loss to judgment was assessed at \$12,000, future economic loss (including expenses) between \$5,700 and \$7,000 and special damages at \$1,264.85¹⁶.
- \$27,000 Seamstress, 53, sustained comminuted fracture of right tibia and fibula requiring three weeks in hospital and a consequential pulmonary embolus requiring two weeks in hospital. She has permanent limitation of movement of the right knee and ankle, half an inch shortening of the right leg which requires the wearing of a built-up shoe and some lumbar spinal injury; these restrict her in her enjoyment of life and performance of household chores. Her earning capacity was reduced by probably more than one third; her claimed loss of earnings to trial (by which time she would have been working at least part time for three years) and future loss of earning capacity both on the basis of total incapacity was \$12,113.69 and \$28,837.83 respectively, and allowance for loss of earning capacity was made from those figures. Special damages total \$2,250¹⁷.
- \$18,000 Senior constable, 38, an active sportsman, sustained a fractured right tibia and fibula with a small puncture wound over the fracture site, right knee injury involving the bone of the lateral condyle of the femur at the knee joint. The right leg was in plaster 11 weeks. His right knee will now not fully straighten or extend and flexion is only possible through 90° with considerable grating. He can only perform sedentary duties with the police force and in 15 years he will be reduced completely to sedentary work on account of increasing arthritic changes in his right knee; he has lost the almost certain chance of promotion to Sergeant at an unspecified time, with an annual loss probably of \$500, but possibly as high as \$1,500 approximately to the retirement age of 60. He is no longer fit for active sport or other activities. Special damages total \$268.90 and loss of wages to trial of \$2,131.08 were also allowed separately. Interest was fixed at \$4,410¹⁸.
- \$17,500 Factory worker, 60, sustained injury to his right knee resulting in 80% loss of use of that leg involving weakness, early osteoarthritis and pain, and restricting him to sedentary employment; also a substantial diminution of his overall psychiatric health which might be relieved by settlement. He also fractured his left radius but this healed without disability. Loss of earnings to trial were \$13,396, and net annual earnings at trial would have been \$5,000 but he suffered a heart attack shortly after the accident unrelated to it and which also affected his loss of earning capacity¹⁹.

16. *Xenos v. Curnow* (1975) 68 L.S.J. Sch. 312 (Jacobs J.). The judgment contains a discussion as to the basis upon which damages are to be assessed where two reasonable future alternative medical procedures are available to the plaintiff.

17. *Wagner (formerly Robertson) v. Van Velzen* (1975) 66 L.S.J. Sch. 155 (Bray C.J., Walters & Wells JJ.). The plaintiff's damages were reduced on appeal on the ground that the award of damages by the learned trial judge was manifestly excessive. Walters and Wells JJ. indicated that damages for the non-economic aspects of the plaintiff's loss could not reasonably exceed \$10,000. Interest was fixed by the Full Court at \$4,095. Damages were reduced by 50% for contributory negligence.

18. *Alley v. Minister of Works and anor* (1975) 64 L.S.J. Sch. 449 (Zelling J.). Damages were reduced by 65% for contributory negligence.

19. *Valaridis v. Scott* (1975) 68 L.S.J. Sch. 61 (Bray C.J., Wells & Jacobs JJ.), increasing the award of damages on the ground, *inter alia*, that it was manifestly

- \$14,000 Female breadcarter, 24, sustained severe injury to her left foot requiring five major surgical procedures including removal of all toes by transmetatarsal amputation leaving her with a mutilated foot about two-thirds of its normal size. Impaired circulation in her foot requires constant massage and maintenance treatment involving some recurring costs and the possibility of further operative treatment to relieve pain. Skin grafts have left marked cosmetic disfigurement of her left arm and left thigh. She suffered severe pain and discomfort for several years and the appearance of her foot is distressing and embarrassing. She cannot wear conventional shoes, is unable to participate in active recreational and sporting activities which she previously enjoyed, and is unable to walk for more than a short distance. She is now fit only for clerical work of a sedentary character but was unlikely to engage in other than part-time work after her family had grown up; \$2,500 was notionally ascribed to future loss of earning capacity. Special damages total \$4,043.13 including \$2,777 loss of earnings to trial²⁰.
- \$5,000 Male, 18, sustained a fractured right leg above the knee and just above the ankle. He underwent three operations, but made a good recovery although he was delayed in commencing employment for three months. He is now restricted in playing active sport but otherwise his capacity to work and enjoy life are not reduced. He underwent considerable pain and suffering. Special damages total \$1,337²¹.
- \$3,500 Labourer, 65, with no pre-accident earning capacity sustained a severe injury to his right leg, which was broken in three places. His residual difficulties include pain, limping and limitation in movement²².
- \$3,000 Female sustained concussion, fractured right ankle and a lacerated lip. Her right leg was in plaster for three months, and she has some minor deformity of her right ankle and will have spasmodic swelling and pain and a risk of arthritic changes in the future. She has a 1 cm. scar on her lip which is noticeable upon inspection. She is able to earn as much as she could before the accident. Special damages total \$116.63²³.
- \$2,000 Female, 7, sustained a fractured shaft of her left femur requiring her leg to be in plaster for three months; she suffered considerable pain and discomfort during this period and she was delayed in starting the school year with no ultimate adverse effect. She has made a complete recovery. Special damages total \$815.50²⁴.

EYE INJURIES

- \$19,500 Labourer, 23, sustained concussion, injury to his left eye, lacerations over his left eye, and a fractured left femur. The fractured femur was fixed with a nail, which was later removed, and he has slight weakness especially on vigorous activity and the knee tends to give way; there is a risk of arthritic deterioration. He has no useful vision of his left eye except to vaguely discern objects and suffers spasmodic diplopia. He has noticeable scarring over his left eye and on his hip. He has suffered no loss of earnings to trial save during convalescence of \$386.48 (allowed for in general damages), but his capacity to earn in the future is restricted. Special damages total \$1,006.70²⁵.

inadequate. Jacobs J. suggested his loss of earning capacity to trial could not have been less than \$50,000, of which that proportion attributable to the accident not less than \$10,000.

20. *Cawrse v. Cocks* (1974) 64 L.S.J. Sch. 413 (Walters J.).
21. *Mueller v. Hazelwood* (1975) 68 L.S.J. Sch. 80 (Senior Judge Ligertwood). Damages were reduced 75% for contributory negligence.
22. *De Souza v. Collins* (1974) 65 L.S.J. Sch. 42 (Bray C.J., Hogarth & Jacobs JJ.) on appeal from an assessment of damages.
23. *Trimboli v. Trimboli* (1973) 62 L.S.J. Sch. 80 (Judge R. H. Ward). Damages were reduced by 50% for the plaintiff's contributory negligence.
24. *Papadinas v. Relph* (1975) 67 L.S.J. Sch. 145 (Judge Reilly).
25. *Shillabeer v. Koehn* (1975) 66 L.S.J. Sch. 344 (Jacobs J.).

\$8,750 Welder, 36, injured his left eye which developed a cataract requiring removal including part of the lens. He was off work three months (during which he received weekly compensation payments of \$1,648.34 not included in the judgment); net loss of earnings of \$357.55 included in general damages. He has loss of 95% function of his eye with a substantial possibility of improvement to 75% functional loss, and a minor cosmetic defect²⁶.

COSMETIC INJURIES

\$10,000 Slaughterman, 24, sustained two fractures of his jaw and a displaced nasal septum. He was hospitalised two weeks when a steel plate was fixed to hold his jaw which is still sensitive to touch, and was off work three weeks. He suffered weekly headaches for three months, pain and discomfort in his jaw for six months, and frequent severe asthma attacks for 15 months (during which time he worked under disability) until operation on his nasal septum. His permanent disabilities are permanent controlled asthma preventing heavy exertion, including heavy work and more active sports, slight hearing loss, minor chewing difficulties, unpleasant intermittent sensation of water in the ear, and noticeable facial asymmetry including depressed 1-in. cheek scar creating lopsided appearance. He has obtained lighter work without actual wage loss. Special damages total \$803.80²⁷.

\$1,250 Female, 43, suffered hair damage resulting in temporary loss of hair on top of her head to a short unsightly stubble; she was greatly embarrassed and used wigs not quite of true colour to conceal the damage. The hair damage recovered over nine months with no permanent damage²⁸.

\$1,000 Female, 13, had one upper front tooth completely knocked out, and a lower front tooth fractured; her face was swollen and bruised for a couple of days and her nose became irritated. Her teeth required painful and expensive treatment involving re-insertion of her upper tooth including a rough plastic splint holding the teeth in place for 68 days, and because her teeth could not be cleaned for that time several cavities developed and needed treatment. Both teeth ultimately were saved²⁹.

*J. R. Mansfield**

26. *Tsavtaridis v. Bradford Kendall Ltd.* (1975) 67 L.S.J. Sch. 73 (Bray C.J., Wells & Jacobs JJ.), dismissing an appeal by the plaintiff from the trial judge's judgment on the ground that the award of damages was manifestly inadequate.

27. *Taffin v. Turley* (1974) 66 L.S.J. Sch. 10 (Judge White). It was also decided that an award of interest on the judgment sum under section 35g of the Local and District Criminal Courts Act 1926-1974 could be made in excess of the jurisdictional limit of the Local Court of Full Jurisdiction. Affirmed on appeal on both the assessment and the interest award: (1975) 66 L.S.J. Sch. 137 (Bray C.J., Walters & Wells JJ.).

28. *Williams v. Perrini* (1975) 67 L.S.J. Sch. 51 (Judge White).

29. *Irwin v. Green and anor* (1974) 63 L.S.J. Sch. 432 (Judge White).

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