

PERSONAL INJURIES

AWARDS IN SOUTH AUSTRALIA 1977-1978

This survey contains summaries of some cases involving claims for damages for personal injuries which have been reported in the *Law Society Judgment Scheme* and some unreported decisions during the period from 1st January, 1977, to 31st May, 1978.

Unreported decisions are included as fewer damages assessment cases have been reported in the *Law Society Judgment Scheme* recently, and those that have been reported have tended to involve more complex issues of fact and law. It has been thought desirable to include at least some more typical cases.

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, generally, pre-trial and post-trial earning capacity are separately specified. I have not included in the marginal figure for damages amounts allowed for special damages or interest.

HEAD INJURIES

\$113,000 Storeman/Representative, aged 28, sustained a fractured skull with an extra dural haematoma pressing on the right side, and multiple fractures of both legs. His head injury has produced memory defects, impaired use of his right hand so he has difficulty with fine movements, and slurred speech which is a serious handicap in communications—all three permanent. His leg fractures were treated variously at operation and he has now 2 cm shortening of the right leg so he wears a built-up shoe, restriction of right knee and ankle movements, and instability of the left knee. He is impeded in climbing, bending, squatting, lifting and other movements and is liable to back strain. He faces the risk of osteo-arthritic deterioration which may become intermittently disabling after five years and require future operative treatment. He has considerable scarring. He has suffered substantial pain and is precluded from any active sport or social life, has difficulty with intercourse and his former prospects in his job including promotion to manager have gone. After attempts to return to his former duties he was dismissed in February 1977, and is now employed as a storeman in light and undemanding and unrewarding work. He has a current earnings loss of \$50 per week, which after 1983 will be \$75 per week, and if he lost his present job he would have difficulty in getting other employment. He recovered \$35,000 for non-economic loss, \$6,000 for past loss of earning capacity, \$70,000 for future loss of earning capacity, \$2,000 for future expenses and \$7,812.46 for special damages, and interest.¹

\$97,000 Labourer, aged 57, sustained concussion and fractured ribs from which he made a good recovery, a lacerated left knee including rupture of the medial ligaments which was repaired under general anaesthetic and now produces occasional pain only, and a fractured dislocation at the C5-6 level of his cervical spine. This fracture was reduced and fixed with bone graft and fusion, but was unstable, and he underwent further hospitalisation for traction to correct it. During this treatment he developed an abscess on the brain which had to be removed. He has severe permanent disabilities: gross limitation of neck movements, substantial pain in the neck and right arm, constant pins and needles sensation in the right arm and portion of the lower arm, headaches, and significant neurological deficits. These are:

1. *Matthews v. Curry* (1978) Bray C.J., 13th February, 1978 (unreported).

stiffness of both arms, clumsiness of the right arm, loss of portion of the range of vision so that he stumbles, and epilepsy which is controlled by medication but to which he is permanently at risk. He is totally and permanently unfit for work from his injuries. He recovered \$22,000 for non-economic damages, \$29,000 for past loss of earning capacity and \$46,000 for future loss of earning capacity (to age 65) and special damages and interest.²

NECK INJURIES

- \$54,405 Female schoolteacher, aged 44, sustained a whiplash injury to her neck requiring her to wear a cervical collar for some time and leaving her permanently with pain and aching in both arms and in the head, limitation and tenderness on neck movements and some depression due to the pain. She had been a student immediately prior to the accident to improve her teaching qualifications and subsequent to the accident resumed teaching part-time and should improve within a year of the judgment to about four days per week. She is restricted both in her school and social activities and becomes exhausted after working half-day due to pain which impairs her teaching capacity. She recovered general damages for non-economic loss of \$25,000, for future economic loss of \$21,500, for past-economic loss \$7,580, for the need for household help \$325, and special damages of \$293.80.³
- \$28,500 Cashier/Paymaster in Commonwealth Public Service, aged 63, received a whiplash injury producing permanent pain and discomfort in his neck, shoulders and upper arms, tingling in his hands, and headaches and dizziness. He was compulsorily retired in January 1977, aged 62, due to his persistent complaints and absences due to pain and was totally unfit for work since his retirement. He would have retired at 65 in any event, and a substantial deduction was made for the contingency of him retiring before then due to significant pre-accident disabilities which he had. His earnings loss to trial (including over one year of total incapacity) was \$15,529.40 and his net earnings at trial were he still employed would have been \$160.68 per week. He recovered \$10,000 for non-economic loss, \$18,500 for loss of earning capacity, \$666.30 for special damages and \$6,750 for interest.⁴
- \$16,000 Fencing contractor, aged 57, aggravated a pre-existing osteo-arthritic condition in his cervical spine accelerating the severity and onset of symptoms of pain, stiffness and restriction of movement and headaches for a time. The accident (in March 1973) severely reduced his earning capacity until September 1976, but in the meantime there had been the risk of the degenerative condition worsening independently of the accident. From September 1976 he was unfit to work as a fencing contractor for reasons unassociated with the accident and thereafter the accident contributed only slightly to his persisting incapacity for work. His ability to perform as a singer was slightly reduced. For his pain and suffering and treatment including traction, and for some persisting pain and inconveniences including difficulty driving, headaches and some difficulty with intercourse he received \$8,000 general damages. His loss of earning capacity between March 1973 and September 1976 was fixed at \$6,500, and from September 1976 onwards \$1,500. He was also awarded special damages of \$1,465.47 and interest.⁵

2. *Ziedas v. Foster* (1978) King J., 17th March, 1978 (unreported). This case is included under the "Head Injury" classification, although the primary physical injury was to the neck, as the major adverse sequelae of the accident stem from the abscess on the brain which occurred during treatment.

3. *Thompson v. Faraonio* (1978) (unreported). The Full Court (Bray C.J., Zelling and Jacobs JJ.) reduced the award of non-economic damages given by the learned trial judge from \$35,000. The Full Court has given leave to the defendant to appeal to the Privy Council on the question of the basis upon which interest on the judgment is to be assessed.

4. *Keogh v. Simmons* (1978) Mitchell J., 4th April, 1978 (unreported).

5. *Canham v. News Ltd.* (1978) Bray C.J., 21st April, 1978 (unreported).

BACK INJURIES

\$28,000 Truck Driver, aged 25, sustained a crushed fracture of the 3rd and 5th lumbar vertebrae resulting in loss of use of both legs. He was hospitalised for three months, underwent operative treatment and was discharged reasonably mobile. Over the following years there was gradual deterioration in his condition through pain and the L2/3 disc space was fused and fixed with screws. He has a permanent weakness in his left leg, with the risk of arthritic degeneration, and is fit only for moderate or sedentary work without heavy lifting or truck driving. He returned to work after a year as a truck driver but was unable to cope and has had various jobs which he has found too hard since that time. He is now engaged in general driving work apparently adequately. He cannot compete equally on the labour market, although he is earning as much as he would otherwise have been doing, and he cannot engage in strenuous exercise or sport. His general damages did not separate his loss of earning capacity from his non-economic loss, except that his past economic loss was agreed by the parties at \$7,000 net and some deduction may have been made by the trial judge for adverse contingencies. Special damages were agreed at \$2,500.⁶

LEG INJURIES

\$34,500 Nursing Supervisor, aged 63, suffered a fracture of the right femur which was fixed under general anaesthetic but which united slowly. During the treatment she underwent considerable pain. The fixing pins were subsequently removed. She is left with her right leg $\frac{1}{2}$ inch shorter than the left and with about $\frac{3}{4}$ of normal movement of the right leg. She suffers and will suffer considerable hip pain with slowly progressing degenerative arthritis in the hip and she may need an operation to fix the hip at a cost of \$2,500. Although she would probably have been obliged to retire from her position at 60 (one year after her accident) she would then probably have obtained alternative nursing work by acquiring or managing a nursing home or private hospital. She is now unfit to do the hard physical work associated with nursing. She was awarded \$12,500 for non-economic loss, \$22,000 for economic loss and \$3,198.00 for special damages.⁷

\$29,500 Builder's Labourer, aged 21, sustained a ruptured spleen, which was removed, and multiple fractures to his left leg, which were reduced and fixed under general anaesthetic. Subsequently a fixing pin was removed under general anaesthetic. He has returned to his former work but walks with a limp and with some wasting in his left leg, which is $\frac{3}{4}$ inch shorter than his right leg. His left knee has some limitation in flexion and there is mild instability in his left ankle. He is embarrassed by his limp, and his knee aches and gets tired so that it affects his sleeping. He has a risk of backache in the future, and his earning capacity is reduced particularly if chronic backache supervenes. He was awarded \$7,500 for non-economic loss, \$22,000 for loss of earning capacity including net loss of earning capacity to trial of \$8,642.56, and special damages of \$2,721.64.⁸

\$13,600 Labourer, aged 30, sustained concussion and a fractured skull and multiple bruises and abrasions (all of which healed without residual adverse

6. *Harrison v. Jackson* (1977) 74 L.S.J.S. 66. Mitchell J. dismissed the action on the question of liability but proceeded to assess damages. On appeal, the appeal was upheld and judgment given for the plaintiff for damages as assessed (Bray C.J. and King J., Hogarth J. dissenting): 74 L.S.J.S. 381.

7. *McKiernan v. Manhire & St. Margaret's Ltd.* (1977) 76 L.S.J.S. 98 (Bright J.). See also n.11.

8. *Carter v. Johansson* (1978) Bright J., 22nd February, 1978 (unreported). Damages were reduced by 50% for contributory negligence.

consequences) and a fractured left hip. He suffered considerable pain and discomfort for several months. He returned to labouring work after about six months but then had some diminution in his capacity to do heavy labouring work, which gradually improved. He has residual 10-20% loss of function of his left hip which causes some pain but is of minor significance in relation to his continuing earning capacity. He recovered \$5,000 for the non-economic aspects of his loss and \$8,600 for loss of earning capacity. Special damages were allowed at \$938.70 and interest at \$3,227.00.⁹

ARM INJURIES

\$55,000 Policeman, aged 33, sustained a fractured and dislocated right shoulder which healed with slight residual disability, and a trans-scapoid dislocation of the right wrist with a fracture of the ulna styloid process. He was hospitalised for six weeks and had significant pain. He has lost 25-35% of the use of his left arm and faces the prospect of degenerative arthritis in the left wrist area which may need to be arthrodesed to reduce pain if the degeneration progresses. He was previously very fit and active, including operating in the motor cycle squad, but is now unable to engage in much physical activity and is likely to be restricted to sedentary work. He was obliged to give up a small property and moved to a smaller house nearer his work. He still is clumsy and has difficulty in doing jobs around the house. He is morose and unhappy because of his physical restriction. He has been given sedentary work earning \$2,440 per annum less, his prospects of promotion are reduced and his opportunity to earn penalty payments has been lost. He was awarded \$27,000 for the non-economic aspects of his loss, \$28,000 for loss of earning capacity including actual loss of wages of \$3,260.00, special damages of \$1,316.24 and interest.¹⁰

\$1,500 Nursing Supervisor, aged 63, suffered two fractured ribs on the left side and a pneumothorax which resolved without disability, a fracture in the upper part of the left tibia which united and produces only occasional residual weakness, and a Colles' fracture of the left wrist which was put in plaster and ultimately united with some deformity but with good movement. She would have returned to her work within four months but for an intervening accident and would have had no persisting loss of earning capacity from her injuries. Her special damages which included actual loss of wages totalled \$868.40.¹¹

EYE INJURIES

\$22,000 Apprentice, aged 22, injured his left eye and has lost almost all vision in it so that he can now only distinguish dark from light. He suffered considerable pain and discomfort during his treatment (involving five operations), and the eye was removed and a prosthesis implanted. He was delayed one year in completing his apprenticeship, and now wears safety goggles all the time at work so that his vision when wearing them is 75% of the full range. He must be more careful in movements, is less able to do active things, has a small risk of disease or a sympathetic reaction in his right eye, and is therefore less able to compete in the labour market. His medical expenses and loss of wages were made up direct by his employer and are not included in the damages, but in the award of damages allowance was made for some loss of earning capacity in the future.¹²

9. *Panagiotidis v. Ladhams* (1978) Bright J., 22nd February, 1978. (unreported).

10. *McEvoy v. Thornhill* (1978) Bright J., 13th February, 1978 (unreported).

11. *McKiernan v. Manhire v. St. Margaret's Ltd.* (1977) 76 L.S.J.S. 98 (Bright J.). See also n.7.

12. *Bacciarelli v. Carr Fasteners Pty. Ltd.* (1978) 22nd February, 1978.

COSMETIC INJURIES

- \$4,000 Factory hand, aged 32, sustained a burn from hot liquid on her right lower leg and was off work for nine weeks. During that time she required daily treatment for the first five weeks or so and underwent considerable pain. She is left with two scars on her right calf, one approximately circular and 1 inch in diameter and the other about 1 inch long and $\frac{1}{2}$ inch wide. She is embarrassed by them; they are noticeable, but not disfiguring, and will fade further with the passage of time. She has no loss of earning capacity.¹³
- \$2,100 Footballer sustained a fractured jaw in two places which required wiring under general anaesthetic. For six weeks his jaws were wired so that he was unable to chew. He suffered considerable pain and discomfort but recovered fully. His damages included an allowance for exemplary damages, the action having been based on an assault on the football field. His special damages totalled \$853.00.¹⁴

*J. R. Mansfield**

13. *Gillman v. Lundberg* (1977) 74 L.S.J.S. 438 (Judge R. H. Ward).

14. *Williams v. Wills* (1977) 74 L.S.J.S. 450 (Judge R. H. Ward).

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