

CASE COMMENT

PERSONAL INJURIES

Survey of Recent Awards in South Australia

This survey covers the period from 27th December 1968 to 25th September 1969, 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 period¹.

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 possible to provide some basis for ascertaining the respective extent of the economic loss and the non-economic loss in the figures awarded by way of general damages.

Head Injuries

\$38,000 Bank clerk aged twenty-three sustained fractured skull, fractured facial bones left side, and injured left eye; the injuries produced weakness in the right side of his body. He remains with persistent loss of his sense of smell, marked weakness in his right arm and right leg and aching leg muscles, general difficulty in concentration, and memory loss. Prior to the accident he was very active and had a good school record. He suffered considerable pain and his enjoyment of life is greatly restricted by his general clumsiness and slowness, which is the result of the accident. He is now unsuited for any clerical work and his capacity to work as a labourer is between one half and one third of that of a normal worker. He could not compete on the labour market, and his working life is shortened. He had the potential to earn up to \$3,900 as a bank manager, though this promotion was not automatic. He lost one full year's salary of \$3,400².

\$300 Male infant suffered a three inch scalp laceration, a minor head injury, damaged front tooth, bruised back and concussion. He complained of continual pain in lumbar region, dizziness and headaches; these were normal symptoms resulting from concussion. He made a good recovery and now suffers only minor inconvenience³.

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1. For previous surveys see (1969) 3 *Adelaide Law Review* 380 and (1968) 3 *Adelaide Law Review* 221 and references in n.1 thereto.
 2. *Drake v. Reichstein* (1968) L.S.J. Scheme 383 (Mitchell J.).
 3. *Banas v. Lanica and Morgan* (1969) L.S.J. Scheme 53 (Hogarth J.).

Back Injuries

- \$37,000 Painter aged fifty was completely paralysed from the upper part of his chest down, including his bowels and bladder. Only his arms and brain remain unaffected. He suffered a collapsed lung and underwent a tracheotomy operation. He has completely lost his earning capacity and must spend his life in a wheelchair or in bed; his life expectancy is reduced to ten years. He will incur expenses of \$300 - \$400 per year, for which \$2,000 was included in the general damages award. Although he received a substantial damages award as a result of an accident in 1960, that accident left him with no great disability; for his present loss of earning capacity \$20,000 was awarded for general damages and for the considerable loss of enjoyment of life, the pain, and the shortened life expectancy \$15,000⁴.
- \$20,000 Married woman aged fifty-six sustained concussion, depressed fracture of left side of skull, laceration to left side of forehead and scalp, fractured left collarbone and dislocated inner end left collarbone, fracture of three ribs left side, and fractured dislocation of the spine at the level of the seventh and eighth dorsal vertebrae with almost complete paralysis below that level. The spinal fracture was reduced and two metal rods were inserted to fix the spine in place. The other fractures were reduced. During treatment she developed bronchial pneumonia. After five months she was discharged with weakness and unsteadiness of movement and with defective bladder control. She also suffered from headaches and dizziness. She is now able to walk with the aid of two sticks, but is unable to lie on her left side because of pain and her left leg is weak and unreliable. She is fit only for light housework and is very socially handicapped. There is the likelihood of periodic bladder infections with hospitalisation and shortening of her life expectancy. She has poor bowel and bladder control. She has to exercise for a considerable period each day to retain the muscle tone. Although she made a partial recovery, she remains a semi-invalid with prospects of repeated hospitalisation and the shortening of her life span.⁵
- \$10,000 Delicatessen owner aged forty-five suffered a back injury resulting in his second/third lumbar joint being stabilised by bone graft and two vertebrae being fused. Before the accident he was on a 40 per cent war disability pension for a knee injury and had a back injury with a fair rate of degenerative arthritis. The instability requiring the present operation was risked by his ignoring medical advice following his first back injury but was certainly hastened by the present accident. He was fit for light work only after seven months but would have been unable to continue heavy work much longer in any event. He suffered pain and discomfort and had to pay \$400 wages at his delicatessen as a result of his inability to work. His back is now more rigid and

4. *Braciak v. Hartwig and Huntley* (1969) L.S.J. Scheme 335 (Chamberlain J.)

5. *Maughan v. The London Assurance* (1969) L.S.J. Scheme 176 (Hogarth J.).

scarred and he has only one moving joint in his lumbar spine, which restricts his employment opportunities⁶.

\$9,000 Plant operator aged thirty-one suffered a soft tissue injury in the region of the second to fourth lumbar vertebrae, and concussion. He has limitation in flexion and extension now and is permanently unfit for heavy work. He suffers considerable pain, even during sexual intercourse. He was forced to give up speedway racing with much consequent loss of enjoyment of life. He was earning \$78 per week gross as a plant operator, which would have continued for approximately 10 years; however his earning probability was reduced through the voluntary employment breaks to go speedway racing. Some of his pain will cease after settlement. He is more vulnerable now so that his working life is shortened although he still has some considerable earning capacity in less strenuous occupations. His Honour indicated that roughly \$7,000 general damages was for economic loss and \$2,000 general damages for the non-economic aspects of his loss⁷.

\$5,800 Married woman aged forty-seven who was earning about \$20 per week as a hotel employee sustained concussion, fractured pelvis, and crushed fracture of the second lumbar vertebrae. The fractured pelvis healed with no residual disability. The spinal fracture left her with intermittent permanent pain and some permanent disability, so that she is unable to do any heavy lifting. She also suffered a narrowing of the disc between the sixth and seventh cervical vertebrae; the vertebrae were fused with some pain and suffering and a minimal degree of permanent disability. Degenerative spinal changes were accelerated slightly. She was unable to work for two and a quarter years and was only partially fit for work for a further eighteen months; she would have worked until the age of sixty. There was some small genuine neurotic inability to work which would disappear when the litigation was completed⁸.

\$3,500 First class machinist sustained partial rupture of an intervertebral lumbar disc with irritative sciatica. He underwent pelvic traction and then a laminectomy operation. He suffered great pain for a time and now suffers intermittent pain when driving etc. He has some permanent instability in his back and it is sensitive to further injury so that his sporting and social activities are restricted. There is the possibility of a further operation at a cost of \$400 - \$500 to fuse the lumbar-sacral disc. He was off work for 22 weeks and then returned to the same job; however he is unable to carry heavy weights and is a less desirable employee as a result of his condition so there is a significant diminishment of his earning capacity⁹.

6. *Robins v. Bean* (1968) L.S.J. Scheme 454 (Mitchell J.).

7. *Forsberg v. Maslin* (1968) L.S.J. Scheme 390 (Bray C.J.).

8. *Teigesser v. Kruse: Teigesser Third Party* (1968) L.S.J. Scheme 468 (Bray C.J.).

9. *Bates v. S.A. Tool and Gauge Ltd.* (1969) L.S.J. Scheme 195 (Bray C.J.).

Neck Injuries

- \$8,250 Married woman aged forty-nine sustained concussion, lacerations and haematoma of the scalp, bruising to shoulder, right hip, abdomen and face, shock and nervous upset. She suffered severe pain in the back of her neck and occipito-temporal headaches. She underwent physiotherapy daily for twelve months, and also underwent further treatment by stretching, heat and the wearing of a cervical collar for a further six months. She has at least two degenerative discs in her neck and stiffening of associated joints with pain and headaches resulting. She has pain in the middle neck on rising, which increases slowly during the day, causing her to become irritable. The permanent considerable degree of persistent pain results in serious diminution of her enjoyment of life. The general damages awarded include an allowance of \$750 for tablets¹⁰.
- \$5,500 Stevedore in his forties sustained severe neck strain, concussion, and contusion of the right testicle. He wore a cervical collar for some months, and suffered headache and neck pain. The turning of his head is permanently restricted, especially to the left and he now holds his head forward. He was reclassified from an "A" class worker to a "B" class worker with less security in his job, but no actual monetary loss. The contused testicle healed with no disability¹¹.

Arm and Hand Injuries

- \$23,000 Factory inspector aged twenty-one sustained a crushed left arm. His treatment was long and painful, involving several operations for skin grafts and he had to wear a splint on his hand for six months. He returned to work one year after the accident. His left arm is normal from 4 in. above the elbow, but with 10 per cent limitation of extension of elbow and inability to extend or clench his fingers, which remain in a clawed position with very little power of movement. He has a loss of sensation in the hand and feels painful numbness across his knuckles in cold weather. The loss of function of the arm as a whole was assessed at 75 per cent. He has difficulty dressing and is unable to eat meals properly. He suffers slight embarrassment as a result of the scarring on the arm. He is right handed. Although he suffered no actual loss of wages, his good prospects of promotion to foreman are lost and he is able only to work as a storeman. He suffered considerable pain.¹²
- \$17,000 Male fruit picker aged forty-four suffered fractured ulna and radius of left arm near wrist joint. The fractures were reduced and subsequently $1\frac{1}{2}$ in. of bone was removed from the lower end of the ulna resulting in a probable permanent loss of function of forearm of 25 per cent. Although the symptoms of pain and limitation would

10. *Rocca v. Murray* (1969) L.S.J. Scheme 439 (Mitchell J.).

11. *Pantic v. Adelaide Stevedoring Co. Ltd.* (1969) L.S.J. Scheme 373 (Zelling A.J.).

12. *Klieve v. Cellulose Australia Limited* (1969) L.S.J. Scheme 149 (Hogarth J.).

improve after litigation, the plaintiff was unlikely to be able to obtain any suitable employment¹³.

\$8,000 Fitter sustained concussion, lacerated scalp, compound fracture of left humerus, fracture of upper third of left ulna, dislocated head of left radius, crack fracture of lower right radius, and abrasions to knees and ankles. The fractures and the dislocation were reduced and the ulna fracture stabilised by insertion of an olecranon screw. The reduction of the humerus was unsatisfactory and was fixed by the insertion of a plate. A nerve lesion of the left forearm became apparent. The ulna fracture did not unite satisfactorily and a Sherman plate was inserted and cancellous bone packed around the fracture site. He is left with some permanent restriction of movement in left elbow and shoulder joints and some weakness of grip in the left hand; he will also suffer periodic pain and must face the possibility of future arthritic deterioration. The right knee remains tender with possibility of removal of cartilage. Some minor memory loss causes increased need for supervision in his job. Partial loss of sense of smell significant in his employment as fitter for SAGASCO. His frequent severe headaches will lessen after litigation. He now suffers mild vertigo, and becomes more irritable than formerly. He underwent substantial pain and discomfort. Although his job is secure, he is not so employable as before the accident¹⁴.

\$4,500 Apprentice electrical fitter aged eighteen, who is right-handed, suffered a deep laceration to the palm of his right hand involving division of flexor tendons of index and middle fingers. He underwent plastic surgery and some relatively expendable tendons were removed from his forearm to repair the damaged tendons. He returned to work six months after the accident. He is left with prominent but not unsightly scarring and permanent loss of function of index and middle fingers of right hand with restricted flexion and weak grip. He lost six months employment as a full tradesman while he completed his apprenticeship and was inconvenienced in having to do an extra year at trade school. The permanent disability is considerable in his job and he has difficulty in handling certain instruments. Although there is no real restriction on his enjoyment of life, he must face the possibility of retrenchment and the fact that he is less employable so that he has lost some potential earning capacity¹⁵.

Leg Injuries

\$26,000 Electrician aged twenty-five had left leg amputated about the middle thigh. Remaining stump proved too short to properly fit articulated limb so he is normally forced to have stiff leg. Fitting the false leg

13. *Koupatziaris v. Thom* (1969) L.S.J. Scheme 153 (Travers J.). Affirmed on appeal: see *Thom v. Koupatziaris* (1969) L.S.J. Scheme 273 (Bray C.J., Hogarth and Mitchell JJ.).

14. *Barbaro v. Doyle* (1969) L.S.J. Scheme 1 (Mitchell J.).

15. *Keynes v. Tassell* (1969) L.S.J. Scheme 179 (Walters J.).

is tiresome. He occasionally gets tingling sensation in fingers of right hand, and suffers phantom pains which should disappear after five years. His pre-existing potential psychopathic traits now result in increased fits of depression from being deprived of all normal physical activities and having the appearance of a cripple. He was unable to work for two years and now earns \$10.00 per week less than prior to the accident in addition to losing probable promotions. His job is more precarious, and he has lost 20 per cent of his earning capacity. Cost of maintaining artificial legs of \$2,000 was included in general damages¹⁶.

\$22,500 Credit manager aged forty-eight sustained concussion, severely lacerated scalp and forehead, lacerations to foot and left knee, extensive abrasions and bruising to right leg and foot. He was an active man though with a weakened left side from polio. He has crippling limitations now and cannot walk without a stick; he tires easily and is unable to do gardening or other exercise. He suffered no actual loss of earnings apart from six months off work but his good prospects of advancement were dashed and he will now have to retire at sixty. The estimated loss of earnings at \$20 per week to sixty-five plus further \$100 per week for five years after he reached sixty was calculated at about \$28,000 but against that his less certain future because of polio and the possibility of other employment was balanced. There was some pain and suffering and loss of enjoyment of life¹⁷.

\$18,500 Female dental assistant aged eighteen sustained concussion, fractured left tibia and fibula, fractured shaft of right femur, fractured left elbow, damaged left knee joint, and lacerations to head and knee. She underwent long and distressing treatment involving five operations including the insertion of an intramedullary pin in the femur and bone graft, and wiring the knee cap. She returned to work as a secretary after one year but resigned through tiredness and aching legs and back. Left knee is unstable, restricting social activities, and there is 50 per cent loss of function of the leg; in a few years the pain will require to be alleviated by operation to stiffen the leg and make it 1 in. shorter. There is 10 per cent loss of full flexion of elbow, and unsightly and embarrassing scarring of tibia, kneecap, buttock and thigh. She suffered acute pain and will suffer a great deal of future pain and discomfort. Her enjoyment of life has been very greatly restricted. She has married since the accident. Approximately \$12,000 was awarded for the non-economic aspects of general damages¹⁸.

\$21,000 Boy aged twelve had right leg amputated below knee. The treatment included four operations and the long and distressing convalescence

16. *Crozier v. Morris* (1969) L.S.J. Scheme 156 (Bray C.J.).

17. *Thorpe v. Hueppauff* (1968) L.S.J. Scheme 464 (Chamberlain J.).

18. *Joyce v. Pioneer Tourist Coaches Pty. Ltd and Parker* (1969) L.S.J. Scheme 519 (Bray C.J., Chamberlain and Mitchell JJ.). The appeal from Walters J. was allowed and the amount awarded for the non economic aspects of the plaintiff's loss reduced from about \$18,500.

caused him nervous and mental upset. He was fitted with an artificial limb, but the very mutilated right leg with muscular injuries creates limp. He faces discomfort and expense in having to replace the limb from time to time. He lost one year's schooling and had difficulty for a further year¹⁹.

- \$12,000 Male sustained compound comminuted fracture of both bones of right leg. He underwent long, painful and uncomfortable treatment including skin graft and removal of dead bone through infection. He developed pneumonia during treatment. His leg is permanently shortened and he limps; he is now unable to play any sport. He faces recurrence of infection from time to time and real possibility but not likelihood of amputation in the future. There are disfiguring scars on his leg. He now has a better job than before the accident but his earning capacity is affected as he is unable to do any heavy work²⁰.
- \$10,000 Labourer aged forty-six sustained comminuted fracture of right tibia and fibula, fracture of left scapula, lacerations and minor injuries. The leg was fixed by pin insertion and skin graft. There is some permanent limitation of movement, pronounced limp through the leg being 1 in. shorter, and probable future arthritic deterioration. The 25 per cent loss of function of left shoulder may be relieved by operation costing \$300. He is now unable to do heavy work and is handicapped on the labour market through increased vulnerability. Earnings of \$54 per week before the accident are reduced now to \$45 per week and he was off work for fifteen months. He can no longer do fruit picking during his vacation. Much of his enjoyment of life is lost and he suffered pain and discomfort²¹.
- \$8,750 Labourer aged thirty sustained concussion, lacerated left knee, and compound fracture of shaft of left femur. A nail was inserted in the fracture. The physical disability was assessed at 20 per cent loss of function of the left leg, and some not unsightly scarring on the leg. He had not worked for three years and more since the accident due to psychological symptoms which will disappear within nine months of settlement. He will then be fit for all but heavy work but is handicapped on the labour market. He suffered considerable pain as well as losing some of his enjoyment of life²².
- \$7,700 Machine operator aged twenty-four sustained compound comminuted fracture of right tibia and fibula, concussion, lacerated cheek and minor bruising and abrasions. He suffered great pain and discomfort in his treatment lasting ten months and five metal screws were inserted in the fractures and bone graft performed. He is left with a 12 in. permanent scar on medial aspect of leg, with hypersensitive skin in proximity, irritation and tenderness in region and some pain. Right foot is stiff through muscular wasting and knee cannot be fully bent.

19. *Sluiter v. Keimeier* (1969) L.S.J. Scheme 193 (Travers J.).

20. *Richards v. Mavroudis* (1969) L.S.J. Scheme 441 (Chamberlain J.).

21. *Antonius v. Gordon* (1968) L.S.J. Scheme 451 (Bray C.J.).

22. *Calabro v. Adami and Calabro* (1968) L.S.J. Scheme 416 (Bray C.J.).

The leg tires easily and he veers to right when walking. The loss of use of the left leg amounts to 20 - 25 per cent. The screws will have to be removed at a cost of \$200. In addition, \$1,500 was allowed in the general damages for economic loss and \$6,000 for pain and suffering and the physical disabilities.²³

- \$7,500 Active male aged sixty-nine sustained concussion, multiple lacerations, fractured neck of right femur, comminuted fracture of right patella, comminuted fracture of left tibia and fibula involving knee joint, contusion of the lungs, intestinal obstruction, and paralysis of left lateral popliteal nerve. The right knee cap was removed and the fractures reduced; the head of the right femur was replaced by a metal prosthesis. He developed kidney stones requiring an operation. His severe permanent disabilities render him a cripple: left leg $1\frac{1}{2}$ in. shorter and bowed posteriorly 30° , clawed toes and callosities on sole of foot, dorsiflexion power of left foot 60 per cent, movement of left ankle and of right hip 50 per cent, scarring on legs, unsightly lump on chin, unable to close upper lid of left eye. He is only able to hobble and most activities are denied him. He faces further operation to replace metal prosthesis and to alleviate probable osteo-arthritis. Some psychological change. Totally deprived of pleasure of retirement and now unemployable though he would otherwise have got some sort of job²⁴.
- \$7,500 Labourer aged forty-one sustained fracture of two bones of left ankle with displacement. Bones failed to unite so screw inserted and bone graft performed. He resumed light work after one year. Fracture healed satisfactorily with some ankle weakness and deformity, producing osteo-arthritic changes and stiffness. He tires easily and wears a built up shoe to avoid lameness, but has rolling gait. Some loss of enjoyment of life and of earning capacity²⁵.
- \$7,125 Land agent aged forty-eight sustained comminuted compound fracture of left ilium, comminuted fracture of left clavicle, fractured rib, lung injury and concussion. Permanent restriction of left hip movement, scarring around hip joint and limp; he suffers minor continuous pain and some neck pain and forgetfulness and is restricted in his activities. For non-economic aspects \$3,750 was awarded and for loss of earning capacity (upon which the evidence was imprecise) \$3,000 plus \$375 for two months' total incapacity²⁶.
- \$6,000 Drink waitress aged forty-four sustained comminuted star-shaped fracture of left patella with displacement of fragments. She suffered pain and tenderness for some time but recovered full knee movement with degenerative osteo-arthritic changes advanced by 10 years. She feels stiffness and soreness on exercise. She was unable to resume

23. *Ensor v. Pollard* (1968) L.S.J. Scheme 356 (Walters J.). Affirmed on appeal: see *Pollard v. Ensor* (1969) L.S.J. Scheme 78 (Bray C.J., Chamberlain and Travers JJ.).

24. *Wyllie v. Webb and Wyllie* (1968) L.S.J. Scheme 448 (Bray C.J.).

25. *Konnis v. Heard* (1969) L.S.J. Scheme 107 (Bright J.).

26. *Fangler v. Power and Pitt* (1969) L.S.J. Scheme 94 (Bray C.J.).

former job which she would have held for six years earning up to \$15 per week. She also employed household help at about \$6 per week for six months. She lost some of her enjoyment of life²⁷.

- \$5,600 Apprentice aged seventeen sustained fractured left leg. The screws inserted were removed through infection. The leg is weaker now and becomes painful when tired; he limps at times. He lost significant enjoyment of life for four years and apprenticeship was extended for six months; allowance was made in agreed special damages for loss of earnings as tradesman occasioned by that delay. He was unable to work for seven months and suffered some pain and discomfort²⁸.
- \$5,000 Laundress aged thirty-nine sustained transverse laceration 4 in. below right patella and smaller laceration just below that, facial scratches and four damaged upper front teeth. Deep venous thrombosis developed but she returned to work after four months. She experienced trouble with the leg for three years and, due to tenderness and superficial ulceration above ankle she underwent operative treatment (after first ignoring medical advice). She is now unable to partake of activities such as swimming and dancing, and has to sleep with her foot elevated; she wears elastic bandage support and special low heeled shoes. She must undergo further monthly physiotherapy. She lost some enjoyment of life and suffered some pain and inconvenience²⁹.
- \$4,500 Cream grader aged fifty-nine sustained comminuted fracture of left upper tibia involving knee joint, torn ligaments right knee, two fractured ribs and lacerations. A pin was inserted in left leg and he now walks with a stick, with unsteadiness in both legs and awkwardness and some restriction of movement. He suffers intermittent aching and swelling and must face degenerative osteo-arthritic changes. He is now handicapped on the labour market. He was off work for six weeks. His enjoyment of life is considerably impaired through restriction on his activities³⁰.
- \$4,250 Married woman aged twenty-one sustained facial injuries with no permanent damage and comminuted fracture of right knee cap. Her knee cap was later removed and she suffered considerable pain and discomfort. The knee joint is weak and unstable, with 1½ in. leg wasting, and 20 per cent loss of function of the leg as a whole. Her activities are restricted and she suffers intermittent pain, especially on exertion. She has some difficulty with her housework³¹.

27. *Bradtberg v. Naracoorte Furnishers Pty. Ltd.* (1969) L.S.J. Scheme 143 (Hogarth J.).

28. *Koncewicz v. Blackborough* (1969) L.S.J. Scheme 225 (Travers J.).

29. *Ischenko v. Payne* (1969) L.S.J. Scheme 130 (Mitchell J.).

30. *Wyllie v. Webb* (1968) L.S.J. Scheme 462 (Bray C.J.).

31. *Croser v. London and Lancashire Insurance Co. Ltd.* (1968) L.S.J. Scheme 330 (Chamberlain J.).

Cosmetic Injuries

- \$10,000 Female aged sixty, formerly active, sustained fractured jaw right side and minor injury to right hip, involving some pain and swelling. Some bone was removed from the jaw and, as a malignant bone tumour was caused or accelerated by the accident, a mutilating operation was performed and the right lower jaw bone removed. A splint was fitted in her mouth. A facial nerve was removed in that operation producing total paralysis of right side facial muscles. Plastic surgery improved dropped mouth and continuous weeping from right eye. There is a possibility of loss of sight of right eye. She has lost a great deal of her enjoyment of life and her formerly happy personality has changed to a more despondent one. She has some difficulty in sleeping and suffers facial numbness. There is the risk of recurring malignancy and her life expectancy is reduced by two or three years³².
- \$8,000 Female student aged twenty-three sustained concussion, extensive facial lacerations, minor body lacerations, injured knuckle left little finger and pain in back, neck, chest and teeth. The finger remains permanently deformed and weak, and there is a possibility of further trouble with three painful teeth. She faces the likelihood of future pain in her neck after strenuous activity and abstained from strenuous activity for two years. Her severe facial scarring was treated by plastic surgery but she is left with some unsightly scarring, which remains significantly noticeable even with makeup. The facial nerve was severed, causing loss of full movement of muscles of right side of nose and of right side of lips. She now has an asymmetrical face and an uneven smile. She finds it difficult to eat and drink on the right side and tends to dribble. There is a possibility of future plastic surgery. Her marriage prospects are affected and she lost much of her pleasure of life. She also suffered pain, distress, humiliation and loss of energy and some loss of earning capacity as her range of jobs is restricted³³.
- \$1,000 Boy aged twelve suffered multiple facial lacerations, lacerated pinna right ear, corneal abrasions and fractured first metacarpal of right hand. He made a speedy and almost complete recovery. He suffered humiliation at school where he was called "scar face" and occasionally gets headaches and watery eyes. He is embarrassed when asked about his scars, which become more apparent after exertion and in cold weather. He suffered nightmares for some time and his school progress is noticeably worse. The remaining scars on forehead and face are not disfiguring and will fade; one forehead scar is noticeable and there is the possibility of surgical excision in future³⁴.

32. *Tester v. Reed* (1968) L.S.J. Scheme 358 (Travers J.).

33. *Hawker v. Young and Dalwood* (1968) L.S.J. Scheme 472 (Bray C.J.).

34. *Brock v. Smith and Brock* (1969) L.S.J. Scheme 50 (Travers J.). Appeal from Local Court of Adelaide on quantum of damages awarded was allowed and general damages assessed at \$1,000.

Eye Injuries

\$20,000 Unskilled labourer aged twenty-nine incurred severe damage to his left eye. He underwent a long and painful course of treatment and was unfit for work for three years. Prior to the accident he was earning \$48.30 per week. An unsuccessful operation resulted in removal of the left eye; the implant inserted had to be removed because of haemorrhaging, and a prosthesis was subsequently fitted. He then underwent two operations for the removal of scar tissue from the left lower lid, and a further three operations to adapt the eye socket to the prosthesis. He suffered considerable pain and anxiety, the tear duct in his right eye dried up, and he has frequently to remove and clean the implant. He suffers still from headaches and dizziness and is unable to fully close the left eyelid with some unsightliness. His employment opportunities are reduced, and he had a depressive neurosis from the unjustified fear of losing his other eye. This should largely disappear after litigation³⁵.

\$6,500 Waterside worker aged forty-seven sustained concussion, colles fracture of left wrist, lacerated left knee, bruised left thigh, facial lacerations and glass in his right eye. The fracture was reduced and the wrist has only minor restriction. Glass spicule protruding through anterior surface of right cornea was removed with great pain; there remains a small corneal scar and tiny spicules of glass in the healed laceration which cause no discomfort but some slight distortion of vision. Operations were carried out successfully to clear his nasal airways, and to reduce the scarring by skin graft and excision. Some scarring is visible but only on close examination. He complained of severe right-sided occipital headaches and neck stiffness, the result of chronic depression from which he would gradually recover when the litigation was completed. He returned to work after about nine months³⁶.

Miscellaneous Injuries

\$42,500 Single male greaser aged forty-eight sustained compound fracture of lower right femur, compound comminuted fracture of lower jaw, ruptured spleen, five fractured left ribs, concussion and minor head injuries, shock, and surgical emphysema in chest. He underwent tracheotomy operation, and the jaw was wired. An attempted bone graft to the femur failed and infection set in resulting in amputation of the right leg above the knee five months after the accident. He suffers phantom limb pains, but can walk stiffly with artificial leg and with aid of two sticks. Possibility of arthritic deterioration of hip joint. He suffered a hernia as a result of the accident. He had constant pain in jaw for 20 months and it is still sensitive. He led a solitary life and his capacity

35. *Tsolomitis v. Delalis and Anor* (1969) L.S.J. Scheme 91 (Chamberlain J.).

36. *Banas v. Lanica and Morgan* (1969) L.S.J. Scheme 53 (Hogarth J.).

for enjoyment of life was greatly reduced. He is now virtually unemployable, as easy sedentary jobs not readily available³⁷.

- \$25,000 Male aged forty-two suffered grossly disrupted pelvis, bladder and prostate, and 1 in. of urethral mucose was completely avulsed and dislocated upwards into his abdomen. He underwent complicated surgery to restore continuity of mucose from bladder to normal urethra; a stabilising screw was inserted in pelvis. Every half year he has dilatation of the urethra which is relieved at cost of \$100 and \$2,500 was allowed for this item in general damages. He remains with pain in the left groin, thigh and in his back and he walks with a marked limp. Possibility in future of operations to fuse bones or to remove the screw. He is now impotent. He is forced to urinate every two hours. He was unable to work for one year with \$1,870 lost wages. He has constant employment but is less employable and incurs about \$14 per week loss of income, for which \$9,000 was awarded³⁸.
- \$18,000 Saw mill employee aged thirty-four suffered severe pain to chest and pubic region and wide separation at the symphysis pubis with an opening up at the right sacro-iliac joint, shock, extensive lacerations, raised skin flaps on left calf, extensively torn muscles and fractured pelvis. There was large haematoma of scrotum. Pelvis fracture was openly reduced and a plate inserted. Sloughs on calf and skin flaps were excised and split skin graft was effectively performed. He wears an elastic stocking to prevent leg swelling. He has a depressed scar on thigh and at graft point on upper leg and posterior calf; there is widened linear scar running down the front of the knee with tenderness and some swelling. The knee joint has 20 per cent limitation of flexion and right ankle 15 per cent loss of dorsi-flexion. He is unable to kneel on left knee. There is tenderness over the symphysis pubis and permanent though not great backache and neckache. He is permanently impotent causing depression also. He returned to work after six months, but is less employable and cannot do overtime; he lost \$845 initially and now earns \$200 - \$300 less per year³⁹.
- \$6,000 Single female aged thirty sustained hairline fracture of skull in region of left forehead, multiple fractures of ribs, contused lung, multiple facial abrasions, swollen and blackened eyes, abrasions to knees, and a deep laceration to inner left foot. She made a full recovery from these physical injuries within four months. A predisposition to depressive psychosis was triggered off by the accident, giving rise to some genuine compensation neurosis in addition to her conscious exaggeration of her symptoms of headaches, dizziness, impaired memory and inability to concentrate; substantial improvement was expected within one year of litigation. There was some loss of earning capacity and pain for three

37. *Hirsch v. Bennett* (1969) L.S.J. Scheme 164 (Bray C.J., Travers and Walters JJ.). Appeal from Hogarth J. in *Bennett v. Hirsch* (1968) L.S.J. Scheme 524 allowed and general damages reduced from \$55,000.

38. *Koschelew v. Quarry Industries Pty. Ltd.* (1969) L.S.J. Scheme 223 (Mitchell J.).

39. *Morrone v. Shoemith* (1968) L.S.J. Scheme 520 (Bright J.).

years. She worked as a missionary earning about \$12 per week so her loss of earnings was not great⁴⁰.

\$5,500 Married woman aged twenty sustained fracture of right humerus, compound fracture of left ulna, compound fracture of right patella, fractured ribs on right side, multiple facial lacerations and a laceration over left knee. Facial scarring caused grave disfigurement which was appreciable despite plastic surgery and was noticeable even with cosmetics. Possibility of drooping deterioration of right side of face. There is noticeable scarring on the arm. She was severely embarrassed for nine months prior to plastic surgery and permanent scarring causes some real though minor loss of enjoyment of life. Frequent headaches. Right arm considerably weaker and motion restricted by 25° loss of extension and 20° loss of flexion. Right knee lost 10 per cent flexion and she cannot kneel on it. She has occasional difficulty breathing. Very slight economic loss. A pregnancy of 7½ months was terminated in the accident; it was the first child and it loss caused acute sorrow at the time; she has now had another child⁴¹.

\$5,000 Married woman aged forty-one suffered five fractured ribs and bruising of left arm and shoulder, left side of chest, and right hand. She suffered some pain but made substantial recovery from her physical injuries, with some permanent pain in ribs and thoracic nerve pains. She suffered much anxiety and depression as result of accident and both her own and her husband's injuries, causing weight loss and memory lapses; this condition will improve after litigation but not completely⁴².

\$3,750 Married woman aged thirty-two sustained concussion, pleural effusion, ruptured liver with bile peritonitis and contusion of right kidney. She underwent painful and unpleasant treatment and developed vaginal infection. After six months she was making gradual improvement but still complained of headaches, chest pain and weakness of bladder. Remote possibility of complication and physical consequences are reasonably minimal. A pregnancy of 10 weeks was terminated in the accident. She has since had a genuine but irrational fear of pregnancy and she derived no satisfaction from intercourse for two years; these psychological consequences will ultimately disappear. She suffered a great deal of pain and discomfort for a time⁴³.

J. R. MANSFIELD*

40. *Moula v. Western Assurance Company and Curtis* (1969) L.S.J. Scheme 59 (Walters J.).

41. *Welfare v. Bivone and Anor* (1969) L.S.J. Scheme 325 (Bray C.J.).

42. *Banas v. Lanica and Morgan* (1969) L.S.J. Scheme 53 (Hogarth J.).

43. *Remmerswaal v. Cassidonis and Kenny* (1968) L.S.J. Scheme 517 (Bray C.J.).

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