

# PERSONAL INJURY AWARDS

## *Survey of Recent Cases*

The following collection of damages awards is presented for the particular use of the legal profession in South Australia in the belief that it is a mistake to overlook the precedents of past damages awards in determining questions related to personal injuries cases.

As the authors of a recent text published in England on the quantum of damages, point out, they do not accept the proposition sometimes put forward that previous awards in personal injuries cases can be of no assistance in dealing with similar problems. In the case of *Bird v. Cocking*<sup>1</sup> Lord Justice Birkett said, "The assessment of damages in cases of personal injuries is perhaps one of the most difficult tasks which a judge has to perform. . . . The task is so difficult because the elements which must be considered in forming the assessment in any given case vary so infinitely from other cases that there can be no fixed and unalterable standard for assessing the amounts for those particular elements. Although there is no fixed and unalterable standard, the courts have been making these assessments over many years, and I think that they do form some guide to the kind of figure which is appropriate to the facts of any particular case, it being for the judge, or for the appellate court if they are considering the matter, to consider the special facts in each case. For I agree that one case cannot really be compared with another. The only thing that can be done is to show how other cases may be a guide, and when, therefore, a particular matter comes for review one of the questions is, how does this accord with the general run of assessments made over the years in comparable cases?"

In the later case of *Rushton v. National Coal Board*<sup>2</sup> Lord Justice Birkett said: "I still think that it is a most useful thing to look at comparable cases to see what other minds have done, and so to gather the general consensus of opinion as to the amount which a man in a certain state of society ought to be awarded". In the same case express approval was given to his approach by Lord Justice Singleton.

Moreover, both the fact and value of a local standard have been the subject of recent judicial comment.

The tendency as one travels east in Australia seems to be for the amount allowed individuals for general damages to be greatly increased. In an endeavour to retain South Australian standards, I fix general damages at £4,500 (*Mayo J. in Haebich v. Earl*).<sup>3</sup>

This survey is limited to the collection of damages awards for personal injuries arising out of collisions in which registered vehicles are involved on public roads. The scope is further restricted to those heads of damage not admitting of any precise pecuniary assessment but rather proceeding on a notional concept of "just and

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1. 1951 2 T.L.R. 1260 (C.A.) at p. 1263.

2. 1953 1 Q.B. 495 (C.A.) at p. 501.

3. 1960 L.S.J. Scheme, at p. 469.

fair compensation". The cases chosen are mostly decisions of 1959 or 1960, with some significant earlier cases.

A guide of this kind must be seen with its faults. The case is rare where a singular injury or loss factor can be isolated. Moreover in view of the general occurrence of multiple injuries and various factors competing for influence in the assessment of each injury, a major handicap lies in the judicial reluctance to split up general damages awards into component injuries and factors, with each major circumstance bearing on the quantum to be assessed individually. No doubt this could be carried to impractical extremes, yet if the following categories were kept separate the standards adopted would be much more apparent and precedent would consequently be much more useful.

- (1) Loss of earnings
- (2) Loss of amenities
- (3) Loss of life expectancy
- (4) Pain and suffering.

### *Head Injuries*

- £600 Skull fracture, lacerations and bruising. Results are headaches, pains and attacks of giddiness after lengthy stooping. There is also some hearing loss in the left ear.<sup>1</sup>
- £1,000 Permanent loss of sense of smell. Additionally, a buttock wound and slight possibility of future trouble resulting from a leaking of cerebro-spinal fluid from a fine skull crack.<sup>2</sup>
- £1,400 Complete loss of sight of left eye. Also, a nose fracture, lacerations, abrasions and shock. Can still work efficiently.<sup>3</sup>
- £2,000 Severe headaches, gradually decreasing; deterioration of memory and articulation; also clumsiness, weakness, depression and a giddiness climbing ladders and riding bicycles. The symptoms were accepted as mainly functional, the probability was a gradual improvement. At present he was listless and despondent, and was employed "solely out of sympathy for his family".<sup>4</sup>
- £2,500 Vision loss to right eye, 55%; to left, 10%. Hearing impairment requiring the boy's removal to the front seat of his class. A facial scar at present disfiguring, but which is regarded as substantially amenable to plastic surgery. Also a slight possibility of epilepsy.<sup>5</sup>
- £2,500 Multiple skull fracture with total loss of sense of smell. A 15% limitation of vision and slight loss of hearing. General loss of enthusiasm for life, which may abate.<sup>6</sup>
- £5,000 Skull fracture and brain damage, resulting in a weak left arm and leg with two fingers of the right hand numb. Also

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1. *Stoilov v. Kabakciev and Maneff* (Mayo J.), July, 1959.
  2. *Moyle v. Hogben and Charles Geddes & Co. Ltd.* (Chamberlain J.), Aug., 1960.
  3. *Riemel v. Quinn* (Ross J.), March, 1960.
  4. *Gilman v. United Insurance and Cockings Ltd.* (Ross J.), Aug., 1959.
  5. *Murray v. Australian and Overseas Insurance Co. Ltd.* (Chamberlain J.), Sep., 1960.
  6. *Brazis v. Smith* (Mayo J.), May, 1959.

fractures of the shin and thigh bones. He is described as either permanently incapacitated or, at the best, an intermittent wage-earner. Moreover, the accident probably aggravated a previous neurotic condition.<sup>7</sup>

- £9,000 Personality change from a cheerful, friendly, to an unstable and quarrelsome person. Sexual impotence and severe epilepsy with frequent seizures. Also, chronic headaches, insomnia and deterioration in memory and concentration. Unfit for any but the lightest of work with an indulgent employer.<sup>8</sup>
- £16,000 Bright, cheerful girl reduced to a paralysed wreck with a ten year life span. Complete loss of use of legs and right arm, very slight control of left arm. Bowels and bladder completely uncontrollable. Can speak only two words. She requires constant medical care, and £9,000 represents the capitalisation of this expense.<sup>9</sup>

### *Spinal Damage*

- £4,500 Married woman suffered permanent damage to neck, dorsal spine, Sacro-Iliac joint (latter radiating a low back pain due to a pressure neuritis). Damage to the coccyx required its complete removal, but the result is a painful and permanent chronic coccydynia. Medical treatment was extremely arduous, and extended over a four-year period. She now suffers almost continuous pain from either her back injury, coccyx area or right leg, depending on whether she is standing, sitting or lying down. Her weight has been reduced from eleven stone four to eight stone six. Inter-course is painful and pregnancy is regarded as dangerous. Her prognosis is described as "gloomy".<sup>10</sup>
- £7,500 Youth has permanent paralysis of the legs, bladder and bowel, with the arms partly paralysed. He has developed a tendency to brood and "an unhealthy introversion leading to sub-conscious magnification of his disability".<sup>11</sup>

### *Cosmetic Injuries*

- £600 Infant girl of two years suffered facial scars, one over each eye, one on the lip, and one on the chin. "As the child grew older the scars would be always observable on close examination but would not be in any way disfiguring or render the face in any way objectionable. They should not affect her marriage prospects".<sup>12</sup>
- £600 A woman of twenty-three suffered facial scars which were concealed by plastic surgery, could eventually be completely disguisable with make-up. However, she does not use cosmetics, and when she is run down and in poor health the

7. *Shrubsole v. Fredburg* (Mayo J.), Aug., 1960.

8. *Carlier v. Adams* (Ross J.), Aug., 1959.

9. *Morgan v. Morgan and Hosking* (Ross J.), May, 1960.

10. *Twelftree v. Engelson* (Piper J.), May, 1959.

11. *Fischer v. Peckham and Miller* (Mayo J.), April, 1959.

12. *Walker and Others v. Borthwick and Others* (Abbott J.), Oct., 1958.

scars become red and noticeable. At such times she is self-conscious and restricts her social life. (Her attitude in this respect was regarded as psychological and the court took the view that this self-consciousness would soon pass.)<sup>13</sup>

- £1,200 Female plaintiff suffered a fractured pelvis, injury to the lower back and abrasions. She suffered recurring pains in her back and abdomen. Permanent effects included facial scars and a misshapen contour of her thigh. The scars were noticeable from beyond fifteen feet.<sup>14</sup>

### *Injuries to Hand and Arm*

- £500 Upper right arm fracture near shoulder. Result is a 30% loss of function and an arm set at an unusual angle, with the elbow jutting out.<sup>15</sup>
- £600 Lower left arm fracture, also dislocated wrist and hand abrasions. Three operations were required, and arm was in plaster for ten months. There is permanent scarring, and the practical certainty of intermittent pain in the future. Slight possibility of future arthritic change. Some wrist deformity.<sup>16</sup>
- £1,200 Bone fracture in right hand. Wrist movement limited permanently by about one-third. Unfit for heavy labouring work and wrist painful to stress. An operation may be necessary to stiffen the wrist.<sup>17</sup>
- £1,800 Left upper-arm broken in two places. Also concussion, lacerations to face and limbs, headaches, and an injury to the radial nerve causing a wrist drop. The result is a permanently restricted arm, with pains in the elbow. There is little endurance or strength in this arm, and it shows signs of arthritic developments. He has lost £100 a year in wages through down-grading from an A to C class operator.<sup>18</sup>
- £1,900 Lower right arm fracture resulting in a 30% loss of normal arm function and 50% loss of movement of the elbow joint. Loss of prospective earnings was a major factor, as plaintiff was handicapped from certain jobs on his one-man fruit block, such as pruning and loading.<sup>19</sup>

### *Leg Injuries*

- £500 Fracture of both bones in lower right leg. He suffered great pain and discomfort for four weeks, which gradually decreased over the next three or four months. He made a perfect recovery.<sup>20</sup>

13. *Dodd v. Chapman and Hague* (Ross J.), Feb., 1960.

14. *Saunders v. Rolfe* (Mayo A.C.J.), July, 1957.

15. *Lambe v. McDonnell* (Brazel J.), July, 1960.

16. *Newitt v. Braybrook* (Ligertwood J.), May, 1957.

17. *Mason v. Stanbury* (Ross J.), March, 1960.

18. *Williams v. Vickers and Others* (Ross J.), May, 1960.

19. *Obst v. Jarrett* (Piper J.), July, 1959.

20. *Koumbarakos v. Honnor* (Abbott J.), Oct., 1958.

- £500 Plaintiff, aged 70, suffered compound tibia fracture and a fibula fracture. The leg is now a half-inch shorter and bowed. There is eczema at the fracture site, where the skin is "papery" and weak. The leg is badly scarred and both legs show arthritic developments. He is unfit for work involving long standing or walking.<sup>21</sup>
- £800 Compound tibia fracture of right leg. A nasty scar remains at the site of the injury, but limb function is good, although the leg aches with long standing, and difficulty is experienced in climbing.<sup>22</sup>
- £900 Compound leg fracture leaving a deformed thigh. The leg is shortened by three-quarters of an inch, and the ligaments are loose and weak. Present disabilities include periodic leg cramps, ugly scarring, limitation of flexion. Plaintiff's shoes wear out monthly.<sup>23</sup>
- £1,000 Knee cap fracture requiring removal of the patella. Heavy work and active sports henceforth impossible. Arthritis will probably set in at the knee joint fairly soon.<sup>24</sup>
- £1,500 Both tibia and fibula fractured in both legs. Treatment involved eight months in hospital and eighteen months of rehabilitation. Left leg is permanently disabled by 10%. It is slightly shorter and weaker, and causes pain with prolonged standing or walking.<sup>25</sup>
- £1,500 71-year-old female plaintiff fractured right leg. She was hospitalised for nearly 19 weeks and now has difficulty bending her right knee.<sup>26</sup>
- £2,000 Compound tibia fracture and double fibula fracture of right leg. He will be unable to work for 22 months. The left leg is one-half inch short. He cannot work at jobs involving long standing, climbing or carrying heavy weights. His disability will seriously handicap him in the labour market.<sup>27</sup>
- £2,300 Leg amputated five and one-half inches below the knee.<sup>28</sup>
- £3,500 Plaintiff, sixteen years, suffered a comminuted fracture of the left thigh bone and a displaced knee joint. He suffered considerable pain, and limitations to work, sport and social activity. There is a definite possibility of further treatment and perhaps an operation.<sup>29</sup>
- £3,750 Both lower legs fractured. Right leg amputated at thigh. Other leg has developed an arthritic condition. Can walk with artificial leg.<sup>30</sup>

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21. *Jarman v. Hocking* (Abbott J.), May, 1959.

22. *Voitkus v. Cibulskis* (Brazel J.), July, 1960.

23. *Kleeman v. Kuebel* (Abbott J.), April, 1959.

24. *Murphy v. Johns and Another* (Ross J.), Oct., 1957.

25. *Lomski v. Dennis* (Abbott J.), May, 1959.

26. *Newman v. Rack* (Mayo J.), Dec., 1958.

27. *Orlando v. Arthur Hall* (Brazel J.), May, 1960.

28. *Miller v. Parslow* (Napier C.J.), May, 1959.

29. *Rontanay v. Press and Smith* (Mayo J.), Sept., 1958.

30. *Wright v. Benbow* (Piper J.), July, 1959.

- £4,200 Plaintiff, 46 years, suffered a shattered right thigh bone. After three years' treatment, with two summers spent in a brace and two bone graftings, a bone union was effected. The result is a leg much lessened in girth, three-quarters of an inch short, and with only 10-15 degrees of knee movement. Arthritis will probably worsen and there is an even chance of another operation, which would involve three months' disablement. He can resume a sedentary occupation.<sup>31</sup>
- £5,500 Compound comminuted fracture of tibia and fibula. Ankle fractured and ankle-joint grossly disorganised. Some small bones of the right foot fractured, and right hip dislocated. Required nine weeks' hospital treatment and successive operations to effect skin grafting, removal of dead bone, bone union, and correction of foot deformity. The right foot is now completely rigid and, being an inch short, requires a "rocking sole" for walking. There is a definite risk of Osteomyelitis recurring and the consequence of this is a real possibility of amputation of the lower limb. There is arthritis of the knee joint which is itself troublesome and unstable, though improving.<sup>32</sup>

#### *Nervous Disorder*

- £1,400 Painter 23 years old. Fracture of left temple bone causing tinnitus, a sensation of ringing in the ear, that will continue for the rest of his life. The same head injury that caused the tinnitus also caused a neurosis which prevents him learning to put up with the tinnitus and at times the combined effect almost drives him hysterical.<sup>33</sup>
- £1,500 Unmarried migrant woman, aged 47, sustained injuries to neck and shoulder joint causing considerable pain. Main disability is a severe post-traumatic neurosis or hysteria which depresses her and makes her intolerant of pain. The injuries would not incapacitate a normal individual but, because of her neurosis, completely incapacitate her. She has lost her job as a domestic earning £7 weekly, plus board and keep, and will require psycho-therapy treatment for several months.<sup>34</sup>

#### *Miscellaneous Injuries*

- £900 Plaintiff suffered serious shock, bruises and lacerations. Her left cheekbone was crushed. Other minor discomforts were suffered. Facial scars were noticeable.<sup>35</sup>
- £1,750 Female plaintiff, 25, suffered severe wound in buttock, penetrating 4-5 inches, and extending around the rectum into the vagina. Severe shock and pain. Hospitalisation for 10 weeks ensued, involving two operations and three months physio-therapy treatment. There was also a gross compound pelvis fracture. Future back pain is probable. Child-bearing likely to be by caesarean section.<sup>36</sup>

31. *Rogers v. Geracitano* (Chamberlain J.), Sept., 1960.

32. *Ahrens v. Goodier* (Brazel J.), Aug., 1960.

33. *Cervo v. Hadjikakon* (Ross J.), July, 1960.

34. *Bowal v. M.T.T.* (Ross J.), July, 1960.

35. *Mitev v. Leconno and Others* (Mayo A.C.J.), July, 1957.

36. *Park v. M.T.T.* (Brazel J.), July, 1960.

*Assessments for Pain and Suffering and Loss of Amenities*

In the following cases, awards were specifically allotted to compensation for these factors alone; they therefore furnish some guide in this respect.

- £50 Plaintiff injured in car crash, suffered a scalp wound and some degree of concussion which kept him in hospital for 10 or 11 days (pain and suffering).<sup>37</sup>
- £300 Fractured skull, concussion, fractured thigh bone and lacerations in many parts of his body. Consequences brought on an attack of pleurisy, a leg abscess, and dermatitis of the leg. As a result of a brain injury incurred in the accident, he became mentally distressed and unemployable (pain and suffering).<sup>38</sup>
- £400 Ten-inch gash across kneecap, and damage to chest—causing pain and discomfort for 3 to 4 months. The knee injury also contributed to a fairly severe condition of varicose veins. He was on crutches for 2 weeks, and required a walking stick for 8 weeks. There was no serious residual impairment.<sup>39</sup>
- £600 Blow to head had same effect as a pre-frontal leucotomy. Plaintiff, aged 46, lost all initiative, became unreliable, irresponsible, and unresponsive to therapeutic treatment. "I fix the net amount for loss of earning power at £5,500. To this amount must be added an allowance for pain and suffering and loss of the amenities of life. I fix this at £600. In doing it I have borne in mind the amount allowed for loss of wages and earning power. They are inter-related".<sup>40</sup>
- £750 Loss of sexual relationship with wife—which inability the court accepted as being likely to continue for "longer than a few months".<sup>41</sup>
- £1,750 (Pain and suffering and loss of amenities of life.) Painter, aged 44, suffered concussion, fractured skull and multiple bruises and abrasions. He is subject to attacks of giddiness which render him unfit for his wharfside job. An ear complaint was aggravated.<sup>42</sup>

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37. *Harvey v. McHale and Pridham* (Ligertwood J.), Dec., 1957.

38. *Milotu v. Williams* (Ligertwood J.), Dec., 1957.

39. *McIntyre v. Critchley* (Chamberlain J.) Sept., 1960.

40. *Bylyk v. Welton and Foote Ltd.* (Piper A.J.), Sept., 1958.

41. *Cameron v. Nottingham Insurance Co.* (Reed J.), May, 1958.

42. *Hanlon v. Wadlow* (Reed J.), Nov., 1958.

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