

# PERSONAL INJURIES

## AWARDS IN SOUTH AUSTRALIA, 1971 - 1972

This survey covers the period from 1st November, 1971 to 31st October, 1972, and includes summaries of selected cases involving claims for damages for personal injuries which have been reported in the Law Society Judgment Scheme during this period.

The cases have been classified according to the injury, or, if there are multiple injuries, according to the major injury received. The damages are stated on the basis of full liability with no reduction for contributory negligence. Information relevant to the assessment of loss of earning capacity has been included where appropriate to provide some basis for ascertaining the respective extent of the economic loss and of the non-economic loss in the figures awarded by way of general damages.

Cases where an interim assessment of damages has been made under Section 30b of the Supreme Court Act, 1932-1971 (S.A.) have not been included in this survey. Cases where a final assessment has been made after an interim assessment under that section have been included.

### Head Injuries

- \$60,000 Fitter aged 52 at trial suffered severe head injuries requiring a large piece of bone of the skull to be removed and consequential brain injuries. A blow to the head where the bone has been removed would have serious consequences. He has permanent residual short and long term memory defect, persecutory hallucinations, spasmodic euphoria, and is permanently incapacitated for work. He is aware of his injuries and disabilities and this causes him considerable distress. He is unable to properly care for himself although he does so and will possibly need to be admitted to a nursing home in the future. But for his injury, he would have worked to age 65, earning \$47 net per week, and his actual loss of earnings to trial was \$10,180 net. It was noted that the value of an annuity of \$1.00 per week to the plaintiff to age 65 was \$450<sup>1</sup>.
- \$50,000 Female aged 59 suffered severe head injuries with extradural haemorrhage and abdominal injury, including brain damage. She was a quadriplegic and unconscious for one year and only very slowly recovered to a conscious level over a period of four years following the accident. She now has permanent speech impediment, intellectual deterioration, spasmodic irascibility, paralysis of left arm, partial paralysis of the right arm, and partial paralysis of both legs. She is able to feed herself with her right arm but is confined to a wheel chair and requires constant partially skilled nursing assistance. She now suffers frequent pain and incontinence. She is now virtually helpless, and is aware to some degree of her loss of enjoyment of life. She will require considerable treatment in the future and probably institutionalisation at some stage. Her life expectancy was estimated at 10 years<sup>2</sup>.
- \$25,000 Storeman Foreman aged 58 suffered concussion, fractured skull involving brain damage and right hemiparesis, fractured humerus, five fractured ribs, severe sprain of the right knee ligaments and shock. The treatment was long involving 2½ months hospitalisation, a tracheotomy, reduction of the fractured humerus, and speech therapy. On discharge he was able to walk and his speech and right arm function were improving; he had to be retaught to speak and write normally. He has made a good physical recovery: he suffers loss of energy at the end of a day's work, poor balance and lack of co-ordination, some loss of memory function, some residual stiffness of the right shoulder, a slight possibility of epilepsy, and an insecure future in employment as he is

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1. *Sunderland v. Macco-Palmer* (1972) L.S.J.S. 111 (Mitchell J.), and affirmed on appeal to Full Court: (1972) L.S.J.S. 727 (Bray C.J., Hogarth and Walters JJ.).

2. *Meadows v. Meadows & Moloney* (1972) L.S.J.S. 888 (Walters J.).

now unable to handle heavy furniture. He is now unable to do gardening and his social activities have greatly been restricted. On these aspects he was awarded \$14,000 damages. He has lost bonus increases of \$8.00 per week by reason of his injuries, and it was noted that an annuity of \$1.00 per week to him was valued at \$276. He may also be downgraded, with further loss of \$16.00 per week and there is a remote chance that he may lose his job. On these aspects he was awarded \$8,000 damages. He is now unable to drive himself to work and is obliged to use public transport and occasionally taxis, and the expense involved was allowed by way of damages at \$2,000. He will also now have to employ people to do work around his house which he would otherwise have done himself, and he was allowed \$1,000 damages under this heading<sup>3</sup>.

\$3,750 Shorthand typist age 22 suffered severe closed head injury manifesting signs of damage to left cerebral hemisphere, multiple facial lacerations, lacerated knees, concussion, fractured right radius, and a ruptured extensor tendon of left ring finger. The lacerations were sutured and the fractured radius reduced and the arm placed in a full arm plaster; the fractured radius and the finger injury healed completely. The facial injuries involved tooth damage, and she is now obliged to wear a partial lower denture which is unpleasant and discomforting; apart from that these injuries result in minimal residual scarring. She has noticeable though not disfiguring scars above both knees. Her memory and concentration ability have been impaired and she has undergone minor personality change and intellectual deterioration. She lost her job as a result of her injuries, and has been largely unsuccessful in obtaining other long-term employment. She faces the possibility only of post traumatic epilepsy. She lost her sense of taste and suffered headaches and vertigo for about 18 months following the accident. Her earning capacity has been seriously affected and she has lost some enjoyment of life although she still plays sport and engages in social activities. She underwent considerable pain and suffering<sup>4</sup>.

### **Back Injuries**

\$81,000 Female aged 21 sustained crush fracture of 4th thoracic vertebra and dislocation of 3rd thoracic vertebra and fractured left femur. The femur was not treated as she suffered complete paraplegia below the level of the 4th thoracic vertebra through severance of the spinal cord. Metal rods were inserted in the spine to stabilise it and subsequently removed, and she underwent operative treatment to correct the positioning of her left foot and other rehabilitative treatment. She has a permanent in-dwelling catheter which is changed fortnightly. Although she is prone to bladder and other infection, and susceptible to extremes of temperature, her life expectancy has not been materially affected. She suffers spasmodic depression, but continued study at a university and then obtained clerical work with the S.A. Government. She proposes to do further study, but her prospects of employment and promotion are limited to an earning rate of about \$5,000 whereas she would have otherwise have had an earning potential in the vicinity of \$7,000. It was considered that she had lost an earning capacity of approximately \$3,000 for a few years and subsequently an earning capacity of approximately \$2,000 in addition to loss of earning capacity for the immediate period of disability. She is able to play some sport but she tires and suffers considerable pain and her enjoyment of life has been very substantially decreased. She needs assistance moving around at home and substantial alterations to her home costing in excess of \$6,000 were carried out. She is now able to drive with a specially fitted car, but is permanently incapable of looking after herself and will need to seek admission to a nursing home or full time assistance if she loses her

3. *Longmore v. Bohlman* (1972) L.S.J.S. 514 (Zelling J.)

4. *Whibley v. Johnson* (1971) L.S.J.S. 1572 (Walters J.).

parents. She will undergo further treatment and incur medical expenses estimated at \$6.00 per week in any event. Her prospects of marriage are practically nil. The damages were divided into two items, of \$30,000 for pain and suffering, loss of marriage prospects, and loss of enjoyment of life, and \$51,000 for past and present and future loss of earning capacity, future hospitalisation expenses, future medical expenses and future expenses relating to her care if she were to lose her parents<sup>5</sup>.

- \$24,000 Assembler and part-time fruit picker aged 38 suffered fracture of 12th thoracic and 1st lumbar vertebrae producing spinal curvature with a slight lump and depression of the right shoulder, limitation of movement of the right shoulder and arm, and weakness and pain in the back. He was obliged to give up his fruit picking activities as they were too heavy, and has continued to work as an assembler in work of the lighter nature but without actual loss of earnings since the accident. He is now permanently unfit for heavy work and consequently the range of jobs available to him is greatly reduced. He is now unable to turn to week-end work including picking work which will produce a loss to him of \$1,150 per annum for a period of 20 years. He suffered and continues to suffer a substantial pain from time to time, and suffers pain on most days after work<sup>6</sup>.
- \$8,000 Female clerk aged 42 suffered fracture dislocation of 1st lumbar vertebra and crush injury to 2nd lumbar vertebra. Spine immobilised during hospitalisation of 40 days and stabilised with a metal rod; this involved considerable pain and discomfort, and the metal rod was eventually removed. She now has permanent back discomfort and pain from time to time, weakness in the left foot and loss of power in the 4th and 5th fingers of the right hand. She is now unable to type and this restricts her earning capacity. She has difficulty stooping and is obliged to kneel to make beds. She has minor interference with her sleep and is nervy in a car, and she is now restricted in playing social tennis and precluded from riding or skiing<sup>7</sup>.
- \$7,000 Diesel mechanic aged 58 suffered crush fracture of 1st lumbar vertebra, fractured ribs, lacerations behind right ear, and right knee injuries. He was hospitalised for two months and now has a painful back which restricts him from lifting and bending and significantly affects his earning capacity; he is likely to lose his present job through redundancy and is starting his own business as a garage proprietor although he cannot do heavy work. He has been obliged to give up enjoyable outside activities. He suffers some chest pain and because of arthritic degeneration in the right knee, faces the possibility of operative treatment at a cost of \$500 and with six months off work at some time in the future. He also continues to undergo medical expenses for physiotherapy treatment and travelling expenses incurred in attending for treatment<sup>8</sup>.
- \$6,000 Kitchen maid aged 42 suffered fractured coccyx and operative treatment to relieve persistent pain was unsuccessful. She has permanent pain in the lower back which occasionally radiates up to the neck and is aggravated through pressures of sitting and bending and similar activities. She is unable to do her heavier housework. She suffered only \$42 economic loss to date of hearing, but her overall earning capacity has been affected as she is now fit only for light work not involving bending or lifting or prolonged sitting. The persistent pain will materially detract from her enjoyment of life<sup>9</sup>.

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5. *Preston v. Mercantile Mutual Insurance Co. Ltd.* (1971) L.S.J.S. 1645 (Hogarth J.), and affirmed on appeal to Full Court: (1972) L.S.J.S.

6. *Bitolas v. Tsakouakas* (1972) L.S.J.S. 71 (Mitchell J.).

7. *McKay v. Page & Sobolski* (1971) L.S.J.S. 1524 (Hogarth J.).

8. *Hawke v. Griffiths & Hawke* (1972) L.S.J.S. 826 (Judge Mohr).

9. *Bizos v. Grosvenor Hotel Ltd.* (1971) L.S.J.S. 1648 (Judge Muirhead).

- \$4,000** Married woman aged 51 employed as casual shop assistant suffered crush fracture of 1st lumbar vertebra and was hospitalised for two months. She is now obliged to wear a surgical corset, and bending is restricted, largely restricting her from engaging in gardening and golf. She tires easily. Her activities will become increasingly restricted in the future. She was totally unfit for work for six months but she has now got similar work and will probably be able to manage that for some time<sup>10</sup>.
- \$2,000** Hairdresser aged 22 sustained concussion, fractured pelvis and partial tear of membrane of urethra, fracture of superior ramus and body of left pubic bone, a damaged tooth and back injuries. The fractures and other injuries healed satisfactorily apart from the back injury, which required manipulation under general anaesthetic. The back pain persisted for a time until pressure on a nerve root was relieved, and he now has some continuing back pain with the possibility only of future arthritic degeneration, and some inconvenience during intercourse<sup>11</sup>.

### Neck Injuries

- \$30,000** Ledger machinist and music teacher aged 34 suffered frontal head injury producing permanent total loss of sense of smell and substantial diminution of sense of taste, and fracture dislocation of 6th and 7th cervical vertebrae. The neck injury was treated by fusion operation and she has permanent disability including loss of movement which produces great strain on other neck joints, damage to the right side of the spinal cord causing severe spasticity of the right thumb and some spasticity of the right arm and leg and disturbed sensation in the left arm and leg so that her right hand is now fit only to perform coarse movements, touch sensitivity at the right hip, susceptibility to chilblains, and pains in the neck, right arm and leg, and headaches. She is precluded from her former employments as a ledger machinist and piano accordion player, and has no earning capacity until some two years following finalisation of her claim. There after she has lost about one half of her earning capacity and will continue to have the disabilities above and require treatment from time to time<sup>12</sup>.
- \$4,250** Office Manager aged 27 previously an active athlete suffered ligamentous and minor joint injury to his neck which has resulted in permanent restriction of full movement and pain on any major movement of his neck. He suffered considerable discomfort for some time, and the disability will slowly degenerate with the possibility of operative treatment many years in the future. He will also require medical treatment from time to time. His earning capacity in his present field of employment is not affected, and there is no reason why he should leave it, but he is now unable to engage in certain heavy fields of employment. His capacity to engage in and enjoy sport has been greatly reduced, although he does some running, and he has some minor difficulties driving and occasionally sleeping<sup>13</sup>.
- \$3,650** Female clerk aged 26 suffered mild concussion and injury to the joint between the 4th and 5th cervical vertebrae. A cervical collar did not alleviate her pain, and subsequently the joint between the two vertebrae were fused by bone grafted from her left hip. During the operation a sympathetic nerve was damaged resulting in some drooping of her left eyelid and altered sensation in the left cheek, but this condition improved substantially by the date of the

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10. *Hawke v. Griffiths* (1972) L.S.J.S. 826 (Judge Mohr). The action for damages was dismissed.

11. *Rositano v. Caruso & Vogelsang* (1972) L.S.J.S. 809 (Judge R. H. Ward).

12. *Beck v. Cavaivolo & anor.* (1972) L.S.J.S. 196 (Sangster J.).

13. *Cowham v. Otway* (1971) L.S.J.S. 1563 (Judge Muirhead).

award two years later, and would completely recover in the near future. The treatment and disabilities were painful and discomforting. She now is left with a slightly stiff neck and some abnormal movement of the 3rd and 4th cervical vertebrae which produce reasonably frequent intermittent pain which will become slightly worse when she has children. She has a scar on her neck 2½ in. long which is not noticeable except on inspection and a scar on her hip which is troublesome if knocked. She was off work for four weeks losing \$190, but now suffers no loss of earning capacity<sup>14</sup>.

\$3,500 Metal Finisher aged 59 suffered a whiplash injury involving aggravation of pre-existing spondylitic degenerative changes in his neck. He was off work for 5½ months, and suffered considerable pain and inconvenience and restriction of neck movement for some time. The effects of the aggravation had largely resolved some three years after the injury, but he was still left with some minor pain and discomfort which did not affect his future earning capacity<sup>15</sup>.

\$3,000 Dental nurse aged 26 suffered a whiplash neck injury. She was fitted with a cervical collar which, together with physiotherapy, produced considerable relief in her pain and discomfort in the neck and across her shoulders and her headaches within about five months. She was fit for part-time employment five months after the injury, and fit for all but heavy manual work within 12 months of the injury. She continues to suffer some discomfort in her work as a dental nurse, and considerable pain and suffering for about one year, but now faces only intermittent pain and headaches<sup>16</sup>.

### **Arm and Hand Injuries**

\$10,000 Taxi driver sustained compound fracture of the right humerus and aggravation of pre-existing degenerative change in his back. At operation a pin was inserted to stabilise the fracture, and he subsequently underwent skin grafting and bone grafting on the right arm. He now has a weak right arm estimated at loss of 25% of its full efficient use. He is handicapped lifting, digging, carpentry and similar activities and has scarring on his arm and leg and back which causes him some embarrassment. He also suffers permanent intermittent headaches and backaches due to the aggravation of his back condition. He is restricted in the number of hours which he can work as a taxi driver which at the present time results in his average earnings being approximately \$60 per week rather than \$72 per week. He was off work for 46 months during which time his gross earnings would have been approximately \$59 per week<sup>17</sup>.

\$1,800 Turner suffered concussion and fractured left clavicle making him unfit for work for nine weeks. He suffered headaches for a time, and has some permanent deformity of the shoulder producing some pain and discomfort and restriction in heavy lifting, and the possibility of osteoarthritic degeneration in the future. He has only a slightly reduced earning capacity and his disabilities do not interfere much with his enjoyment of life<sup>18</sup>.

\$1,000 Maintenance Engineer aged 48 suffered a crack through the olecranon spur in his right elbow. The spur was removed at operation and he was off work for three weeks after that treatment. He has worked since then with some pain and discomfort and he cannot completely straighten his right arm. It was estimated that he had lost 8% of the full efficient use of his right upper arm<sup>19</sup>.

14. *Teakle v. Tom the Cheap (S.A.) Pty. Ltd.* (1971) L.S.J.S. 1672 (Mitchell J.).

15. *Fiorita v. Cufone & Griffiths* (1972) L.S.J.S. 703 (Judge Williams).

16. *Farinella v. Schultz* (1971) L.S.J.S. 1528 (Judge Mohr).

17. *Antonion v. Kitson* (1972) L.S.J.S. 115 (Bray C.J.).

18. *Medjedavic v. O'Neill* (1972) L.S.J.S. 340 (Bray C.J.).

19. *Elliot v. General Motors-Holden's Pty. Ltd.* (1972) L.S.J.S. 977 (Judge R. H. Ward).

### Leg Injuries

- \$50,000** Yard man aged 59 employed by a council suffered multiple fractures of the pelvis and of both lower legs. The left leg was amputated above the knee. Attempts to salvage the right leg were unsuccessful and it was also amputated above the knee 18 months after the injury. He was hospitalized for six months and underwent several skin grafts, and the wearing of a caliper during the salvage attempts. He had very severe pain in his right leg for a considerable time. Since the amputation of his right leg he has undergone further operation to remove a neuroma in the stump of the right leg, and pain in the leg has persisted. Efforts to fit acceptable prostheses were difficult although he now has some slight mobility. It is unlikely that he will obtain any further employment. He needs alterations to be carried out to his house to assist his living, and will need paid assistance for his wife who has cared for him in the future and ultimately will need to be admitted to a nursing home at a cost of \$20 to \$30 (to him) per week. He would probably have worked to age 65 and his earnings at the time of the assessment would have been \$51 per week. He will also undergo further expense for future substantial medical treatment<sup>20</sup>.
- \$15,000** Labourer aged 19 sustained injury to left knee involving the pinching of the synovial membrane of the knee joint between the femur and the tibia in December 1967. An operation to release the pinched membrane was performed, and he returned to semi-sedentary light work in June 1968 although with continuing complaints of pain. In December 1968 the patella was removed through gross changes over the medical aspect of the patella, and a further exploratory operation carried out in April 1969. He was fit to resume light work in about June 1969. He continued to suffer significant pain and stiffness as a result of a conversion reaction or anxiety to his injury which has rendered him unfit for heavy labouring work or work entailing standing for any lengthy period. Some improvement of his symptoms will occur following settlement, but he will continue to have pain and limitation in mobility in the knee which will persist and preclude him from heavy labouring work. Loss of earnings net of \$3,724 to date of award included in assessed general damages<sup>21</sup>.
- \$12,000** Driving contractor suffered lacerations to the head and knee, and an avulsion fracture of the right os calcis of his foot. He suffered considerable pain, and an operation was performed to remove the protruding bone. He has permanent weakness and deformity which impedes walking, and it is possible that further deterioration will occur to require further treatment. His ability to drive vehicles for long periods of time has been practically destroyed. He did not work for 3 months following the injury, and after further spasmodic attempts to work, he has permanently stopped driving trucks. He employs a driver at \$60 per week net to do the duties which he would otherwise do, but he carries out the supervisory and administrative work, but if he were still driving, he would need to employ someone to do this work. He would have stopped driving trucks within a few years in any event through his age. The award of damages was divided into \$8,500 for loss of earning capacity, and \$3,500 for the non-economic aspects of his loss<sup>22</sup>.
- \$7,500** Female cleaner aged 57 suffered fractured right ankle involving the medial and lateral malleoli of the lower tibia and fibula. The fractures were reduced and fixed with a screw and were in plaster for two months. She made slow progress through pain and swelling, and was totally unfit for work for six months. Her former job was initially unavailable, but when she returned to it, she was unable to perform that work and, for practical purposes, has lost her

20. *McCoy v. Johnson* (1972) L.S.J.S. 293 (Mitchell J.).

21. *Papagiannis v. Australian Glass Manufacturing Co.* (1971) L.S.J.S. 1693 (Hogarth J.).

22. *Wolper v. Poole* (1972) L.S.J.S. 1 (Bray C.J.).

earning capacity. She has persistent pain and swelling and stiffness in the right ankle. Her actual loss of earnings to the date of trial was equivalent to \$5,000, and she probably would not have worked beyond age 60<sup>23</sup>.

- \$7,500 Factory hand sustained grossly comminuted fracture of right heel bone with disruption of adjacent small joints of the foot. The fracture was manipulated and the leg placed in plaster for two months. He returned to light work 2½ months after the injury, but with pain and swelling in the foot after a days work. He has degenerative changes in the foot which will continue to produce pain and swelling after standing for a time, walks with a limp, and is unable to run or climb ladders or squat; apart from those disabilities he is fit for his work as a factory hand. He has lost 25% of the full efficient use of his right lower leg. It is possible that he may require treatment for further degeneration although not fusion of the ankle joint itself<sup>24</sup>.
- \$5,500 Kitchen hand aged 26 suffered a fractured left tibia. Reduction of the fracture was unsatisfactory and she underwent a bone graft operation which was successful. She suffered considerable pain for a time. She now has slight outward bowing of the lower left leg and it is possible that arthritic deterioration will occur through increased strain on the left ankle. She was earning \$30 per week at the time of the injury and was unfit for work for some 13 months and thereafter fit for part-time work only for a further four months. She suffers no loss of her future earning capacity after the award<sup>25</sup>.
- \$5,500 Married woman suffered general bruising, injury to right wrist which recovered within about six weeks, and torn medial cartilage in left knee. The injury to the left knee was not diagnosed initially, but the cartilage was eventually removed 18 months after the injury due to continuing pain and disability. She underwent further operative treatment due to persistent pain and disability, and will probably require a further operation in the future and possibly ultimately fusion of the knee joint if the disability persists to the same degree. She has suffered considerable pain and discomfort which at time affected her sleep, impeded her in her household duties and in her activities such as bowls, gardening and swimming. These disabilities are likely to be permanent<sup>26</sup>.
- \$5,000 Male student aged 16 sustained schrapnel wounds to the right thigh, right ankle and foot, and left shin. He underwent two operations and was off school for one month. He was obliged to give up sport for a time through tiredness and aching, and is now restricted from playing football, or taking part in Cadet training. The leg stiffens when it has been immobile for a time, and he is conscious of and embarrassed by the residual scarring, particularly that on his right thigh. He has been obliged to give up his desire to do Army training at Duntroon Military College, and proposes to become a teacher. This will cause no actual financial loss. He has a long diagonal scar on his right thigh which is depressed and ugly and involves some muscle damage, a noticeable long scar from his left ankle across the top of his foot, a recessed and noticeable mark on his left shin, and other mild scarring on his left foot at the base of his toes, the left instep of his foot, the front of his left thigh, his chest and abdomen<sup>27</sup>.

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23. *Archer v. Para Hills Community Club Inc.* (1972) L.S.J.S. 815 (Senior Judge Ligertwood).
  24. *Robbins v. Uniroyal Pty. Ltd.* (1971) L.S.J.S. 1591 (Judge Muirhead). Claim for damages dismissed.
  25. *Maheraki v. Franklin* (1972) L.S.J.S. 448 (Mitchell J.).
  26. *Savage v. Savage & Hoffmann* (1971) L.S.J.S. 1615 (Sangster J.).
  27. *McGrath v. The Commonwealth of Australia* (1972) L.S.J.S. 335 (Sangster J.).

- \$5,000** School teacher, aged 30, previously very active, sustained grazes and bruises to the right lower leg and damage to the structures of the right knee. He has minor residual scarring of the right lower leg. He now has permanent weakness of the right knee estimated at loss of 33 $\frac{1}{4}$ % of the full efficient use of the right leg which precludes him from activities such as playing sport, certain recreations, and he has difficulty climbing stairs. He will continue to have intermittent pain and discomfort and there is a possibility of arthritic degeneration in the future. He was off work for one week and then on half time for several months using crutches. He has not lost earning capacity as a teacher, but other fields of employment are now restricted. He received sick pay during his absence, an allowance for that was made in general damages<sup>28</sup>.
- \$3,750** Barmaid aged 26 sustained lacerations to the right knee and chin, to the right index and little fingers, and to the forehead. She was hospitalized for 33 days. The lacerated forehead healed with scarcely discernible scarring. The lacerated fingers healed with noticeable scars across the top of the knuckles and some residual weakness affecting strenuous movements. A skin graft was performed on the right knee and she now has substantial cosmetic disability involving triangular scarring to size of the palm of a hand at the rear of her knee which is depressed and discoloured and has a nasty disabled look. She also has slight discolouration of the skin at the graft site. She was off work for 14 weeks and her knee now tires and aches after work on occasions. She cannot kneel on both knees at one time and this causes her some inconvenience in her employment and restricts her sporting activities. She is conscious and embarrassed to some degree by her scarring. It is likely that some arthritic degeneration will occur at some time in the future<sup>29</sup>.
- \$3,500** Married woman aged 75 sustained fractures of the upper end of the left tibia and fibula, and contusions to the head and chest and lower back. She was hospitalised for about 13 weeks. She now has pain in her left leg and lower back, and headaches from time to time. She has bowing and deformity of the left leg and the left foot is turned inwards. She also has half inch shortening of the left leg and restriction of movements of the left knee. It is likely that she will suffer from secondary osteo-arthritis of the left knee and require operative treatment at the cost of \$500 within a few years. Her life expectancy of nine years has not been affected<sup>30</sup>.

### Eye Injuries

- \$10,000** Construction carpenter aged 34 suffered loss of one eye, and retained normal vision in the other which was not injured<sup>31</sup>.
- \$3,500** Female shop assistant aged 17 suffered lacerations on the right cheek and forehead, on the right corner of her mouth and on her tongue, and a lacerated cornea of the right eye resulting in collapse of the right eyeball. She was hospitalised for three weeks and off work for four weeks. The lacerations were sutured and healed satisfactorily, although interfering with her eating and with her speech for about four months. The corneal laceration resulted in 75-80% loss of vision of the right eye, which has been reduced by corrective spectacles to 10-15% loss of vision of the right eye. The spectacles became necessary when the plaintiff suffered headaches after reading, fine work and

28. *Jones v. Lynn* (1972) L.S.J.S. 184 (Judge Mohr).

29. *Jobst v. Rosie* (1972) L.S.J.S. 83 (Senior Judge Ligertwood).

30. *Virgo v. Wiltshire & anor.* (1972) L.S.J.S. 187 (Judge Mohr).

31. *Bennett v. The Broken Hill Proprietary Co. Ltd.* (1972) L.S.J.S. 71 (Chamberlain J.). The claim for damages was dismissed, and an appeal to the Full Court on the question of liability dismissed: see (1972) L.S.J.S. 593 (Bray C.J., Hogarth and Walters JJ.).

exposure to glare. She now wears spectacles almost all the time. Special damages include actual loss of wages<sup>32</sup>.

### **Cosmetic Injuries**

- \$5,000** Male student aged 16 suffered schrapnel wounds in his left shin requiring operative treatment to remove dead muscle tissue and subsequently to perform a skin graft and further cosmetic surgery. The residual disability is of cosmetic significance only through scarring at the donor site and at the site of the injury. He has a deep concavity on his left shin which is unsightly and will cause significant embarrassment in the future as well as his past embarrassment. The area of the wound is more vulnerable to injury than before, and any severe injury would substantially extend the normal period of incapacity and complicate the treatment. He suffered considerable pain and distress for some time<sup>33</sup>.
- \$3,500** Male aged 12 suffered concussion, and deep lacerations to his upper lip, chin, left shoulder and chest. He underwent four skin graft operations and will have to undergo another minor one in the future at an estimated cost of \$275. He has permanent residual moderate facial scarring and the grafting to the upper lip and chin have produced slight deformity of the right nostril and a minor breathing impediment which is a nuisance to him. He has a pale scar in the middle of his upper chest, a depressed large scar at the front of his left armpit and occasional headaches. Initially he suffered significant embarrassment, and will continue to suffer a little embarrassment in the future. He will also have slight difficulty in shaving in the future as no hair has grown at the graft sites. He suffered substantial pain and suffering in the past, but has not suffered any real loss of earning capacity<sup>34</sup>.
- \$3,200** Female dental assistant aged 20 suffered concussion, bruising which was painful for about 1 week, and mouth injuries including five upper teeth and three lower teeth being knocked out in the accident and two upper teeth fractured. She was hospitalized for one week and suffered a great deal of pain, and her eating and speech were affected for a considerable time whilst it was attempted to fit dentures. This proved to be painful and unsuccessful. The two fractured teeth were cleared and root fillings replaced, and they were sensitive until the nerves were removed. There is a significant possibility of further operative treatment at a cost of \$300 if those teeth degenerate, and she will need to have annual checkups for several years. She had upper and lower bridges fitted during long and uncomfortable treatment, and it is possible that she will need further treatment in the near future and in any event will need replacement bridges in about 20 years at a cost in today's terms of \$1,720. She has a good appearance but suffered some embarrassment for a time<sup>35</sup>.
- \$2,000** Female process worker aged 21 suffered concussion, laceration to the right upper lip and left thigh, fractures of the superior ramus of the right pubis, an impacted fracture on the junction of the inferior rami of the right pubis and ischium, two fractured teeth and a fracture of the proximal phalanx of the left little finger. She was hospitalized for 10 days and off work for six months. Within 1 month the lacerations had healed and the fractures in the pelvis clinically stabilised. She found that lifting at work was too much for her, and became a shop assistant with no actual loss of earnings although she has suffered some loss of earning capacity. Scarring on her knee and lip

32. *Gregory v. Briggs & McCauley* (1971) L.S.J.S. 1614 (Senior Judge Ligertwood).

33. *White v. The Commonwealth of Australia* (1972) L.S.J.S. 502 (Hogarth J.).

34. *Kooyman v. Robertson* (1972) L.S.J.S. 188 (Judge White).

35. *Wale v. Nerzizoglou* (1972) L.S.J.S. 623 (Judge Williams).

were excised, but she still has noticeable scarring and a lump on her lip and some scarring of no great cosmetic significance on her knee. She underwent extensive dental treatment and had crowns fitted on two teeth which are noticeable but not disfiguring. She has a minor permanent disability in running as a result of the fractures in the pelvis. She suffered considerable pain and discomfort, and her earning capacity has been reduced slightly<sup>36</sup>.

\$1,500 Male student aged 17 suffered lacerations to the left side of his face and his left ear, concussion, shock, multiple bruises including bruising to the back, and a greenstick fracture of the left clavicle. His arm was in a sling for one month, and general bruising was painful for about three weeks. The fractured clavicle healed well and he now has full movement of the shoulder but some minor callous growth on it. His sporting activities were reduced for a few months and he suffered pain when the shoulder or ear were knocked. The ear is sensitive and becomes red and itches in summer. He has a 2-in. scar across the lobe of the left ear. He also had an ugly scar on his left cheek which caused him embarrassment for a time but that has now been excised and leaves him with minimal disability<sup>37</sup>.

\$1,350 Female cashier aged 17 suffered extensive lacerations to the forehead, a bruised left foot and lower back and buttocks, concussion, and a fractured pelvis. She was hospitalized for six days and had made a full recovery from her injuries within three months apart from scarring, some diminished sensation at the site of a scalp laceration, some difficulty concentrating and tenderness in the right foot. She has a permanent extensive scalp scar at about the hairline with altered sensation on it, which is visible though not grossly disfiguring and which could be covered by a hairstyle. She suffered headaches and disturbed vision and embarrassment for a time, but her schooling was not affected and she now has no loss of earning capacity<sup>38</sup>.

\$450 Female process worker aged 19 suffered concussion, abrasions to the forehead and two black eyes. She was off work about one month during which she would have earned \$68, and suffered pain and headaches for a time. She now has minimal residual disability and no loss of earning capacity<sup>39</sup>.

### **Miscellaneous Injuries**

\$25,000 Married woman aged 63 suffered severe head injury, lacerated right forehead and face, penetration injury to right eye involving lacerated cornea and dislocation of the lens with loss of the vitreous, comminuted fracture of the left femur, fracture dislocation of right hip, and fractures of styloid processes of both radii. The lacerations were sutured. She had two operations of the eye. The fractured femur was reduced and fixed with a nail, and the right hip was placed in traction. She was hospitalised for about four months with great discomfort, and was discharged walking with the use of two sticks. After about two years she was able to walk with one stick at limited flexion of the right hip and faces a 50/50 prospect of operative treatment to replace the hip joint at a cost of \$900. The eye injury prevented her from reading without corrective lenses, and correction gave her 50% vision of the right eye; correction however produces double images and she therefore has small residual use of the right eye although if she lost the left eye she would be able to obtain 50% use of it. She has given up all outside activities, and was previously very active, because of difficulty walking and moving and more or less constant pain in right leg and lack of strength in both hands and wrists.

36. *L. A. Smith v. Waugh* (1971) L.S.J.S. 192 (Judge Mohr).

37. *Spry v. S.A. Railways* (1972) L.S.J.S. 725 (Judge Williams).

38. *E. M. Smith v. Waugh* (1972) L.S.J.S. 192 (Judge Mohr).

39. *C. J. Smith v. Waugh* (1972) L.S.J.S. 192 (Judge Mohr).

She is now unable to live alone or do her own housekeeping and needs assistance in dressing and housework; if her husband were to die she would need to go into a nursing home at considerable expense. Her need for personal assistance will probably increase as time goes on, and she was described as a semi-invalid<sup>40</sup>.

- \$14,000 Male student aged 19 suffered severe concussion, fractured left cheekbone which was elevated at operation and has set satisfactorily, fractured left femur, two fractured ribs, lacerated right knee, fractures of both bones of both wrists, and severe teeth damage involving the removal of three upper front teeth below the gum with nerve exposure and one lower front tooth, and eight other fractured teeth. A nail was inserted in the fractured femur, and union occurred after some time although he tires after walking a long distance. The fractured ribs healed but he has some minor breathing irregularities. The fractured left wrist was treated by reduction and insertion of nails, and he now has some restriction of movement which do not represent great disabilities. The fractured right wrist required two operations to treat it and he now has minor residual difficulties in fine movements, slight wasting and slight loss of power. Treatment for the damaged teeth was long and painful involving the removal of dead nerves, and construction of artificial teeth which are liable to need further replacement in about 15 years. He suffered considerable lengthy periods of depression during his first year at University as a result of his injuries and was delayed from entering his profession for one year: his prospects of promotion were reduced by that period and he was awarded \$5,000 under this heading<sup>41</sup>.
- \$3,500 Married woman suffered concussion, facial laceration on left side of the face, right shoulder injury, bruised right leg, lacerated and torn muscles of left leg, and lacerated hands. After a short period of time she was fit to resume her household duties and do the lighter part of her duties as a hotel housemaid. She suffered some pain thereafter and her lacerations healed with only minor scarring. She has mild crepitus on movement of both shoulders, back stiffness and some discomfort on movement which prevents her from doing the heavier work required of a housemaid, and minor disability to the left leg. No further evidence was given as to her loss of earning capacity<sup>42</sup>.
- \$1,600 Married woman aged 26 suffered fractured right inferior pubic ramus and fractured right ilio-pubic process, The fractures united and she used crutches for two months. She suffered severe pain for a time reducing to discomfort over a period of about three years and would then make full recovery. She lost no earning capacity and suffered only minor disability in her housework during the period of discomfort<sup>43</sup>.
- \$750 Interstate truck driver sustained two broken ribs. He suffered considerable pain and was off work for two weeks, and was restricted to local driving for a period of six weeks. He recovered fully within about six months, but during that period he suffered discomfort by reason of the fractured ribs. His actual loss of earning was included in the special damages<sup>44</sup>.

*J. R. Mansfield\**

40. *Eagle v. Edmonds, Wilson & Hempel* (1971) L.S.J.S. 1690 (Hogarth J.).

41. *Holmes v. Trapatselis* (1971) L.S.J.S. 1713 (Hogarth J.) and affirmed on appeal by the Full Court (Bray C.J., Mitchell and Wells JJ.) (unreported judgment 5/4/72).

42. *Kot v. Ferguson* (1971) L.S.J.S. 1531 (Sangster J.).

43. *Bunic v. Cavanagh-Lang* (1972) L.S.J.S. 201 (Judge Muirhead).

44. *McKinna v. Blueline Drive-In Theatre (Regd.)* (1972) L.S.J.S. 966 (Judge White).

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