

## PERSONAL INJURIES AWARDS IN SOUTH AUSTRALIA 1975-1976

This survey contains summaries of all cases involving claims for damages for personal injuries which have been reported in the Law Society Judgement Scheme during the period from 1st November, 1975 to 31st December, 1976.

The cases have been classified according to the injury, or if there are multiple injuries, according to the major injury received. The damages are stated on the basis of full liability, with no reduction for any contributory negligence.

The stated age of the plaintiff is that at trial as, almost invariably, pre-trial and post-trial loss of earning capacity are separately specified.

### HEAD INJURIES

- \$125,000 Male student, aged 19, sustained brain injuries producing a faulty memory, impairment of intellectual capacity and unsteadiness on his feet. He has now difficulties in assimilating and memorising information and in summarising and correlating it. He has a mechanical drainage apparatus implanted in his brain which becomes infected periodically, requiring operative treatment and producing most unpleasant symptoms for some weeks thereafter, during which he is unfit for work. He has a significant risk of developing epilepsy. Due to his disabilities, his liability to periodic long absences and his impaired motor skills he is limited to non-exacting clerical work provided a suitable employer could be found; he is unable to engage in active sports, and his social ability is impaired. But for the accident there was a high possibility that he would have become a successful veterinary surgeon. His employment was delayed by two years by virtue of his injuries, and he has already suffered significant pain and suffering and distress. He also has some vision problems to the left side.<sup>1</sup>
- \$42,500 Male, aged 15 $\frac{3}{4}$  (8 $\frac{1}{2}$  at time of accident), sustained a depressed compound fracture of the right parietal region of the skull including some brain tissue damage, producing paralysis on the left side of his body, cerebral irritation and right ear deafness. He was discharged after one month in hospital wearing a protective skull helmet and with some persisting left-sided weakness. He repeated Grade 4 at school. He has since improved somewhat but has a permanent steel plate in his skull, slight hearing deficiency in the right ear, a gap of vision on his left side which is distressing and causes considerable inconvenience, including preventing him from playing most sports and from driving a motor vehicle, and slight clumsiness on his left side particularly in the arm. He has a reduced intellectual performance, and is not able to compete satisfactorily in the open labour market or to do work near machinery or involving driving. He has obtained employment in a sausage casing factory which is likely to remain available to him. Special damages total \$709.20.<sup>2</sup>
- \$25,000 Self-employed carpenter and joiner, aged 41, sustained an extensive fracture to the skull and abrasions which healed, cranial nerve injuries which partly resolved after treatment but which have resulted in the embarrassment and inconvenience of him suffering nasal discharge while eating, ear injuries producing 100% deafness in the left ear and 22.4% deafness in the right ear (44.6% binaural hearing loss), a minor dental injury and depression. He now uses a hearing aid for his right ear

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1. *Hayman v. Forbes & Brommell* (1975) 69 L.S.J.Sch. 110 (Bray C.J., Mitchell and Zelling J.J.). The Full Court allowed an appeal on the amount of damages and reduced the assessment of damages for loss of earning capacity, but upheld the decision of the learned trial judge on the question of liability and his allowance of the sum of \$50,000 in the assessment of damages for the non-economic aspects of the plaintiff's loss.

2. *Jones v. Hameister* (1976) 71 L.S.J.Sch. 320 (Zelling J.). Damages were reduced 50% for contributory negligence.

which is useful only under favourable conditions; he has some tinnitus, and his balance has been adversely affected upon certain movements; his social activities have been greatly impaired. The depression has altered his family relationships somewhat and is due to post-traumatic accident neurosis which will resolve three months after settlement. He has defective memory and impaired concentration to some extent. Apart from the immediate period of incapacity, he has been 20% impaired in his profession to the date of judgment and three months thereafter, and then 10% permanently impaired in his profession; he is unable to compete equally on the open labour market should he be forced to do so.<sup>3</sup>

### NECK INJURIES

\$40,000 Female stenographer-secretary sustained severe injury to the C5-6 disc and probably to adjacent discs which was very painful initially and produced incapacity for four months following the injury. She now has pain and discomfort in certain activities such as sitting, typing, gardening and household work and some persisting restriction of spinal mobility. She also has some pain in the scapula and down her arms from time to time. She still periodically wears a cervical collar, requires intermittent physiotherapy and pain-killing drugs, and is forced to expend money for labour for certain tasks she would otherwise perform herself at home; her future medical and other expenses due to her disability will be in the vicinity of \$450 *per annum*. But for her injury she would almost certainly have qualified and obtained employment as a Court Reporter, and by virtue of her inability to do so she had lost a sum in the vicinity of \$9,000 net pre-trial and continued to lose a sum in the vicinity of \$40 per week net permanently. She has lost 20% of her efficiency in her present employment without any loss of earnings in it, and no real risk of losing that employment; she would be unable to compete equally on the labour market, but still has other avenues of promotion available to her. Special damages totalled \$1,625 (including actual loss of wages during the incapacity).<sup>4</sup>

\$1,500 Male clerk sustained a whiplash injury involving minor soft tissue damage to his neck, producing pain for a time, and thereafter some intermittent recurring neck pain which was neither severe nor of long duration in its episodes, and some headaches. He was found to have substantially exaggerated his disabilities, mainly deliberately, but partly due to an excessive pre-occupation with his physical wellbeing. He had no loss of earning capacity to the date of judgment, nor any reasonable prospect of such loss in the future. He had no real disability in his employment or in his recreational activities.<sup>5</sup>

### LEG INJURIES

\$81,000 Female, aged 20, sustained various injuries including amputation of the right leg at the knee joint, injury to the left ankle, extensive lacerations, kidney damage, loss of the spleen, and loss of five front teeth in the bottom jaw for which she now wears a plate, but from which she still suffers some inconvenience and difficulties. Her treatment was prolonged and painful. She has a prosthesis fitted to the right leg which needs replacing periodically and is not completely satisfactory. The left ankle is stiff and swollen, without

3. *Parker v. Pahl* (1975) 69 L.S.J.Sch. 206 (Bray C.J., Jacobs and King JJ.). Damages were reduced 50% for contributory negligence. The Full Court allowed an appeal from the assessment of damages and increased the award of damages. It was noted that the value of annuity of \$1 per week to this plaintiff at 8½% *p.a.* to age 65 was \$526.

4. *O'Connor v. The State of South Australia* (1976) 71 L.S.J.Sch. 85 (Bray C.J.). Damages were reduced 33½% for contributory negligence.

5. *Thomas v. Van Den Yssel* (1976) 71 L.S.J.Sch. 183 (Bray C.J., Jacobs and King JJ.). The Full Court dismissed an appeal from the Local Court of Full Jurisdiction.

movement, and she will need arthrodesis within five-ten years. She has extensive disfiguring scarring on her face, abdomen, right arm and left ankle despite plastic surgery and suffers embarrassment from it. She has significantly impaired kidney function, partly due to the injuries, with some risk of danger to her health and to her life. All sporting activities have been lost to her, her social life is severely impaired and she is now unlikely to marry, and her day to day activities are gravely impeded. She was training to qualify as an enrolled nurse, for which she is no longer fit, and is now employed as a nurses assistant, but is not in fact coping with that employment and needs sedentary employment. She will have grave difficulty in obtaining suitable employment and it will be far less satisfying to her. She is not able safely to live alone and will need in the future some supporting and medical treatment. Included in general damages was the sum of \$2,000 for voluntary services rendered to her by her parents following the injuries, and \$4,000 for loss of earning capacity to the date of trial.<sup>6</sup>

\$60,000 Male, aged 21, employed in an active job, sustained concussion, comminuted compound fractures of the tibia and fibula in both legs, a fracture of the left femur in the knee joint and fractures of the right ilium and rami of the right pubic bone, producing in all paralysis of the right leg and partial paralysis of the left leg. He had a long and complicated treatment including grafting procedures, and both legs were shortened approximately the same amount. He has permanent paralysis of many muscles of the right leg and stiffness of most joints of both legs associated with severe restriction of movement and weakness. The fracture of the right tibia has not united and he may need a further bone graft with possible complications which might lead to amputation. He has undergone severe pain and suffering, and is likely to face further pain and suffering in the future especially with the right leg. He has an odd rolling gait, very severe leg scarring, and is unable to run, to walk far or to squat. Ordinary day-to-day movements are complicated. He continues to be employed with the same employer in more sedentary work, but his job prospects are limited and he could not compete adequately on the open labour market. His recreational activities are very severely impaired. Special damages total \$5,497.<sup>7</sup>

\$34,300 Female office assistant, aged 43, sustained partial amputation of the left leg below the knee, severe lacerations to the right knee, and lacerations to the left elbow and right foot. Treatment required amputation of the left leg above the knee and the lacerations were sutured. She now has a prosthesis fitted to the left leg which needs periodical renewal and also faces some risk of bone infection in the leg stump. She also has phantom pains in the left leg and suffers considerable discomfort. The prosthesis is disfiguring, producing an awkward gait, and the stump itself is unsightly. She also has some crepitus and restriction in the right knee joint producing pain and weakness and the right patella will probably need to be removed in the future; the right knee joint is also unsightly. She has returned to work but her range of activities is much restricted although, as office assistant in a partnership business with her husband, there has been no actual reduced profitability; her ability to compete and her earning capacity have in their potential been diminished. She also now needs to drive an automatic car and some allowance was made for that. The value of voluntary services provided to her following the injury was allowed for in general damages and \$1,300. Special damages total \$2,839.87.<sup>8</sup>

6. *Bishop v. Hartford Fire Insurance Co. Ltd. and anor.* (1975) L.S.J.Sch. 77 (Bray C.J.). It was noted that the value of an annuity of \$1 per week to this plaintiff at 8½% to age 65 was \$615.

7. *Shepherd v. Zilm* (1976) 71 L.S.J.Sch. 327 (Zelling J.). Damages were reduced 75% for contributory negligence.

8. *Doble v. Brunton & ors.* (1976) 72 L.S.J.Sch. 151 (Bray C.J.). One of the defendants was the plaintiff's husband, who had rendered to the plaintiff the

- \$20,000 Female, aged 16 (12 at time of accident), sustained a fractured left femur which united well, but the growth centres in the leg were impaired so that her left leg was 4.25 cm shorter than the right. Bone was therefore removed from the right leg to produce the same length, and her stature has thereby been considerably shortened. Her left knee is unstable and bows, she has scarring from the operation, and she is grossly restricted in her sporting activities. Her employment opportunities have also been restricted, for example in nursing, which she wished to pursue as a career, and she may develop arthritis in her left knee. She suffers some backache due to her defective posture.<sup>9</sup>
- \$12,000 News vendor, aged 43, sustained extensive soft tissue damage to the dorsum of his left foot with fractures and dislocation of the tarso-metatarsal region. He underwent two operations and was two months off work but was then limited in his employment because of pain. He therefore sold his business and has since qualified as a teacher, so that he has no actual financial loss continuing either from the change in employment or from the sale of his business; his employment opportunities are however somewhat reduced and he was at the Teachers College for one year full time to qualify as a teacher. He has a permanent disability in his left foot so that he can no longer engage in prolonged foot activity or play sport, and it is probable that deterioration in his condition will occur.<sup>10</sup>
- \$8,500 Male shop proprietor, aged 58, sustained a compound fracture of the right tibia, dislocation of the right acromioclavicular joint producing persisting minor pain and the possibility of arthritic degeneration which might require operative treatment, injury to the left knee which produces minor persisting symptoms, and lacerations to the head and scalp. The fractured tibia increased a pre-existing disability in the right leg so as to somewhat diminish his earning capacity although not greatly. He sold his business because of his disability and obtained alternative employment within five-six weeks, for which allowance was made in the loss of earning capacity pre-trial of \$480. An allowance was made of \$565 for voluntary support services provided to him during his convalescence.<sup>11</sup>

### ARM INJURIES

- \$21,800 Male construction contractor/cement worker, aged 41, sustained bruises and lacerations to the right side of his head and right chest, an undisplaced fracture of the right scapula in the shoulder joint, and subluxation of the right acromioclavicular joint. Continual pain and weakness from that last-mentioned injury forced him to give up manual work and undergo various operations including the excision of portion of the outer end of the clavicle, but he has permanent pain and weakness in the right shoulder joint especially upon movement and activity involving rotation of the joint. He is significantly restricted in his recreational activities. He is no longer able to engage in

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8. (Continued)  
voluntary services for which allowance was made in the assessment of damages. Orders were made on contribution notices as between defendants whereby the plaintiff's husband was to bear 15% of the assessed damages. Bray C.J. ordered that he be given credit in satisfying his portion of the judgment sum to the value of such voluntary services.
9. *Roberts v. Hicks* (1975) 69 L.S.J.Sch. 97 (Senior Judge Ligertwood). Although damages were assessed, the claim was dismissed as the plaintiff had failed to prove his case. An appeal to the Full Supreme Court on the question of liability only was allowed (Bray C.J. and Walters J., Mitchell J. dissenting) and further consideration on the question of damages deferred for argument.
10. *Seager v. Burford* (1975) 69 L.S.J.Sch 100 (Senior Judge Ligertwood). Damages were reduced 50% for contributory negligence.
11. *Beck v. Farrelly* (1975) 69 L.S.J.Sch. 1 (Bray C.J., Mitchell and Zelling JJ.). The Full Court allowed an appeal from the Local Court of Full Jurisdiction, and increased the award of damages. This is the first decision in South Australia in which allowance was made in an award of damages for the value of voluntary services rendered to the plaintiff by relatives.

sustained heavy lifting, nor could he compete equally on the open labour market if forced to do so. Included in his damages was an allowance for loss of profit in his business of \$1,000 following the injury (when he was unable to work) and \$4,800 for the additional cost to his business of employing temporary labour for a time after his injury; it was then found that due to the expansion of his business he would thereafter have been performing essentially managerial functions anyway. Special damages totalled \$1,481.31.<sup>12</sup>

### **COSMETIC INJURIES**

\$20,000 Female factory worker sustained severe facial lacerations and a left shoulder joint injury. She underwent extensive plastic surgery but now has a permanent noticeable facial scarring and premature ageing. She has suffered some matrimonial problems from her injuries. She has partial numbness on the left side of her face producing a tendency to dribble and she underwent considerable pain and embarrassment. She also still has some shoulder pain and headaches after reading too long. Her earning capacity has been diminished in that she is less nimble and less agile and somewhat less attractive than previously, but she has a young child and is not likely to work for some time. Special damages total \$1,483.35 including loss of earnings to trial.<sup>13</sup>

*J. R. Mansfield\**

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12. *Covino v. Elgrave* (1976) 71 L.S.J.Sch. 138 (King J.). Damages were reduced 15% for contributory negligence.

13. *Plesa v. Griffiths* (1976) 72 L.S.J.Sch. 320 (Bright J.). An appeal to the Full Court was dismissed (unreported to date).

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