

PERSONAL INJURIES

Survey of recent awards in South Australia

The present survey covers the period from the 13th September 1966 to the 7th September 1967, and includes summaries of all cases involving claims for damages for personal injuries which have been reported in the Law Society Judgment Scheme during that period.¹

The cases have been categorized according to the injury, or if there are multiple injuries, according to major injury received.

Head Injuries

\$40,000 Married woman aged twenty-three suffered loss of consciousness, multiple lacerations of the face and fractures of the facial skeleton, including a fractured mandible. Her left side was paralyzed. She cannot move her left arm at all, for some sensations it is deficient and for others hypersensitive. She suffers very painful, uncontrollable spasms in the arm, and has to wear a splint in bed to stop the fingers curling up. Pains in the arm may not disappear if the arm is amputated. Her left leg has considerable utility, particularly when in a caliper. Her toes tend to curl up under the foot. Her right eye is blinded and has a squint. Drugs have helped giddiness and headaches from which she suffers, but she has frequent falls. Injury to the spinous process of her neck has caused some distortion of her posture; she has to wear a spinal brace because of an injury to the small of her back. Her face is somewhat misshapen and lumpy and she has, as well as a tracheotomy scar, two other scars on her face and neck. The left side of her mouth droops slightly and is narrower than the right. When she is excited she loses fluency. She cannot cry, but has uncontrollable fits of giggling instead. Her left breast is greatly enlarged. She suffers from urinary frequency. She cannot dress herself without assistance or be left alone as she is always liable to fall or suffer some mishap. She can do some light housework and superintend the cooking. She is completely unemployable and can no longer play any sport. If it is possible for her to have children she would not be able to look after them².

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1. For previous surveys see 2 Adelaide Law Review, 226; 2 Adelaide Law Review 373; 3 Adelaide Law Review 84.
2. *Travers v. Union Assurance Society of Australia Limited* (1967) L.S.J. Scheme 163 (Bright J., May, 1967).

- \$34,500 Married woman aged forty-six who was a chronic alcoholic, emotionally unstable and mentally subnormal, and whose main arteries to the brain showed some signs of degeneration, suffered multiple fractures of the skull and pubic rami, bruises to the face in the region of the right temple, and bruises and abrasions on both legs. She remained semi-conscious for some days. Her mind has become completely "vegetated" and this will be her permanent state. She will require skilled nursing care in hospital for the rest of her life. She would have reached the condition she is in now in about ten years. Her life expectancy is ten years. She is to some degrees sensible of cold and hunger and of being wet and dirty. No amount awarded for loss of life as all she has lost is a period of insanity. \$32,411.96 of the amount awarded represents the future cost of her maintenance in hospital for ten years³.
- \$15,000 Girl aged eight suffered a severe degree of cerebral concussion and was unconscious for about three weeks. Fracture of the left tibia and fibula united well, leaving some dimpling at the fracture site below the knee which is visible to the naked eye and the leg has lost its natural bowing. Transfusion followed by intravenous drip in right leg caused cortical irritation and the foot would not come up to a right angle. Treatment on this with plaster was satisfactory. Injuries aggravated a degree of knock-kneedness for which she had to wear irons for four months; but for the injury irons would not have been necessary. Tracheotomy scar could be improved by an operation costing \$100. Left leg function is not impaired but for the residual deformity aggravating the knock-knee; there is some slight shortening of the leg. Her intellectual development has been retarded and she will always be several years behind others of the same age. In all probability she will be able to earn a living in factory work which involves repetition. Her marriageability is probably affected by her intellectual and emotional condition⁴.
- \$10,000 Eight year old boy sustained a head injury with damage to the mid-brain, a fracture of the left fibula which healed successfully, fracture to the right collar-bone, numerous abrasions and lacerations. He was unconscious for four weeks. He has permanent disabilities in his motor functions in unco-ordination of his left side and significant disabilities in intellectual function. Definite disability in arithmetical matters and to a lesser extent in other intellectual fields. Degree of emotional instability brought on by teasing of other children. He will go through life with physical and mental handicaps which are likely to prejudice both his capacity to earn a living and, perhaps to a minor extent, his other activities⁵.
- \$4,700 Cleaning woman aged fifty-nine sustained concussion, a fine fracture of the skull which caused some headaches and dizziness, an injury

3. *Allan v. Arblaster* (1967) L.S.J. Scheme 69 (Walters J., March, 1967).

4. *Hodges v. Duck* (1966) L.S.J. Scheme 623 (Hogarth J., November, 1966).

5. *Allen v. Sternberg* (1966) L.S.J. Scheme 552 (Chamberlain, J., September, 1966).

to the sixth and seventh cervical vertebrae which has led to a narrowing of the space between them and which is likely to develop an arthritic condition. An injury to the joint of the base of her right thumb has developed an arthritic condition. The injuries have aggravated arterial degeneration and accelerated degenerative changes, namely, inability to concentrate, poor memory and dizziness. Enforced rest led to some minor stiffness in both her knees, due to an incipient osteo-arthritic condition manifesting itself. She was unable to control her bowels on discharge from hospital. Her clothes were damaged and her earning capacity reduced for six months⁶.

\$3,200 Married man aged fifty-four sustained concussion, lacerations to the face and chin, bruised ribs, pierced left lung, a compound fracture of the left side of the jaw and injuries to the right eye and the left hand. He had considerable pain, suffering and discomfort. Apart from a disposition to headaches of greater severity and frequency than before the accident and certain scarring, the main item of permanent injury is his jaw. Two operations were performed on the jaw and pain continued for some time afterwards, and still continues to a lesser extent. He has permanent anaesthesia of the lip; his lower dentures pressing on the site of the fracture causes, and will continue to cause, pain. Position could be eased either by a further operation or by the construction of dentures by a specialist. His dentures require, and will continue to require, a special rubber base. He is, if only minimally, a less valuable employee and a less attractive candidate for employment in the labour market than he was. He is left with his health and enjoyment of life permanently and significantly reduced, though only to a minor extent⁷.

Spinal and Neck Injuries

\$50,000 Milk vendor aged fifty suffered an injury to the neck and spinal cord which rendered him a quadraplegic. He has weak movements of the upper arm, a few movements of the forearm and none of the hands. He will need frequent medical supervision and is susceptible to high or low temperatures. He continues to suffer pain in the shoulders and will continue to endure the indignity and discomfort of being unable to perform any physical activity to assist himself in his bodily needs. He cannot work or undertake the pursuits which were an interest and a pleasure to him. His expectation of life is seven years⁸.

6. *Howlett v. Lee and Poole* (1967) L.S.J. Scheme 255 (Hogarth J., August, 1967).

7. *Netherwood & Netherwood v. Sebestyan & Imray* (1967) L.S.J. Scheme 291 (Bray C.J., September, 1967).

8. *Read v. Watson and Knowles* (1967) L.S.J. Scheme 107 (Mitchell J., April, 1967).

\$5,000 Married woman aged fifty-one sustained concussion, bruises, lacerations to the scalp, the face, the lip and the thumb. The scars are not disfiguring, but they are noticeable, particularly one on her neck which is the result of an operation. She has some restriction in the use of the thumb. Main injury was to the neck and spine. The disc spaces between the fourth and fifth, fifth and sixth and sixth and seventh cervical vertebrae were fused, bone being used from each of her hips to achieve this. She still has continuing headaches and pain in the neck for which she uses drugs. The pain and headaches will continue for a substantial period in the future, though both severity and frequency of the attacks will diminish. The movement of her neck is restricted by about 70% to 80%. She has suffered grave psychological harm and is extremely nervous when a passenger in a car. Her enjoyment of life, her interest and efficiency in her home have been drastically curtailed and she has become practically a recluse. Her nervousness, pain and headaches will tend to diminish on the completion of this litigation. She is now permanently unemployable except by the most unusual and patient of employers⁹.

\$2,000 Female sustained concussion, a laceration to the top of her head and forehead, bruising, a fracture dislocation of the second and third cervical vertebrae and a fracture of the right clavicle. The neck was successfully treated with a bone graft which led to the sacrifice of one mobile joint in the neck. This will throw additional wear on the adjacent joints and degenerative changes will probably take place earlier than would otherwise have been the case. This loss of mobility in the neck renders her more likely to injury from violence. She has visible, but not disfiguring, scars on her forehead, left side of her face and on her right arm. She has a conspicuous lump on her collarbone and a scar on her hip from which the bone graft was taken. The first would be visible with some types of clothing normally worn but the second would not. She occasionally gets aches in her neck and is fearful of injury from sport, or in ordinary life from sharp movements of the neck or falls. Her normal activities were limited for more than three months¹⁰.

Cosmetic Injuries

\$9,000 Married man aged twenty-nine suffered burns on approximately 40% of his body. Though most of the damage was superficial, there were deep burns on the right hand, left elbow, left side of the back and upper parts of the arms. These burns were treated by skin grafts, the skin being taken from his thighs. He suffered intense pain and discomfort during treatment for the burns. The insertion

9. *Netherwood & Netherwood v. Sebestyan & Imray* (1967) L.S.J. Scheme 291 at 293 (Bray, C.J., September, 1967).

10. *Grow v. Williams and Wilson* (1967) L.S.J. Scheme 213 (Bray C.J., July, 1967).

of a catheter led to an infection of the bladder with consequent trouble, embarrassment and discomfort, frequency of urination and dysuria. This condition is now considerably relieved through the use of sulpha drugs, but the weakness remains with a possible, though remote, chance of kidney trouble in the future. He may have to resort to drugs indefinitely. Loss of about 10% vision in the left eye does not represent any substantial disability. He has a significant disability in limitation of the movements of his back due to the burns and their treatment; this is likely to continue indefinitely. The skin-grafted areas are more susceptible than normal skin to damage of various kinds. The scars on his body are unsightly and cause him grave embarrassment, his activities are considerably curtailed through embarrassment and fear of sunburn and back pain. As a result of his injuries he suffered a temperamental change and has become more susceptible to irritation and liable to burst into fits of rage. He may have to change his job for one of lower pay and work shorter hours¹¹.

\$2,500 Apprenticed refrigeration mechanic aged nineteen was burned on both wrists, back of right hand, right leg and, to a lesser extent, on the left leg, feet and under the chin, and some of his hair was burnt. Burn on the right leg extending from just below the knee to just above the ankle was a full thickness burn on which a skin graft was performed leaving a scar some 25 by 14 inches on the front and inner aspect of the leg. He has a barely detectable scar under his chin, scarring around both wrists and on the back of his hand; there is some discolouration at the site of the skin graft on the right shin. He is sensitive about the appearance of his leg. He has a "pins and needles" sensation in ring and little fingers of the left hand which affects him when he has to use the hand in certain attitudes. He has nightmares in which the accident is re-enacted but it is probable these will become less frequent. Use of the equipment which caused his injuries tends to bring on dreams about the accident. Owing to his absence from work his advancement to the next year of his apprenticeship, with corresponding rise in salary has been delayed a year, as has his qualifying to earn the wages of a qualified tradesman¹².

\$2,000 Female aged twenty-eight suffered concussion, severe lacerations of the forehead and scalp, bleeding nose and bruised hand. She is left with multiple scars all over her forehead, left upper eyelid, both cheeks, both sides of the chin, she has an obvious red scar below the left side of the jaw. Small branches of the facial nerves had been cut, leaving her with a permanent inability to raise the left eye-brow or to frown on the left side of her forehead. Although heavily scarred she is not disfigured. She complains of continuous headaches and dizziness which become worse on stooping, and

11. *Bagnall v. S.A. Rubber Mills Pty. Ltd.* (1967) L.S.J. Scheme 282 (Bray C.J., September, 1967).

12. *Williams v. Smith* (1966) L.S.J. Scheme 671 (Mitchell J., December, 1966).

periodic backache and occasional sleeplessness, all of which are probably caused, to some extent, by her personal affairs. She is suffering from a "convergence weakness" in the extra-ocular muscles which will respond to treatment and relieve her headaches¹³.

Injuries to Hand and Arm

- \$3,000** Wool presser sustained a fracture of the base of the second, and possibly the third, metacarpal of the left hand. This has resulted in a residual disability in the hand of 15% due to pain on certain movements; this pain is added to by a local arthritic condition which is not likely to involve other joints. The arthritic condition may degenerate slowly. He is, apart from his hand, fit for ordinary labouring work. Though unfit to return to his job as wool presser he is not much worse off financially. He is less well-equipped in a struggle for employment because of his impaired hand. Worry caused by being unable to work led to stomach aches and dizziness which have now gone¹⁴.
- \$1,600** Married woman suffered a dislocated hip, broken wrist, lacerations on both legs, under her chin and on her left cheek. Dislocated hip was reduced successfully: she still gets some pain in it on change of weather. The lacerations healed mostly without disfigurement except for the laceration under the chin which presents a noticeable red patch. Main disability is in the wrist where there is instability in the radio-ulna joint between the bones of the forearm just above the wrist joint. This results in weakness, pain and sometimes swelling. A small bony spur of little significance formed in the soft tissue between the radius and the ulna. There is some soft tissue irritation in the wrist which might become worse and require the removal of the plate which was inserted in the wrist. This operation would cost \$200 and would not affect the stability of the wrist. Weakness in the wrist makes her unable to hold some household objects in the left hand. A sensation of pins and needles in the wrist if she gets a fright while driving is of psycho-neurotic origin and is of no great importance¹⁵.
- \$1,250** Married woman sustained bruises and small cuts on her body and a small cut on her head which soon cleared up. She had a broken rib which healed normally. Her main injury was to her left shoulder and arm; severe inflammatory condition of the tissues around the shoulders, called pericapsulitis, caused severe pain and limitation of movement. A stable condition was reached some twelve or fifteen months after the injury was received. She has a slight residual

13. *Stamouli v. Coates and Infantidis* (1966) L.S.J. Scheme 577 (Chamberlain, J., October, 1966).

14. *Hardy v. Pastoral Shearing Co. Ltd.* (1967) L.S.J. Scheme 191 (Bright J., June, 1967).

15. *Linke v. Howard* (1967) L.S.J. Scheme 1 at p. 13 (Hogarth J., January, 1967).

weakness in the left arm, some aching on change in weather, a permanent slight subluxation which causes no symptoms and a slight restriction in movement of the arm. She is able to carry out her full domestic duties unaided¹⁶.

Leg and Pelvis Injuries

\$20,000 Shearer aged thirty-nine sustained a compound fracture of his right femur, a fracture of the right upper tibia involving the knee joint, a compound comminuted fracture of the right tibia and fibula and a probable dislocated left knee with severe ligamentous damage. He underwent six operations on his knee, all of which caused him considerable pain and involved intensive painful physiotherapy. He is unable to work as a shearer and it would be difficult for him to work in a factory production line owing to cramp in his legs and pain from the right hip extending down the right leg which makes it necessary for him to move his position frequently. He is unfitted for clerical work. He must use a stick at all times and will probably develop arthritic changes in both knee joints, with a possibility that in later years he may develop arthritis in the lower hip and lumbar spine. He has presbyopia which would not have developed for five years. There is some scarring to the face and arms which is not of a major significance. He wears built-up shoes to compensate for a $\frac{1}{2}$ inch shortening of his right leg. Loss of earnings assessed at \$1,495¹⁷.

\$16,000 Married woman aged thirty-five suffered shock, concussion, a severe injury to her left leg which necessitated amputation some $3\frac{1}{2}$ inches below the knee, a compound fracture of the right tibia at the junction of the middle and upper third of the leg, a fracture of the left collarbone, sundry lacerations and multiple bruising. She has been fitted with an artificial leg to which she will gradually accommodate herself. She suffers pain in the amputated leg and in her right leg, the ankle of which is swollen and the site of the fracture abnormally sensitive. The left collarbone is deformed but has adequate function and pain is now minimal. An injury to the lower joints of the neck causes pain in the right arm which will not disappear for a long time. There is a neuroma in the divided end of the popliteal nerve which will persist in causing pain and tenderness, the pain may increase and the neuroma will then have to be removed. She is unable to attend to the heavier of her household duties or to her gardening. She has been rendered less happy and less comfortable in her inability wholly to care for her children; the artificial limb would render any further pregnancies more uncomfortable¹⁸.

16. *Sawczuk v. Fawcett* (1967) L.S.J. Scheme 167 (Bright J., June, 1967).

17. *Williams v. Smith* (1966) L.S.J. Scheme 671 (Mitchell J., December, 1966).

18. *Festa v. Moss and another* (1967) L.S.J. Scheme 79 (Mitchell J., March, 1967).

- \$10,000 Arc welder aged forty-seven sustained mild concussion, comminuted fractures of the right tibia and fibula and the upper half of the right femur, a fracture of the neck of the right fifth metacarpal and haematuria, probably due to contusion of the right kidney. He is left with his right leg 2 inches shorter than his left and an infected bone which flares up periodically, occasioning frequent medical treatment and considerable pain and discomfort. This condition is likely to remain indefinitely and there is a slight possibility that the lower leg will, at some time, have to be amputated. He has been able to resume his former work but not before using his accumulated sick leave. He had to employ domestic help during his incapacity. There is some possibility of future economic loss and diminution of earning capacity in that if he has to leave his present employment he will be hampered in his competition with other tradesmen in the labour market, both because he has to sit down to work instead of standing up and because he is likely to be absent from work through sickness more often than the average arc-welder would be. He will not be able to work the full hours of a normal working year. The possibility of amputation means a possibility of further economic detriment¹⁹.
- \$10,000 Pipe fitter aged forty sustained a compound fracture of his right tibia and fibula. He had large lacerations behind his right knee, the treatment of which has left the skin tighter around the knee than it should be and consequently the knee has some limitation of movement. The tibia is now stable, the leg being between $\frac{1}{2}$ inch and $\frac{3}{4}$ inch shorter than the left leg, and it is desirable he should wear a built-up shoe to correct his posture. There is gross and obvious scarring around the skin wound. His right foot lacks spring and there is a limitation of movement of the foot. In consequence of his disabilities he can work only a bare five-day week and is less agile than formerly. He cannot walk well on rough ground. There is a possibility that he will sustain low back-ache and arthritic changes. He is less employable now because of his disabilities and his enjoyment of life is limited. He is unable to work overtime²⁰.
- \$6,400 Motor mechanic aged fifty-two sustained fractures to the fifth, sixth the left side front of his body. This pain continued for approximately seventh ribs on the left side, causing pain down the whole of mately twelve months. A fairly severe bump on the forehead resulted in headaches which gradually improved and virtually disappeared after some ten or twelve weeks, then recurred some twelve months later but have now disappeared. His most serious injuries were to his knees which became swollen soon after he returned to work. A bursa in front of his left knee was removed by operation. His

19. *Cochiara v. Woolcock* (1967) L.S.J. Scheme 285 (Bray, C.J., Travers & Mitchell JJ., September, 1967). Chamberlain J., (1967) L.S.J. Scheme 188 had assessed the plaintiff's general damages at \$8,000 for pain and suffering and loss of the enjoyment and amenities of life. He allowed nothing for future economic loss. The Full Supreme Court awarded \$2,000 under this heading.

20. *Ruzic v. Smallacombe* (1967) L.S.J. Scheme 193 (Bright J., June, 1967).

left knee is noticeably swollen and there is scarring on both knees. He walks with a slight limp and has pain in both knees particularly when he kneels or works on the under or lower parts of vehicles. There are slight changes in both knee caps, the left being worse than the right, in keeping with early osteo-arthritis. He will probably develop some considerable degree of osteo-arthritis between the patella and the femur in the left knee which, as he grows older, will restrict his knee movements, with stiffness and pain making it difficult for him to continue work. The right knee will deteriorate at a slower rate than the left. His loss of enjoyment of his annual holiday and loss of earning capacity were assessed at \$280²¹.

\$6,000 Unqualified welder suffered a comminuted fracture of the mid-shaft of the right femur, a complete disorganization of the right knee joint including a tearing of both cruciate ligaments, fracture of the right tibial condyle and a torn medial ligament, a fractured shaft of the right fibula and shock. Fracture of the femur did not unite and a metal pin had to be inserted and a bone graft performed. His right leg is between $\frac{3}{4}$ and 1 inch shorter than the left, as a result of which he stands, when barefooted, with a tilted pelvis and a compensatory spinal curvature. He normally wears a built up shoe and walks with a limp which is more pronounced when he is barefooted. He has healed scar over sites of operations. Right knee will flex to only 90° and lacks the last few degrees of extension. He has limitation of upward flexion of the right ankle. Likely that very painful traumatic arthritis will develop in the knee. May develop pain in his back owing to standing with a curved spine. Sporting and social activities are limited by his disability which is also likely to interfere to some extent with his ability to work²².

\$6,000 Polisher and part-time market gardener aged sixty-two sustained a fracture of the middle lower left leg which was repaired by inserting a plate. His left foot is in a fixed position with the toes pointing downwards at an angle of about 10 degrees. He has swelling in his left ankle and knee from the accretion of excess fluid in and about the left leg; fluid was present in other parts of his body. He will require a diuretic injection fortnightly for the rest of his life to keep this condition under control. There is slight lateral bowing of the leg and the knee has osteo-arthritis which causes only slight limitation of flexion. The sub-taloid and mid-tarsal joints have no movement at all. He still has some pain and aching, especially on changes in weather. He walks reasonably well though with a slight limp and somewhat unsteadily at times; he uses a walking stick as a precautionary measure. He is able to do some fairly strenuous work with a hoe for up to about half an hour but not sufficient to enable him to be employable in any available remunerative employment. He is unable to work as a full-time market-gardener as he had intended to

21. *Linke v. Howard* (1967) L.S.J. Scheme 1 (Hogarth J., January, 1967).

22. *Carnsew v. Bruhn* [1966] S.A.S.R. 397 (Hogarth J., October, 1966).

do when he reached sixty-five. He would so have worked for approximately two years²³.

- \$5,250 Male aged sixty-one sustained a fracture of the neck of the left femur. During the time he was walking on crutches he suffered from crutch paralysis for three weeks, from which he recovered in two months. He had some residual weakness in his hands from the paralysis for an extensive period. His left leg is about $\frac{3}{4}$ inch shorter than the right which has an aggravating effect on his degenerative arthritis of the spine. He is able to do a full day's work but his leg gets very tired and heavy before the end of the day; he is unable to do as much gardening as he used to. He now walks more slowly, tires more easily and has lost a great deal of the enjoyment of life²⁴.
- \$4,500 Barman suffered a double fracture of the left femur and laceration of the left knee-cap. A pin was inserted in the upper end of the left tibia and both legs were placed in Thomas splints. He suffered acute pain and discomfort after these surgical procedures and the pain persisted whilst his legs remained in splints. He suffered further severe pain in his leg after an operation to fix the upper fracture by an intramedullary nail and bone graft. The femur mended soundly but his left leg is $1\frac{3}{4}$ inches shorter than his right and he has lost 20 degrees of flexion of the left knee and there remains an external rotation deformity. Some of these disabilities may be attributable to an old fracture of the tibia, the recent injuries having caused some aggravation of the pre-existing condition of the leg. The shortening of the leg brings on a feeling of tiredness after prolonged standing. He is able to perform his work satisfactorily, without inconvenience to himself, although at times he is conscious of a twinge or smart in his left leg and weather changes produce pain in the leg²⁵.
- \$4,500 Female "belt picker" aged sixteen sustained a fracture of the left femur, the left side of the pelvis and contusions of the left foot. A metal pin which was inserted in the fracture of the femur extruded and had to be removed. The fracture gave way and the pin had to be re-inserted and a graft performed. She has pain in the region of her knees and left hip and ankle; her knee gives way and causes her to fall. There is some wasting away of the thigh muscle which can be corrected by physiotherapy. Some bone thickening and slight displacement of a joint in the ankle is likely to produce future discomfort, but is not likely to progress. She has a long and somewhat unsightly scar on her outer thigh, which is obvious when she wears bathers or shorts. She suffers from nervous trouble and takes tranquillisers for this; it is expected to clear up in due course, as is the pain and discomfort she still suffers²⁶.

23. *Raschella v. Duggan* (1967) L.S.J. Scheme 216 (Travers J., July, 1967).

24. *Bywaters v. Carpenter* (1967) L.S.J. Scheme 97 (Bright J., April, 1967).

25. *Waldron v. Thorpe and Yeing* (1967) L.S.J. Scheme 307 (Walters J., September, 1967).

26. *Mattner v. Mattner and Another* (1967) L.S.J. Scheme 189 (Chamberlain J., June, 1967).

- \$3,000 Married woman aged forty-three suffered distress, shock and an injury to her right leg which was swollen and extensively bruised with a laceration on the front part in about the middle of the lower third. Abrasions to the back of her right hand and fingers cleared up within a normal space of time. The condition of her right leg was complicated by the development of an inflammation of the veins caused by a thrombosis in the deep venous system which resulted in a marked breaking down of the valves of the deep venous system and of the communicating veins. This has led to swelling in the leg and necessitates her wearing an elastic bandage or stocking. She has an area of pigmentation over her right calf measuring about 5 inches by 2½ inches at its widest which would not be obvious to a casual observer. Various operation scars on the leg can be seen when the leg is bare. She is deeply affected emotionally about her disability and this has led her to alter her way of life so that she has not even faced the prospect of trying to revert to her pre-accident activities, in which she could, in fact, indulge, though with some discomfort to herself. Her future earning capacity may be affected to some extent²⁷.
- \$2,400 Motor cyclist aged seventeen suffered severe shock and concussion, lacerations to his forehead and left elbow and minor injury to teeth. Main injury was a badly bruised right leg which still becomes painful and swollen after physical activity; any permanent disability is of a minor nature. Concussion affected his memory and ability to concentrate resulting in the loss of a year in his education. A disfiguring scar requires plastic surgery²⁸.
- \$1,500 Waitress suffered a small laceration on the forehead and a fracture of the pubic rami on both sides, but with little displacement. She still has pain in her back and leg, but this is diminishing in intensity. Disturbance to the fourth and fifth lumbar nerve roots could cause lumbago or sciatica to develop. She is able to carry on her job as a waitress²⁹.

Chest Injuries

- \$7,000 Married woman aged sixty-two sustained moderate concussion from which she recovered without complications. Main injury was a series of fractures of the ribs on both sides of her chest, resulting in a "flail chest", punctured lungs and injuries to the pleural spaces. A tracheotomy was performed and a stenosis in the trachea developed. Tracheotomy tube, with an attachment to enable her to speak, was inserted permanently. This apparatus is quite noticeable and cannot

27. *Skewes v. Wilson* (1967) L.S.J. Scheme 154 (Hogarth J., May, 1967).

28. *Foster v. Zoerner* (1966) L.S.J. Scheme 554 (Chamberlain J., September, 1966).

29. *Stamouli v. Coates and Infantidis* (1966) L.S.J. Scheme 580 (Chamberlain J., October, 1966).

be hidden by clothing. Chronic bronchitis from which she suffered previously causes her considerably more distress now, and as her bronchitis becomes worse, the tracheotomy may become more of a handicap. Frequent coughing to clear the mucus through the tube has aggravated a pre-existing prolapse of the uterus and she has to wear a pessary to control it. Expectation of life is somewhat lessened and she has lost a good deal of the enjoyment of life in that she becomes tired and irritable very easily³⁰.

\$4,000 Dressmaker aged forty-two sustained a mild head injury resulting in shock and concussion from which she recovered without any complications, multiple fractures of the third to ninth ribs on the left side of her chest and bilateral fractures of the superior and inferior pubic rami, multiple contusions and lacerations, including a deep laceration of the left ankle. She developed a collapse of the left lung brought about by pleural effusion. The effusion resulted in some pleural scarring. Her convalescence took seven months. The rib fractures have interfered with her normal chest movement; there is bulging of her chest wall, a degree of breathlessness now subsists and deep breathing or sneezing produces discomfort on the left side of the chest. This condition may improve with time. There is some deformity of the left sacroiliac joint, producing slight limitation of hip flexion. The alteration in the shape of the chest wall and subluxation of the left sacroiliac joint are likely to cause her more pain and discomfort than an ordinary person as she has a pre-existing idiopathic curvature of the spine. She has difficulty in standing erect on rising in the morning, pain on sudden body movement and discomfort with any change in the weather or after standing for any appreciable length of time. These sensations will persist and probably become more intense as she grows older. Her residual disabilities are not likely to affect her earning capacity or interfere with her enjoyment of life³¹.

\$4,000 Male aged fifty-eight, suffered a linear fracture of the skull and fractures of the fourth to eighth ribs, posteriorly on the right side. He now suffers from angina of effort due to coronary artery disease and left ventricular hypertrophy which may not ever have manifested itself but for the injuries he received. Considerable limitations imposed on his general activities but up to the time of trial his earning capacity was not impaired. He will incur regular expense for drugs³².

\$4,000 Foreman checker suffered an abrasion over the right temporal region of the scalp which has left a scar which tends to redden if the skin becomes sunburned but otherwise is not very noticeable. Major injuries were fractures of the second to the seventh ribs, inclusive, on the right side and a pneumothorax. He was in considerable pain

30. *Carter v. Veatrike* (1966) L.S.J. Scheme 522 (Bright J., September, 1966).

31. *Peregi v. Lipski* (1967) L.S.J. Scheme 118 (Walters J., April, 1967).

32. *Rickman v. Waddington* (1966) L.S.J. Scheme 535 (Chamberlain J., September, 1966).

for ten days and it was some five months before he was able to resume his normal duties. Chest expansion will never return to normal; he will continue to have pain in the region of the back and sacroiliac joint due to a fracture of the sacrum. There is tenderness over and below the left iliac crest in the region of which is a palpable depression; the right gluteus maximus muscle has been partially crushed and detached from the iliac crest. He has a spondylolisthesis. Pain in this area, and in the area of the left iliac crest and below it, is likely to continue and there is a possibility he may at some future time have to undergo a spinal fusion. He suffers from shortness of breath which will continue and also from headaches which are concussionial in origin³³.

Miscellaneous Injuries

- \$15,000** Earth-moving contractor suffered concussion, facial abrasions, fracture of the third and fourth ribs, fracture of the scapula (left side), fracture of the right tibia and fibula. The scapula united firmly but there may be arthritis in later life; he will need occasional pain-killing drugs. The concussion, abrasions and rib fractures have caused no residual disability. Leg has healed quite well now, but the tibia was slow to unite and had to be fastened by screws. He has full painless movement of the knee but his ankle is a little stiff and lacks 15° of movement in each direction. There is a little angulation at the fracture site which is not very significant but affects his posture slightly. The ankle swells at times. His earning capacity was impaired. He developed mental depression as a reaction to the loss of his wife and baby and the injuries he sustained, with a consequential sense of inadequacy to carry on his business³⁴.
- \$9,000** Male aged twenty-seven sustained a fractured shaft of the right fibula, laceration of the right elbow, dislocation of the right sternoclavicular joint, lacerated scalp and concussion. He suffers from time to time from dizziness and aches in the shoulder, head and leg which have become somewhat magnified in his mind by reason of his "brooding" over his condition and "his depressive state" which resulted from his injuries. His fears and worries should be alleviated to some extent by the conclusion of litigation³⁵.

33. *Watherson v. Miller* (1966) L.S.J. Scheme 661. (Mitchell J., November, 1966).

34. *Hamlyn v. Hann and Heagney*, unreported judgment delivered on 24th November, 1967 (Chamberlain, Mitchell and Walters JJ). This was an appeal from the judgment of Bright J., (1967) L.S.J. Scheme 204. Bright J. had found he could not effect a clear separation between the suffering for which section 23b of The Wrongs Act 1930-1959 provided for payment of solatium, and emotional re-action of the appellant, and so did not award damages for consequential loss flowing from the suffering. The Full Court awarded \$3,000 under this head. Bright J. had awarded \$1,000 for loss of earning capacity, this was increased, by the Full Court, to \$8,000.

35. *Fotopoulos v. P.M.G. and Jeffries* (1967) L.S.J. Scheme 268 (Travers J., August, 1967).

- \$5,500 Married woman suffered concussion, fractures of the fibula at the right ankle and of the left scapula, and severe abrasions and lacerations to her left forehead, left cheek and left shoulder, with extensive impregnation of bitumen into the subcutaneous tissue of those areas. She also sustained torn muscles and ligaments of the left shoulder, severe contusions of the left knee joint, left leg and left foot. Both her legs were severely bruised, with swelling, particularly in her left leg. She had lacerated lips and her right eye tooth was broken off. She still has pain in her left shoulder and arm and radiating down the left side of her body. If she does not exercise her shoulder the pain is likely to increase. The pain is associated with a large fibrous lump in the left sacroiliac region of her back. She has headaches about once a week or fortnight, resulting from the concussion, which are likely to continue. The scarring to her face is not readily noticeable. A scar on her left shoulder approximately 4 inches by $1\frac{1}{2}$ inches contains streaks of black from the bitumen which is noticeable when she wears bathers and some types of evening dress. It is not grossly disfiguring. She has some irritation from a small lump at the back of this scar; she also has a small lump on her lip. Her left ankle swells when she is tired and her legs swell in summer more than previously. She has been fitted with an artificial eye tooth³⁶.
- \$4,000 Widowed pensioner aged eighty-one suffered concussion, shock, fracture of lower jaw, left ankle, upper part of left lower leg below the knee and upper part of the left thigh bone at the hip as well as abrasions and some lacerations. As complications of her injuries she developed atrial fibrillation and also showed mild diabetic tendencies. Her lower lip is numb on both sides and she has a tender swelling on the left side of the lower jaw. Her left hip healed with some deformity and becomes painful when she walks. The left knee is painful and rather stiff. She suffers considerable pain on changes in weather. She has become completely dependent on others, whereas, before being injured, she was completely self-sufficient. She is "house-bound" with the prospect of gradual deterioration and the possibility of spending her last days in an institution³⁷.
- \$2,500 Female pensioner aged sixty-four suffered shock, lacerations to the left parietal region of the scalp, lacerations over the lower medial aspect of the right tibia, a contusion in the region of the left ankle and a contusion over the left lower ribs. Skin graft over the laceration on the right leg was performed. She will continue to have some degree of pain if she does much walking or standing. The accident constituted a severe shaking up for a woman of her age, which she felt to a far greater extent than she would have had she been younger, with the result that she now suffers from hypertension³⁸.

36. *Sheldrick v. Drew* (1967) L.S.J. Scheme 252. (Hogarth J., September, 1967).

37. *Ryan v. Freeman* (1966) L.S.J. Scheme 697 (Travers J., December, 1966).

38. *Young v. Harvalik* (1966) L.S.J. Scheme 631 (Hogarth J., November, 1966).

- \$2,400 Married woman as a result of an accident had a miscarriage and received injuries to the left knee, and lost a tooth. The ligaments of the knee were strained and this left her with periodical pains and aches, particularly at the time of weather changes, or when performing certain actions. These aches and pains are likely to continue indefinitely, though the disability is only slight. She was genuinely distressed by the miscarriage, and it set up an anxiety state in her which still continues. She suffers from dizziness, headaches and nervous dyspepsia. She worries a lot and frequently cries, and no longer goes out to the amusements which she used to attend before the accident. Her psychological disability will diminish and probably disappear in the course of time; it may be assisted by the termination of litigation³⁹.
- \$1,800 Married woman aged twenty-nine suffered burns to the rectum and severe proctitis, which led to anal stricture. Original burn to the rectum healed without demonstrable scarring, narrowing of the bowel or residual inflammatory change in the rectal lining. Her injuries caused her prolonged and intense pain and suffering as well as severe mental stress and nervous disturbance. Anxiety should be removed by litigation ending⁴⁰.

39. *Falidis v. Eatts and The London & Lancashire Insurance Co. Ltd.* (1967) L.S.J. Scheme 275 (Bray, C.J., August, 1967).

40. *Rosciolo v. Ru Rua Hospital Incorporated* (1966) L.S.J. Scheme 702. (Walters J., December, 1966).