

# PERSONAL INJURIES

## AWARDS IN SOUTH AUSTRALIA, 1970-71

This survey covers the period from 1st October, 1970, to 31st October, 1971, and includes summaries of all cases involving claims for damages for personal injuries which have been reported in the Lew Society Judgement 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 any contributory negligence. Information relevant to the assessment of loss of earning capacity has been included where available 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 s.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 and an appropriate footnote recorded.

### Head Injuries

- \$25,000 Housekeeper and married woman aged 43 sustained concussion, and brain damage. She is now only slightly better than an imbecile, and can do nothing apart from dressing herself. Prior to the accident she was employed part time as a housekeeper earning \$6 per week. She is aware of her uselessness and is most unhappy about it, and the injury has dramatically affected her personality and her way of life. There is a possibility of her being admitted to a nursing home in the future. General damages include loss of earnings for six years to the date of the award of \$2,808<sup>1</sup>.
- \$25,000 Male sustained head injuries resulting in loss of sight of right eye, ugly scarring above left eye, and a post traumatic neurosis causing perpetual headaches. He was hospitalised for 253 days and his treatment was painful. Although he was of low intellect and had inadequate schooling, he had been regularly employed prior to this accident and is now wholly and permanently unemployable. Prior to the accident his employment was greatly restricted, but he was working as a labourer in the timber industry and to the date of the trial had he continued that work, he would have earned approximately \$14,232. His enjoyment of life is inhibited, but not greatly, and he has given up certain activities. He is employed in a sheltered environment at present. His special damages do not include any loss of wages<sup>2</sup>.
- \$13,000 Widowed teacher aged 50 sustained concussion, extensive facial injuries including fractures of the facial skeleton and teeth damage, fracture of the transverse process of 7th cervical vertebra with muscle bruising and bruising around right shoulder. She suffered severe pain in right shoulder and in the left side of her face and was off work for two months. She is left with substantial scarring on the left temple and left side of her face near the ear and on her neck. She has no feeling in the left cheek. She has lost her sense of smell and

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1. *Paroczy v. Cook* (1971) L.S.J. Scheme 1,024 (Bray C.J., Walters and Wells JJ.) allowing an appeal from Sangster J. and increasing the award of damages.

2. *Neale v. Gregory* (1971) L.S.J. Scheme 237 (Sangster A.J.). An appeal to the Full Court against the apportionment of liability only was dismissed: see (1971) L.S.J. Scheme 1,030 (Bray C.J. Walters and Wells JJ.).

her sense of taste has been reduced. She suffers from reduced intellectual capacity in that her concentration and memory are poorer. She is susceptible to episodes of giddiness and fainting. She is now obliged to wear glasses. She is embarrassed by her scarring and her teaching ability has been reduced; she needs to try harder to preserve the standard of her work and salary appreciation is restricted through her mental difficulties. She has probably been deprived of the opportunity to become a classified teacher which would involve an increase in earnings of about \$500 per year. The greater strain caused by her work has reduced her enjoyment of life. She suffered considerable pain and discomfort and continues to do so<sup>3</sup>.

\$10,000 Married woman aged 26 sustained concussion with cerebral injury, fractured tibia and compound fracture of right lateral femoral condyle. Temporary paralysis of left arm recovered slowly. The leg fracture was pinned and subsequently reduced under operation when screws were inserted to fix fragmented bone and a Thomas splint applied. The pins were later removed. She has difficulty climbing stairs, and faces the probability of premature osteoarthritis and the possibility of arthrodosis of the leg at some time in the future. The cerebral injury affects the use of her left leg at some time in the future. The cerebral injury affects the use of her left hand and she has loss of power in her left shoulder and elbow so that she is unable to perform fine movements with her fingers nor any movements requiring strength; she has some difficulty in household chores. She could not now obtain employment, but she would not have worked much anyway. She also has some headaches which will persist but are not of great significance<sup>4</sup>.

\$10,000 Male aged three years sustained concussion and head injury, fractured left tibia and abrasions. He had a full length plaster on his left leg, which recovered within a few months. In hospital he had convulsions and partial paralysis. He has undergone a personality change from a placid to an aggressive child, and has suffered brain damage with epileptic manifestations and the high possibility of future epileptic convulsions with consequential diminution of his earning capacity through the restricted choice of occupations available to him<sup>5</sup>.

\$6,500 Labourer aged 20 sustained concussion, deep scalp laceration over left eye to bridge of nose, compound fracture of skull, severe brain bruising, fractured nasal bones and extensive facial bruising. He had some paralysis of eye movement for a time. He was discharged after six weeks and resumed employment after two months. He suffered a great deal of pain and emotional distress. He has a deep thickened oblique scar over his left forehead to his nose which was subsequently repaired and is now only slightly visible. He has slight weakness of facial muscles on the left side. His nasal deformity was corrected by operation. His sense of smell is impaired, and he has lost his sense of taste. He has 50% loss of use of one eye which produces double vision and blurring after prolonged reading, and adversely affects him in clerical work. He also suffers headaches on occasions and is more easily tired and suffers fits of depression. He was deprived largely of the amenities of life for two years but will be fit to resume sport again shortly and there is no damage nor any risk of further deterioration of his physical condition. The injuries have had minimal effect on his prospects of promotion<sup>6</sup>.

3. *Virgo v. Clayton* (1970) L.S.J. Scheme 678 (Mitchell J.).

4. *Pace v. S.A. Insurance Co. Ltd.* (1971) L.S.J. Scheme 802 (Hogarth J.).

5. *Jamieson v. Royal Insurance Co. Ltd.* (1971) L.S.J. Scheme 1432 (Judge Mohr).

6. *Jukes v. Minister of Works* (1971) L.S.J. Scheme (Walters J.).

**Back Injuries**

- \$37,500 Female factory worker aged 21 sustained concussion, fractured 1st lumbar vertebra, fracture dislocation of 12th thoracic vertebra, deformity of the spine in the mid-lumbar region and lacerations. She is now a partial paraplegic. She had some rods inserted into her spine, which will have to be removed, a laminectomy operation and a long period of treatment and rehabilitation of about two years which was embarrassing and humiliating. She cannot control bladder movements and uses a plastic bage for urine with considerable embarrassment and trouble. She is unable to run and walks with a limp and dragging of her leg and she has clawing of her right foot. She has little prospect of marriage and her injuries have greatly reduced her enjoyment of life; she was previously very active. She had partly trained as a nurse but it was unlikely that she would have completed that training in any event. Her loss of earning capacity would be approximately \$10 per week if she could get work, but at present she is fit for semi-sedentary work only and has lost a substantial percentage of her capacity to work. Her future medical treatment was estimated at \$7,500 and included in general damages<sup>7</sup>.
- \$30,000 Bricklayer aged 45 sustained injury to the lowest lumbar disc, a torn medial cartilage in his right knee, and minor injuries. He was hospitalized for three and a half weeks and after treatment he resumed work as a bricklayer after five months. He was unable to maintain that employment, and subsequently underwent an operation to fuse the spine at the level of the affected disc and for removal of the cartilage from the knee. He now has signs of degeneration in the discs in his lumbar spine due to the extra pressure upon them. He suffers frequent nagging back pain and discomfort, and is totally disabled from heavy labouring work and is fit for sedentary work only. He is precluded from any significant activity. His capacity to work as a bricklayer has been destroyed, and he has been unable to obtain suitable light work or sedentary work. He has reasonable prospects of employment in the future as he is doing a book-keeping course. His earning capacity has been at least halved, and reduced from about \$80 per week to \$40 to \$50 per week<sup>8</sup>.
- \$27,500 Married woman aged 46 sustained a fractured dislocation of the spine which now renders her a quadraplegic. The injury has shortened her life capacity from in excess of 30 years to seven years, and she is now permanently hospitalized and only able to do very limited movements. She is susceptible to infections because of her inability to move. Prior to the accident she was in excellent health, but she is now totally dependent upon others for her support<sup>9</sup>.
- \$9,000 Male aged 40 sustained injury to his lumbo sacral region and was totally incapacitated for 22 months and fit for light work only for a further two and a half years. He then regained his full capacity to work thereafter except for 25% residual disability of his back following a fusion operation. He failed to obtain light work during the two and a half year period due to his unjustified failure to rehabilitate himself. His earnings during total incapacity would have been approximately \$50 per week and his potential earnings during the interim period \$50 net and from light work potentially \$35 per week. Thereafter he earned about \$42 per week net. He underwent pain and suffering and loss of amenities of life during treatment and thereafter and will have more or

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7. *Hollingsworth v. Gelok* (1971) L.S.J. Scheme 1,402 (Zelling J.).

8. *Bremert v. Clark* (1971) L.S.J. Scheme 315 (Bray C.J.).

9. *Lamb v. Hunnerup* (1971) L.S.J. Scheme 345 (Sangster A.J.).

less continual discomfort from now on although without much loss of amenities<sup>10</sup>.

- \$8,000 Female sustained fractured skull and concussion, fractured pelvis through left pubic bone and right inferior pubic ramus, and crushed and comminuted fracture of third lumbar vertebra. She was in hospital for three weeks. The lumbar fracture united but she is restricted in back movement to two-thirds normal and has some periodic pain which is likely to continue but not to deteriorate. There is a remote possibility of a fusion operation at the area. She is able to do housework, but not to play tennis. She has a very slight limp and minimal right hip disability. Her head injury has resulted in defective memory and depression, irritability, noise sensitivity, and lack of emotional control. She previously assisted her husband in a printing business, and her capacity to do so is reduced and she loses the satisfaction of helping her husband. Her daily life is troublesome but the depression will gradually improve with treatment. She will continue to suffer from loss of memory and some headaches and some backache and will need regular analgesic medicine which will cost about \$60 a year<sup>11</sup>.
- \$7,500 Shop proprietor sustained ruptured duodenum, fractures of the 9th, 11th and 12th thoracic and 1st lumbar vertebra, and a fractured left 6th rib. His treatment was complicated through the development of an abscess. He was fitted with a spinal brace. His injuries were painful. He now has back pain periodically, and frequent episodes of constipation. He has a large scar on his abdomen. He was previously very active, and now is in partnership with his wife in a shop business. He is handicapped to some extent mainly through inconvenience. His income for one year was halved. He now suffers no particular financial loss and will not do so in the future, but his physical restrictions are permanent and there is a possibility only of arthritic degeneration in his back<sup>12</sup>.
- \$6,500 Labourer aged 30 sustained ligamentous injury in the region of his 1st lumbar vertebra and a rib injury. The rib injury cleared up. He was totally incapacitated for six months, with a loss of wages of \$810, and partially incapacitated for a further 21 months. He then returned to work with no further monetary loss. He now has no significant permanent disability for work from his back injury though he suffers episodes of pain, and his enjoyment of life is restricted as a consequence and he has some difficulty sleeping. His damages for past and future loss of earning capacity were assessed at \$3,500, and total award was for \$6,500 general damages<sup>13</sup>.
- \$2,750 Female art student aged 24 sustained a crush fracture of the superior surface of the 3rd lumbar vertebra, and large haematoma in the left thigh. She has residual swelling in the left thigh, painful to the touch, which is noticeable when wearing bathers. She also suffers pain in the back on strenuous exertion or after sitting for a long time, and will have this mild pain and discomfort almost daily. This will cause some difficulty when caring for children. She was nervous in a car for some time. She suffers no loss of earning capacity apart from the pain and discomfort<sup>14</sup>.

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10. *Trocko v. Renlita Products* (1971) L.S.J. Scheme 1,281 (Wells J.).

11. *Cowey v. Sitariski* (1971) L.S.J. Scheme 175 (Mitchell J.).

12. *Shelley v. Shelley* (1970) L.S.J. Scheme 651 (Hogarth J.).

13. *Asininidis v. Ready Mixed Concrete (S.A.) Pty. Ltd.* (1970) L.S.J. Scheme 728 (Zelling J.).

14. *van Rood v. Gray* (1970) L.S.J. Scheme 737a (Judge Mohr).

\$1,800 Female aged 30 sustained severe bruising to her right buttock and upper thigh, bruises to her right forearm and minor injury to a lower lumbar disc. Her injuries recovered within about three weeks, but leaving her with residual disabilities in the form of discomfort and sporadic pain and weakness in the right leg and of backache after effort or prolonged standing. She has an increased susceptibility to further back injury. She is now restricted in her sporting and general activities, and she was previously fairly active. She has suffered minimal loss of earning capacity<sup>15</sup>.

### Neck Injuries

\$21,000 Foundry worker aged 38 sustained soft tissue injury to neck, and minor injuries. He returned to work for a short time but was unable to manage and has been unemployed for three years. Head and neck movements are restricted and the condition is slowly getting worse. He suffers from giddiness and headaches and is liable to lapses of concentration. The neck injury manifested pre-existing spondylitis which may have come on at a later stage, but which now renders him fit for light work only and with the prospect of time off periodically. His anticipated working life is 27 years, and he was awarded \$14,000 for economic loss including approximately \$2,000 per year for the last three years and a future partial loss of earning capacity of about \$4 per week. For his pain and suffering and loss of amenities he was awarded \$7,000<sup>16</sup>.

\$8,450 Middle aged nurse attendant who had previously undergone a laminectomy operation and had a degenerative neck condition sustained severe injuries to her cervical and lumbar spine. She is now unable to resume work as a Nurse Attendant. She suffers severe headaches which are relieved by painful injections, and pain in the neck and back. She is unlikely to obtain employment as remunerative as that of a nurse attendant during her future working life of about seven years. She will continue to suffer pain and may need some treatment in the future<sup>17</sup>.

\$6,000 Secretary aged 33 sustained concussion, laceration to her forehead, bruised knee cap tendon, whiplash injury to her neck and shoulder, and damage to her coccyx. She has a two and a half inch scar on her forehead which is noticeable despite an operation but which will probably fade and become quite faint. She has some pain in her buttocks after sitting for a long time or after activity involving her lower back, such as playing sport or doing housework. She was off work for two weeks but has no further actual economic loss. She is now unable to do modelling, although she did not earn much at that work, and has been obliged to give up tennis and squash. She will have intermittent pain from damage to her coccyx for about 10 years and some pain in the neck and shoulder and right knee from time to time. These disabilities cause some loss of earning capacity<sup>18</sup>.

\$6,000 Male aged 19 sustained ligamentous strain in the area of the 5th and 6th cervical vertebra causing joint instability, and producing persistent neck pain and headaches from time to time. Physiotherapy could reduce the pain. He developed a psychological overlay which will recover following the award. He faces the probability of arthritic deterioration in the cervical spine which will

15. *Glaetzer v. Giaccio* (1970) L.S.J. Scheme 757 (Judge Muirhead).

16. *Mertzanidis v. Robinson* (1970) L.S.J. Scheme 586 (Zelling J.).

17. *Chapman v. Mathews* (1971) L.S.J. Scheme 428 (Wells J.).

18. *Archer v. M.T.T. and Ryan* (1971) L.S.J. Scheme 1,453 (Judge Mohr).

probably require a fusion operation in 10-15 years time. There was minimal loss of earning capacity although he was obliged to give up the C.M.F. for some time<sup>19</sup>.

- \$5,000 Sales Manager aged 29 sustained ligamentous injury to his neck and some damage to his lower spine and a minor thumb injury. His treatment included painful physiotherapy and traction. He was off work for three weeks only. He now suffers from frequent and severe headaches, frequent neck pain and almost constant discomfort in his back. He has difficulty relaxing and his temperament has been adversely affected. His enjoyment of life is reduced by restriction on his social and sporting and gardening activities. He faces the possibility of degenerative changes in his lower thoracic and cervical spine which will increase the stiffness and pain within about 20 years<sup>20</sup>.
- \$4,500 Factory hand aged 36 sustained ligamentous neck injury and injury to a cervical disc causing limitation of movement, pain and weakness in the arm and intermittent headaches. He has difficulty doing heavy work and his enjoyment of life is affected. He has trouble sleeping, and neck pain and headaches annoy him causing some depression. He faces the possibility of arthritic deterioration in his cervical spine with the possibility of short periods off work<sup>21</sup>.
- \$4,000 School teacher aged 25 sustained concussion with cerebral irritation, lacerations, ligamentous injury to left side of neck and to lower back and bruised radial nerve on right elbow joint. She suffered considerable pain and discomfort and was hospitalized on several occasions. She underwent plastic surgery and remains with faint scarring which caused distress for some time and still causes embarrassment occasionally. She still suffers headaches and occasional pain in the back and elbow which will be permanent and which will cause slight interference with her ability to do housework. Her injuries caused substantial pain, but she now suffers no adverse affect on her earning capacity. Actual loss of wages included special damages<sup>22</sup>.
- \$3,500 Cafeteria assistant aged 48 sustained ligamentous injury to neck in area of 6th cervical vertebra and small avulsion fracture of that vertebra. She suffered headaches and pain for some time and was off work for two and a half months. Because of frequent pain and headaches she underwent manipulation operation after 15 months. Her ability to do housework has been restricted, though not as great as alleged, and she still has a minor disability but will eventually recover fully within one to two years of the final award. Apart from the immediate period off work, no economic incapacity flowed from the injury. Special damages include actual loss of wages<sup>23</sup>.
- \$3,000 Welder aged 57 suffered a whiplash injury causing considerable pain. He was hospitalized for six days with neck stiffness and limitation of movements and his treatment included traction, a neck collar, and tranquilisers. He developed an hysterical condition which caused minor paralysis in upper limbs for a time. He returned to work after nine weeks, but had constant pain in his neck and head for six months and severe and frequent headaches and depression from time to time. These disabilities gradually reduced, but he still gets headaches

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19. *Blewitt v. Wirth* (1971) L.S.J. Scheme 936 (Judge Muirhead).

20. *Ades v. Spencer* (1970) L.S.J. Scheme 725 (Mitchell J.).

21. *Fails v. Giles* (1971) L.S.J. Scheme 1,360 (Judge Williams).

22. *Tenshek v. Heynen and Cooper* (1971) L.S.J. Scheme 648 (Bray C.J.).

23. *Dziedzic v. Picken* (1971) L.S.J. Scheme 1,344 (Judge Williams).

about six times a month although becoming less frequent and less severe, and occasional depression. He has full and free movement of his neck. His capacity to enjoy life has been reduced by his injuries<sup>24</sup>.

\$2,500 Female aged 50 sustained painful and severe ligamentous injury to her neck and concussion. She was hospitalized for three weeks and under treatment for a further year. She suffers from bouts of dizziness and headaches, and has some stiffness in her neck which is reducing in extent. She has to avoid sudden neck movements, and still has some slight neck instability. Her working capacity was considerably impaired for about one year. Although she was not working at the time, it is probable that she would have worked for some of this period<sup>25</sup>.

### **Arm and Hand Injuries**

\$2,000 Male aged three years sustained lacerations to his forehead and left hand and amputation of the second finger of his left hand. He was a left-handed child, and this amputation will cause him substantial embarrassment and will affect his enjoyment of life and will restrict his earning capacity, although he can direct his career accordingly. It was noted that in this regard his position was better than if he were committed to an occupation where the finger was essential<sup>26</sup>.

### **Leg Injuries**

\$32,500 Train lighting examiner aged 29 sustained compound fracture of right tibia with considerable bone loss, facial lacerations and lacerations to right arm. He was hospitalized for about 10 weeks initially and on eight subsequent occasions, and underwent a number of operations including bone grafts. The leg was finally amputated below the knee and he had rehabilitation treatment for 142 days to learn to use an artificial leg. He suffered a great deal of pain. His net loss of income to the award is \$7,521.49 and he is now employed as an acting storeman as he was unable to resume his prior employment; he is suffering a future continuing economic loss estimated at \$12 per week<sup>27</sup>.

\$21,500 Construction labourer aged 44 sustained comminuted fracture of upper left femur which required a series of operations and a prosthesis to replace natural bone. He will need a further prosthesis in five to 15 years. He also sustained jarring of the cervical spine, and a strained lower lumbar spine. The injuries accelerated his ageing process causing degenerative changes and pain earlier than otherwise. He also sustained a fractured pelvis which united with little disability although with some groin pain, fractured head of the left radius which now restricts his ability to use both hands and affects his prospects of re-employment if he loses his present job, and a fracture of the os calcis and permanent stiffening of the subtalar joint of the left ankle. He is unable to play sport or dance. He has three quarter inch build up on his left

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24. *Hanþzis v. Fotopoulos and Cook* (1971) L.S.J. Scheme 1,488 (Senior Judge Ligertwood).
  25. *Schaublin v. Henstridge Bus Service* (1971) L.S.J. Scheme 185 (Judge Muirhead).
  26. *Mollenmaus v. Siviour* (1971) L.S.J. Scheme 607 (Bray C.J.).
  27. *Noble v. Edwards* (1971) L.S.J. Scheme 842 (Bray C.J., Mitchell and Wells J.J.). The Full Court reversed the decision of Chamberlain J. in holding that the plaintiff had failed to prove negligence against the defendant, and then proceeded to assess damages. On appeal to the High Court, the decision of the Full Court was reversed and the finding of Chamberlain J. on liability was restored: see (1971) 45 A.L.J.R. 682.

shoe to prevent pelvic tilt. He has undergone eight operations and faces another one. He suffered two years of severe pain, which has gradually reduced, and he will continue to have some pain and suffering. For the non-economic aspects of his loss he was awarded \$11,000. He was off work for two years and is now earning substantially less than previously as a rigger, and his overtime opportunities are restricted. His employment is not now as secure as previously and he could not compete equally on the labour market. He was awarded \$9,000 for lost earning capacity, not including \$7,000 paid by way of compensation and for earnings gratuitously paid by his former employer. He was also awarded \$1,500 to cater for the future operation<sup>28</sup>.

\$20,000 Machinist aged 41 sustained concussion, fractured right femur, compound fracture of left tibia and fibula, and complications to left ankle. The left leg was manipulated and put in plaster, and a pin inserted in the right leg. A fat embolism complicated his painful treatment but that condition resolved. He had traction on his right leg for three months which caused some discomfort. He was discharged on crutches after five months, and after seven months all the fractures were soundly united. He was fit for his pre-injury work after eleven months. A gradual deformity of his toes developed after 14 months requiring further surgery, and in all he was effectively incapacitated for about two years. He underwent in that time an arthrodesis operation and was certified fit for sedentary work only after two years. His left leg is now half inch shorter than his right, and he has scarring at the operation sites, and a disability of both feet rendering him unfit for heavy work or prolonged standing or walking. He still has some toe difficulty and faces the probability of further surgery to his left foot to correct it in the future at a cost of \$200. He will probably then need surgical boots. He also faces the possibility of further foot deterioration after that operation. His capacity for work is substantially reduced by about half but he was not a good worker beforehand. He has undergone considerable pain and suffering and loss of amenities and of enjoyment of life, and will continue to have pains in his feet and legs<sup>29</sup>.

\$12,000 Wool carter aged 25 sustained compound fracture right tibia and fibula and was hospitalized for three weeks. His leg was in plaster for 11 months due to slow union of the fracture and he was off work for 18 months. He has residual pain and stiffness in his right ankle and has audible crepitous on movement of the ankle joint. He has given up football and motor bike racing and has difficulty with heavy lifting. His actual loss of wages would be in vicinity of \$6,270 for 18 months but this actual loss of wages is only partially attributable to the accident<sup>30</sup>.

\$12,000 Bricklayer aged 41 sustained a fractured right ankle and lacerations to forehead. He was hospitalized for three weeks and the leg put in plaster and a pin inserted. The pin was subsequently removed at further operation. The leg was in plaster for six months. He now has 20% loss of function of the right lower leg and is unable to squat or run and has difficulty climbing stairs or ladders. He has some arthritis of the ankle joint which will tend to get worse and faces the possibility of arthrodesis of the ankle involving six months off work. He suffered considerable pain and discomfort and reduction of his enjoyment of life. He is now unable to maintain his work as a bricklayer and is working as a press operator with a comparative wage loss of about \$10 per

28. *Brown v. Hansen & Yuncken Ltd.* (1971) L.S.J. Scheme 182 (Zelling J.).

29. *Vassiliadis v. Walker and Myer Emporium (S.A.) Ltd.* (1971) L.S.J. Scheme 1,448 (Wells J.).

30. *Watson v. Hopkins* (1971) L.S.J. Scheme 1,111 (Chamberlain J.).



week. He was unfit for work for some months following the injury with an actual wage loss of about \$2,000 and then fit for light work only for a further six months. The actuarial calculation shows the present value of \$1.00 per week to a man aged 45 to age 65 or earlier death is \$542.00. He has also lost the opportunity and capacity for overtime work. He received \$8,500 for the economic aspects of his loss including lost earning capacity from the date of the injury to the award and \$3,500 for the non-economic aspects of his loss<sup>31</sup>.

- \$8,000 Surveyor aged 48 sustained concussion, facial lacerations, compound fracture both bones of left forearm, and injured chest and right hip. He has lost one-third rotational movement of his left forearm, and the fractured right hip has resulted in osteo-arthritis and pain, especially when moving over uneven ground. His loss of use of his right leg was estimated at 25-30%, and the condition will worsen and will result in operative treatment within a few years: At the present time it restricts him in his activities in his employment and adversely affects his earning capacity. General damages included \$2,500 for loss of earning capacity<sup>32</sup>.
- \$7,000 Farmer now aged 59 with pre-existing arthritic condition in his knees and neck suffered a whiplash injury aggravating those conditions and bringing on pain 10-15 years earlier than otherwise, including headaches, and stiffness. The symptoms gradually decreased but restricted his activities for some 12 months and forced him to give up his work in the country and to obtain employment as a welder. He is now unable to do that work fully. For loss of earning capacity between the injury and award he received \$1,000, and for future loss of earning capacity (about five and three quarter years at roughly \$1,000 per year) \$3,000; for the non-economic aspects of his loss he was awarded \$3,000<sup>33</sup>.
- \$6,500 Labourer aged 27 sustained compound fractures of right tibia and fibula, and fractured right femur. A pin was inserted to stabilise the fractured femur. The fractured tibia did not unite, and he underwent a bone graft operation and a long convalescence before being fit for work 12 months after the accident. He is now employed as a spot welder with an increase in earnings. The right leg has the following restrictions: flexion of knee restricted by 20 degrees, minor restriction of right ankle movement, leg half inch shorter, pain and discomfort from time to time, and some crepitus in the knee joint. The condition will not deteriorate, but he is unfit for work in heavy labouring fields and has therefore suffered some loss of earning capacity. General damages include loss of earning capacity<sup>34</sup>.
- \$6,435 Labourer sustained a compound comminuted fracture of the left femur and a lacerated left foot. A pin was inserted in the upper tibia and the leg placed in a splint. He underwent traction for three months and was then discharged with a leg caliper and crutches. He was hospitalized for a further month and then underwent physiotherapy treatment. The fracture united soundly and he returned to work after 12 months but continued to suffer pain and discomfort. Varicose veins developed from thrombosis associated with the accident and he now wears an elastic stocking, but this condition could be cured. He was re-

31. *Volpato v. Zachory* (1971) L.S.J. Scheme 211 (Bray C.J.).

32. *Todd v. Verner and Daniel* (1971) L.S.J. Scheme 534 (Bray C.J., and Mitchell J., Sangster A.J. dissenting). The Full Court allowed an appeal from Judge Williams and increased the assessment from \$5,500.

33. *Skelton v. Herle* (1971) L.S.J. Scheme 1,377 (Judge White).

34. *Alvino v. Smith* (1971) L.S.J. Scheme 1,180 (Judge Muirhead).

trenched after 18 months and applied for and received the invalid pension. He has made no further efforts to obtain employment. He has about 30% disability of his left leg and some pain through compensation neurosis. General damages include an allowance for about one years wages<sup>85</sup>.

\$6,000 Fitter aged 18 sustained a fractured left humerus and fractured left femur, and lacerations to his right ankle. His left upper arm was splinted and the thigh fracture fixed with a metal nail. He underwent a further operation when screws were inserted in the thigh fracture and a metal pin in the arm fracture. He was discharged after two months, when he could walk with crutches, and he resumed employment after five months. His treatment was painful, and aggravated by a fat embolism which developed. He now has full range of movement of his shoulder and elbow, and of the hip and knee. The metal nail and the screws were removed from his thigh and the pin removed from his arm under further operation. His left leg is shortened by half a ninch so he needs to wear a built up heel. He has difficulty squatting and slight loss of movement of his knee, which stiffens after long standing or walking. There is some loss of power in the left arm and shoulder. He has an 8" scar on his left thigh, which is tender and unpleasant in appearance, and the leg is vulnerable to further injury. He faces the possibility of degenerative changes of the leg. The loss of function of the left leg was assessed at 25-33%. He suffers no loss of earnings since resuming his employment, but he is unable to compete equally on the labour market in the future<sup>86</sup>.

\$6,000 Machinist aged 24 sustained a fractured right thigh, right knee injury, and fractured left collar bone. A pin and two screws were inserted in the right thigh to stabilise the fracture, and were subsequently removed. The cartilage was removed from the right knee. He has the following physical disabilities: the right leg is somewhat clumsy and  $\frac{3}{4}$  in. shorter, with the probability of mild osteo-arthritis in the right knee and of the need to wear a raised heel in the future. The collar bone is slightly deformed causing clicking on certain movements of the left arm. He still gets pain and discomfort on occasions and is now unable to play sport. He suffered no actual loss of income as a partner in a ceiling contracting firm but his loss of earning capacity during the year or so of disability was taken into account in that his share of profits was reduced by the fact that the partnership paid about \$1,900 for sub-contracting work due to his disability. He has residual loss of earning capacity in his inability to work at heights and this would be some disadvantage on the open labour market<sup>87</sup>.

\$6,000 Machinist aged 43 sustained fractured right leg causing considerable pain and discomfort. The leg was in plaster for 8 months and he underwent two operations including a bone graft operation. He was off work for 12 months. The leg is now  $1\frac{1}{2}$  in. shorter and he wears a raised shoe. He has wastage of leg and thigh muscles, noticeable scars on the right hip and shin, and osteo-arthritis developing in the right knee joint. His activities are substantially impaired and his enjoyment of life is reduced, but he has retained his employment although it causes him more tiredness than previously. The total loss of function of his right leg was estimated at 50%. Special damages included allowance for one year's loss of wages<sup>88</sup>.

35. *Moretti v. Milton* (1971) L.S.J. Scheme 540 (Chamberlain J.).

36. *Hampshire v. Davey* (1970) L.S.J. Scheme 589 (Walters J.).

37. *Bivone v. Welfare* (1971) L.S.J. Scheme 1,080 (Mitchell J.).

38. *Habib v. Sims* (1971) L.S.J. Scheme 591 (Bray C.J.).

- \$5,500** Fitter and turned aged 36 sustained injury to right lower leg and lower back, bruising and lacerations to right ankle, and a torn popliteal muscle in right knee. Because of continual pain he underwent an operation to secure the muscle. He still has some back pain on standing for a time, some pain in his right knee and some small restriction of flexion and extension, and slight restriction of ankle movements. Scar tissue in the knee created pain in the muscle but a further operation to free the restricted nerves was unsuccessful. He has 15% loss of function of the right leg. He is satisfactorily employed and is not restricted very much in his general activities. Actual loss of wages above compensation paid is \$696.10<sup>80</sup>.
- \$5,000** Female aged 15 sustained concussion, minor fracture of left patella, fracture between the condyles of the upper ends of the tibia, avulsion of the ligaments of knee and injury to the cartilages of the left knee. She was hospitalised for 17 days, and both cartilages were removed and the leg placed in plaster for two months. She now has a slight limp, and cannot run or kneel or play sport. The knee is unstable, and there is a strong likelihood that it will have to be stiffened by operation in 10 to 15 years time. This would substantially restrict her activities and, if she were not married, reduce her marriage prospects. She has embarrassing scarring of the left knee and will suffer considerable pain and limitation for the future. The leg is susceptible to further injury<sup>40</sup>.
- \$5,000** Female aged 58 sustained a minor head injury and a serious hip injury. She was in traction for four weeks, and then mobilised on crutches for a further four months. She has residual deformity of the hip joint, and the injury has brought on arthritic pain and stiffness which considerably restrict her movements. She will need an operation in four years time at a cost of \$600. She is now unable to rise easily or to kneel, and will have intermittent pain in addition to the restrictions. She is restricted in helping her husband on the farm but there is no significant loss of earning capacity<sup>41</sup>.
- \$4,800** Truck driver sustained right knee injury which required removal of the kneecap, and his treatment was long and painful, including being hospitalised three times with two painful manipulatory treatments under general anaesthetic and prolonged physiotherapy. He now has a weakened leg and wasted thigh muscle and a weakened index finger. He also has pain and discomfort in his right shoulder after vigorous movements and is unable to lift heavy weights. He was re-employed but would be unable to compete equally on the labour market in the unlikely event of him being dismissed. This represents some loss of earning capacity. Special damages included actual loss of wages<sup>42</sup>.
- \$4,000** Male aged 13½ sustained fractured left fibula, damage to medial cartilage of the right knee and general abrasions, leaving minimal cosmetic defects and some tenderness in a scar above his left ear. He also suffered occasional headaches. He was hospitalised for several days and the cartilage was removed. His sporting activities are restricted and he has pain through his knee and ankle injuries. He will recover from removal of the cartilage with no significant disability. He has some slight restrictions in the various fields of employment open to him, with minimal loss of earning capacity. He suffered a three-year interrup-

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39. *Zujic v. General Motors-Holden's Pty. Ltd.* (1971) L.S.J. Scheme 863 (Hogarth J.).

40. *Clonan v. Campbell* (1971) L.S.J. Scheme 651 (Zelling J.).

41. *Stoekel v. Harpas* (1971) L.S.J. Scheme 605 (Wells J.).

42. *Woolfall v. Hunter* (1971) L.S.J. Scheme 1,309 (Wells J.).

tion to his sporting activities. There is a possibility of arthritis in the right knee in the future and a scar on the knee<sup>43</sup>.

- \$3,500 Receptionist sustained injury to her right knee requiring removal of the lower pole of the right patella. The leg was placed in plaster and subsequently manipulated to reduce the pain. She faces the probability of further operation at a cost of about \$450. She has a permanent disability represented by pain in her knee, and some loss of flexion although she is able to walk, run a short distance, do housework and gardening. She is unable to play basketball although she would not have played for much longer anyway. There is some restriction of her earning capacity and she was off work for 7 weeks. She is now married and will have some pain on certain movements handling her children<sup>44</sup>.
- \$3,500 Male aged 35 sustained comminuted fracture of right patella, laceration to inner side of right ankle, laceration over right eye and fractured rib. The patella was removed at operation and the leg was in plaster for five weeks. He was hospitalised for three weeks. His left kneecap was bruised and he had mild pain in that knee for some time. He remains with some minor permanent discomfort of the knee with the possibility only of further operative treatment. The lacerations healed. He is now unfit for professional wrestling but would be too occupied to do that anyway. He suffered an economic loss of about \$10 per week for 15 months<sup>45</sup>.
- \$3,000 Car salesman aged 24 sustained facial injuries involving some permanent scarring which is visible but not disfiguring, severe bruising of the left shoulder, lacerations to left forearm and fractured right kneecap. He returned to work quickly, but was unable to drive a car for some time. His knee was immobilized in plaster for some months, and is sporadically unreliable with sudden episodes of weakness, aching and swelling. He faces the possibility of arthritic degeneration and removal of the kneecap, but this is unlikely. His residual disability is a slightly impaired right knee joint which is a nuisance only in his present work but would be a significant disability for heavy work. He will suffer some discomfort in the future. Special damages include loss of earnings during actual incapacity<sup>46</sup>.
- \$2,250 Garage attendant aged 16 sustained fractured right leg and the fracture was reduced and a plate and screws were inserted. It is possible that the plate and screws may need to be removed in the future. He suffered considerable pain for a time, but is left with permanent minimal disability. The right leg is  $\frac{1}{2}$  in. shorter than the left, and he has a long scar on the right leg and a scar on his foot which are noticeable but not offensive and some minor altered sensation in the leg. His actual loss of wages during incapacity was \$696 included in general damages. He suffered diminution of his earning capacity during that time, and his residual disability is now of minimal significance to his earning capacity<sup>47</sup>.
- \$2,000 Female age 6 sustained fractured shaft of the left upper femur, abrasions to the left knee and tenderness of the pelvis. Her leg was splinted and she underwent traction treatment and a further operation to correct angulation of the shaft of the femur when her hip was in plaster for one month. Her

43. *Papadopoulos v. Scutchings* (1971) L.S.J. Scheme 1,354 (Judge Mohr).

44. *Berridge v. Haythorpe* (1971) L.S.J. Scheme 1,436 (Zelling J.).

45. *Pace v. S.A. Insurance Co. Ltd.* (1971) L.S.J. Scheme 799 (Hogarth J.).

46. *Ladhams v. Philo* (1971) L.S.J. Scheme 216 (Judge Muirhead).

47. *Bell v. Archer* (1971) L.S.J. Scheme 941 (Bray C.J.).

leg gradually returned to normal over 16 months with the fracture united firmly but the left leg about  $\frac{1}{2}$  in. shorter than the right. This shortening was of no significance<sup>48</sup>.

- \$1,850 Secretary aged 35 sustained fractured base of fifth metatarsal bone in right foot, abrasions and bruising to right knee, bruised right hip, and ligamentous strains to her spine. Her right leg was in plaster for five weeks and she used a walking stick for about six months. Her hip was tender for about 18 months and she had some difficulty kneeling on her right knee. The ankle fracture healed well, but swells and becomes painful by the end of the day. She has some pain in her back and neck after prolonged activity, and is now unable to do ballet. Her residual disability is only some pain and interference with her social and domestic activities<sup>49</sup>.
- \$1,750 Composer aged 56 sustained fractured tibia and fibula and was hospitalised three days when the fractures were reduced under general anaesthetic and the leg placed in a full plaster. His leg was in plaster 12 weeks and he underwent physiotherapy treatment. He returned to work after six weeks and used crutches and a walking stick through knee stiffness which lasted for a further two months. He now has slight loss of movement in the ankle and slight ache on change of weather. There is a probability of arthritis in the ankle joint of mild degree and some disability in walking over uneven or pebble ground. There was no loss of wages and allowance was made for loss of accumulated sick leave<sup>50</sup>.
- \$1,750 Male sustained injured left leg and bruised and abraded head. He was two weeks off work with a painful and swollen leg and used a walking stick for some time. He had persistent pain and stiffness of the knee causing difficulty climbing stairs or turning sharply, and the knee still tends to give way and get sore after prolonged use. There is some permanent soft tissue calcification in the knee<sup>51</sup>.

### **Cosmetic Injuries**

- \$25,000 Female aged 20 sustained concussion, very severe facial lacerations involving her face, ear and neck, and injuries to both knees. She had partial right-sided facial palsy due to division of a facial nerve, and the branches of the nerve were sutured. She was unable to close her right eye and developed corneal erosion, her eyelids were then sewn together to protect the cornea and only divided about eight months later. She had residual weakness of facial expression and slight drooping of her face, particularly about the corner of her mouth. She has continual twitching of the right side of her face with every movement of her right eye, and it is difficult to fully close the right eye. She has to make daily use of eye ointment, due to a chronic infection secondary to the scarring which causes recurring styes in her right eye. She also suffers mild high tone hearing loss and diminution of tolerance to noise, and recurring headaches. Her face is still badly scarred with distortion of facial expression on the right side. She is very conscious of the scarring and becomes depressed as a result. She has undergone a change of personality accordingly. Before the accident she helped her parents operate a petrol station and also worked as sales girl at nights on casual work, earning about \$10 per week. She has

48. *Dodgson v. Walker* (1970) L.S.J. Scheme 574 (Hogarth J.).

49. *McCormick v. Piekarski* (1971) L.S.J. Scheme 1,468 (Senior Judge Ligertwood).

50. *Dohnt v. Dellow* (1971) L.S.J. Scheme 1,339 (Judge Mohr).

51. *Roche v. Dixon* (1971) L.S.J. Scheme 1,480 (Senior Judge Ligertwood).

given up that work due to her injuries but now helps at the petrol station part time but avoids contact with customers due to her sensitivity. She now has very little social contact. She is a divorcee and now is unable to resume work as sales girl or as a typist, which she would have done until remarriage, and has little prospect of remarriage<sup>52</sup>.

\$6,250 Male aged 14 sustained severe lacerations to his face requiring 50-60 sutures, a dislocated hip and a knee injury. He has residual facial scarring which was very noticeable and embarrassing and a slight twitch at the side of his mouth when blinking. His outlook gradually improved, but he was most unhappy at school. His scarring will still be noticeable after five or six years although with little embarrassment, and the noticeable twitch in his lip will remain. On this aspect he received \$4,000 for general damages. His leg was put in a plaster cast and he was on crutches after six weeks and returned to school after 10 weeks. The hip "locks" on occasions, causing some annoyance but no other disability. His knee tends to give way so his sporting activities at school are restricted and he will have trouble squatting in his intended occupation as a mechanic. He will suffer no direct economic loss as he will be able to do that work. General damages for his leg disability were assessed at \$2,250<sup>53</sup>.

\$5,250 Female sustained concussion, fractured maxilla, damage to seven teeth and small laceration to right leg below the knee. The facial fracture was reduced and the face then placed in a splint for four weeks; this involved great discomfort. She had damage to the infra-orbital nerve producing some numbness in the right cheek. She had difficulty eating for some time. She developed an eye infection which needed operative treatment to rectify a watery eye. She had considerable dental treatment. She now has only minor permanent disabilities; possible deterioration of some teeth, periodic headaches, pain on eating hard food, some numbness in the right side of her face during cold weather, and occasional clicking of her jaw. The leg healed without disability<sup>54</sup>.

\$4,500 Stenographer aged 19 sustained concussion, fractured right cheek bone and nasal bone, lacerated head, teeth damage, and damaged infra-orbital nerve producing severe double vision. She underwent two operations to reduce the facial fracture and was hospitalised for 15 days and was off work for six weeks. The double vision continued with intolerance to light for some time due to a refractive error, but apart from needing glasses for sun and for close work and an occasional blurring and a tendency towards weeping in the right eye on occasions, her vision has returned to normal. She has some numbness on the right side of her face and has neuralgia type headaches of considerable severity about twice a week which will continue for 5-10 years. Her capacity for work is slightly decreased. She underwent operation to improve the scarring but remains with a significant but not disfiguring blemish under her right eye. There is the possibility of a need for further treatment to her teeth. Her special damages include actual loss of wages<sup>55</sup>.

\$2,800 Vineyard hand aged 24 sustained fractured right maxilla and a split palate, fractured jaw, damaged front upper teeth, and a lacerated lower lip. He was hospitalised for two weeks and the fractures were reduced and his jaw

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52. *Leedham v. Hewitson and Smith* (1971) L.S.J. Scheme 342 (Hogarth J.). An appeal to the Full Court on the ground that the damages awarded were manifestly excessive was dismissed.

53. *Kluske v. Kowald and Rivers* (1971) L.S.J. Scheme 1,392 (Judge White).

54. *Parrish v. Haddaway and Dinham* (1971) L.S.J. Scheme 943 (Hogarth J.).

55. *Turnbull v. Veitch* (1971) L.S.J. Scheme 1,496 (Judge Muirhead).

immobilised by wiring for eight weeks. He was off work for two months. His fractures healed well, and he now wears a plate with three false teeth which causes some inconvenience and will require replacement every 7-10 years. He underwent two operations to rectify scarring on his lower lip which is still noticeable but not disfiguring. He has occasional headaches. His injuries and treatment initially were very painful and unpleasant<sup>66</sup>.

- \$2,750 Secretary/receptionist aged 17 sustained lacerations to her forehead and the right side of her face and to her upper thigh, and concussion. She had 105 stitches in her face and six in her thigh and was hospitalized for six days. She was unable to eat properly for some time, and had pain when the stitches were removed. She had a numb feeling in her face for some time. Because of frequent headaches she underwent an operation to remove glass from her face, and now has headaches only rarely. She suffered considerable embarrassment for some time from the scarring and had an operation to excise scars on forehead which improved her appearance greatly. She has some residual scarring on forehead and left cheek which is noticeable, but now not really embarrassing. Her social activities are still slightly restricted. She has a very slightly restricted capacity for work as she might be unable to compete equally for receptionist work, but she is still an attractive girl<sup>67</sup>.
- \$2,000 Male aged 17 sustained facial lacerations. He was hospitalized for seven days and was off work for four weeks. He later underwent plastic surgery and lost a further week's work. He suffered considerable embarrassment through the swelling and discomfort for some months. He now has noticeable scars on the left side of his face which constitute a permanent blemish. He has an occasional twitch in his cheek and the cheek bone sometimes becomes swollen and tender. He now suffers occasional minimal embarrassment. There is no economic loss and his loss of wages was included in the special damages<sup>68</sup>.
- \$1,800 Student teacher aged 19 sustained facial lacerations requiring 25 stitches in region of his left eye. He suffered fairly frequent and severe headaches for six months, but these diminished over a further period of 12 months. He has residual scarring including two fine pale scars above his left eyebrow, a transverse scar on the upper eyelid about one and a half inches in length, and an oblique scar running from the outer end of the left eye down onto his cheek about one and a half inches long and eighth of an inch wide. The only apparent scar is that running down on his left cheek, which is an impairment or blemish but not disfiguring. He suffered some embarrassment, but the scars have faded substantially. Corrective surgery could relieve the scarring even more but the plaintiff had declined it. He suffered no loss of earning capacity<sup>69</sup>.
- \$500 Female aged nine years sustained injury to her right knee leaving a small permanent scar on the inside of the knee<sup>70</sup>.
- \$500 Male sustained broken nose with consequential deformity of nasal septum, black left eye, minor abrasions and bruises to the face and a chipped tooth. He subsequently underwent an operation to straighten his nasal septum involving three days in hospital. He has no residual disability except that one side

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56. *Liebich v. Owens* (1971) L.S.J. Scheme 1,492 (Senior Judge Ligertwood).  
 57. *Fornarino v. Washington* (1971) L.S.J. Scheme 1,483 (Judge Williams).  
 58. *Madigan v. Petrovic and Lawrie* (1970) L.S.J. Scheme 660 (Bray C.J.).  
 59. *Searle v. Hall and Perry* (1971) L.S.J. Scheme 433 (Judge Muirhead).  
 60. *Carbone v. De Blasio* (1971) L.S.J. Scheme 790 (Judge Muirhead).

of nose becomes more easily blocked than the other. This is of minimal nuisance value only<sup>61</sup>.

\$300 Male sustained a depressed fracture of the left cheek involving some degree of pain and discomfort. He underwent two operations to elevate the depressed fracture. He was off work for two weeks but suffers no further loss of earning capacity. He had a short period of double vision. He still has an area of numbness in his left cheek. Special damages include actual loss of wages<sup>62</sup>.

### **Eye Injuries**

\$5,000 Female press operator sustained a right eye injury resulting in scarring of the cornea which restricts vision in her right eye. Without correction by spectacles, she has lost 90% vision of the right eye, and with correction the loss is 50%. She has loss of vision looking sideways. She underwent significant pain and suffering, and must now wear glasses. She has lost some earning capacity through restricted fields of employment<sup>63</sup>.

### **Miscellaneous Injuries**

\$25,000 Boilermaker aged 46 sustained four fractures to pelvis, ruptured urethra, and bruising to both shins. He underwent operative treatment including the insertion of an indwelling catheter, and was bedridden for two months. He gradually mobilised, initially in a wheel chair and then with the use of two sticks. He suffered pain in his groin and lower part of his back and the inside of his left leg on movement, and underwent four operations to cure difficulties with urination. The pain in his leg gradually improved, but comes on when crouching or kneeling. His backache persists on occasions and he has difficulty stooping or lifting or when he is tired. He also has some pelvis pain on occasions. He is now permanently unable to have sexual intercourse, and becomes moody and introspective and gets much more tired. He has permanent urinary difficulties and will need regular urinary dilatations every year, at a cost of about \$50 plus loss of wages. He has difficulty walking on uneven surfaces. His social activities have been dramatically restricted, but he is able to continue playing some sport. His loss of income during total incapacity is \$2,400 and his actual loss of earnings to the trial approximately \$4,200. He is also suffering a continuing wage loss of about \$12 per week. An actuarial certificate tendered, showed the value of an annuity of \$1 per week to the plaintiff to age 65 or prior death is \$528<sup>64</sup>.

\$10,000 Geologist aged 23 sustained five fractured ribs, bruised lung, and ruptured left kidney. He made a complete recovery apart from the kidney injury, but with intermittent pain when sitting in cramped position, which is not of great significance. He suffered complications of his kidney injury which involved considerable pain and discomfort, and he was unable to work for five months, and had many attendances at the renal unit at the hospital. His left kidney now has 15% of normal kidney function, and he should not play sport in case of injury to the right kidney which is presently functioning well. Loss of the right kidney would involve the need for regular treatment on an artificial

61. *Watson v. Gaghan* (1971) L.S.J. Scheme 1.096 (Judge Mohr).

62. *Young v. Betts* (1971) L.S.J. Scheme 1,330 (Judge Mohr).

63. *Lakis v. Scott Bonnar Ltd.* (1971) L.S.J. Scheme 1,350 (Judge Mohr).

64. *Durkin v. Rositano* (1971) L.S.J. Scheme 945 (Hogarth J.).



kidney. His enjoyment of life is affected by that risk, and he is restricted in employment as he cannot go into remote places, so there is some consequential loss of earning capacity. He also lives with the possibility of complications through disease or trauma to his right kidney, with the obvious adverse effects such would bring<sup>65</sup>.

- \$4,000 Electrical fitter aged 47 sustained concussion, lacerations of scalp and fractured left clavicle. He was hospitalized for one day only, and off work for six and a half weeks. He suffered considerable discomfort and distress, but has no residual disabilities from his physical injuries and no impairment of his earning capacity since returning to work. He had old standing degenerative changes in his cervicle and lumbar vertebrae which preceded the accident and would have brought on pain in the future. He now also suffers pain from a compensation neurosis and some pain from some exacerbation of his pre-existing degenerative vertebral condition which has come on about eight years earlier than otherwise. Settlement of the litigation will resolve his compensation neurosis problem and will result in substantial diminution of his pain within 12 months<sup>66</sup>.
- \$3,500 Dental therapist aged 21 sustained fractured rib, gross rupture of right kidney, fractured pelvis, concussion, slight bladder injury and damage to larynx. The ruptured kidney was controlled and the pelvis immobilised. She was in hospital 25 days, and then discharged upon crutches. She now has small but not insignificant residual disabilities: weakness of the right leg causes tiredness and unpleasant bouts of cramp, occasional pelvic and low back pain, and annoying headaches. Her disabilities are of nuisance value to her as a housewife, and her capacity to enjoy life has been reduced and she is less tolerant to stress. She suffered great anxiety for a time<sup>67</sup>.
- \$2,500 Female laboratory technician aged 47 sustained head and knee injuries. She was off work for two weeks with pain in her knees and some pieces of glass were removed from her left knee. She continued to have pain and difficulty working and was unable to do any housework for two months. She developed an anxiety state causing migraine headaches and premature onset of menopause and aggravation of a back condition, but is unlikely to terminate her employment through her injuries<sup>68</sup>.
- \$1,800 Police Constable sustained concussion, lacerations to the scalp and upper right eyelid and bridge of nose, some conjunctival haemorrhage in the right eye, abrasions to the front of his chest, bruised rib cage and abrasions to both knees. His lacerations required 21 sutures. He was hospitalized for two weeks and returned to work after one month. He had substantial pain in his chest and both knees, but this gradually lessened over six months, with only slight pain in his knees for a further few years. He now has some pain in his left knee after activity, some scarring which is not disfiguring and which causes no embarrassment, and headaches spasmodically. He suffers no loss of earning capacity. Loss of wages included in special damages<sup>69</sup>.

65. *Kopcheff v. Lawlors Pty. Ltd.* (1971) L.S.J. Scheme 1.336 (Judge Mohr).

66. *Buczynski v. McDonald* (1971) L.S.J. Scheme 468 (Walters J.).

67. *Ogden v. Brookman* (1971) L.S.J. Scheme 431 (Judge Muirhead).

68. *Varadi v. Clelland and Murphy* (1971) L.S.J. Scheme 1,469 (Judge Williams).

69. *Boscence v. Harslett* (1971) L.S.J. Scheme 1.037 (Mitchell J.).

\$1,000 Male sustained mild concussion, fractured left 11th rib, ruptured kidney and lacerated scalp. He was hospitalized for nine days and had severe pain for four or five days. He still has pain in the area of the rib injury. The kidney recovered but there is a possibility of some pain occasionally. He has mild pain in his head occasionally through a piece of glass which is still there, but this is of nuisance value only<sup>70</sup>.

*J. R. Mansfield\**

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70. *Sydorowich v. Christopoulos* (1971) L.S.J. Scheme 952 (Judge Ward).

\* A barrister and solicitor of the Supreme Court of S.A.