

PERSONAL INJURIES AWARDS IN SOUTH AUSTRALIA 1978-1979

This survey contains summaries of some decisions involving claims for damages for personal injuries delivered during the period from 1 June, 1978 to 30 September, 1979, including a number of unreported decisions.

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

The stated age of the plaintiff is that at trial as, generally, pre-trial and post-trial losses of earning capacity are separately specified. I have not included in the marginal figure amounts allowed for special damages or for interest.

It is important to note that the decision of the Full Court in *Paull v. Gloede*¹ has redefined the basis upon which interest or a lump sum in lieu of interest upon a judgment is to be assessed. It is also important to note for the purpose of assessing an amount to be allowed for losses or expenses to be incurred in the future that the Full Court has recently in *Rendell v. Paul & Earle*² indicated that an interest rate for the purpose of actuarial evidence for such assessments should be considerably lower than has been adopted in the last few years.

HEAD INJURIES

\$57,500 Roof Tiler, aged 26, suffered a severe head injury, an undisplaced fracture of the mandible and a fracture of the left scapula, both of which fractures healed. He was unconscious for fourteen days, and was then found to have left hemiplegia from which he only slowly recovered with appropriate rehabilitation. He has a permanent residual intellectual impairment assessed by one witness as a one-third reduction on his pre-injury function, residual weakness of the left leg and of the left arm, and an uncertain sense of balance. He cannot resume his former work as a roof tiler but is fit for suitable unskilled labouring work although he has had difficulty in finding it and is disadvantaged in competition with others to obtain it. He has also suffered social restrictions and limitations because of his injuries. But for the accident he would be earning at trial \$184.00 per week whereas his present capacity as an unskilled labourer would produce an earning rate of \$140.00 per week if he could obtain such work. He was awarded \$15,000 for non-economic losses, \$12,500 for past loss of earning capacity and \$30,000 for further loss of earning capacity. His special damages were \$1,581.³

\$17,500 Female, aged 21, sustained concussion and brain damage, a lacerated ear and a fractured right femur. She was unconscious for several weeks. Her treatment was prolonged involving five operations in all including a period of rehabilitation due to general weakness of the left side of her body and impaired intellectual functioning. She now has fairly minor residual disability, namely some slight permanent double vision looking to the extreme left, some slight permanent word-finding difficulty, some slight unsteadiness on her feet which will disappear, some headaches, minor occasional hip pain, and fatigue, from which she will recover within a few years. She is now fit to do almost any kind of work although the disabilities only slowly recovered over a period of years. She recovered \$15,000 for non-economic losses and loss of earning capacity in the past, \$2,500 for loss of earning capacity in the past, \$2,500 for loss of earning capacity in the future and her special damages were \$4,065.⁴

1. (1970) 83 L.S.J.S. 157. Hogarth, Jacobs and Mohr JJ.

2. King C.J., Walters and White JJ., 25 October, 1979.

3. *McIntosh v. Mair* (1978) 81 L.S.J.S. 473, Jacobs J.

4. *Andrews v. Andrews & Neves* Judgment 3869. White J., 16 June, 1978.

NECK INJURIES

- \$72,000 Veterinary Surgeon, aged 36, sustained a whiplash injury producing severe pain and stiffness and restricted range of neck movements, prolonged headaches, some abnormal sensation in the right arm for a month and requiring extended treatment by physiotherapy heat treatment, analgesics and a splint. He was unfit for work for one month and then returned to work but is now much slower and less efficient: he operates only one quarter of the time he previously operated and has been obliged to employ one to one and a half assistants in his business to complete the level of work which he would otherwise have done. That disability will persist for about 5 years more and then for another 10 years he will be disabled for about one month per year after which he will effectively have no further loss of earning capacity. His sporting and social activities have been much restricted and he is likely to suffer bouts of disabling pain due to osteoarthritic changes in his neck. Non-economic losses were assessed at \$12,000, and loss of earning capacity to trial at \$20,000 and subsequently at \$40,000. Special damages totalled \$941.00.⁵
- \$20,350 Female receptionist, aged 60, sustained a whiplash injury producing persisting neck pain and headaches. She returned to work intermittently after the accident but then resigned for health problems unassociated with injuries sustained in the accident. She has not worked since her resignation and as a consequence of her injuries was assessed as having lost a third of her earning capacity to her anticipated retirement age of 65. She recovered \$15,000 for past and future loss of earning capacity, \$5,000 for non-economic losses, and \$350 for future expenses. Her special damages totalled \$950.⁶
- \$187,000 Field engineer, aged 47, sustained a lumbar disc injury producing severe pain leading to his depression and attempted suicide. His condition was eventually diagnosed as he underwent two fusion operations, the first of which was unsuccessful and the second only partly successful. He is now severely disabled and is fit only for office or light bench work where he can sit or stand and he will have intermittent periods of total incapacity. He faces the prospect of continuing and increasing pain. He has also developed a depressive neurosis. He is unfit for his previous work where he had substantial prospects of promotion and substantial prospects of earning more in other employment. His non-economic losses were assessed at \$40,000, and he recovered \$37,000 for past loss of earning capacity and \$110,000 for future loss of earning capacity. His special damages totalled \$8,591.⁷
- \$32,500 Building supervisor, aged 30, suffered a back injury requiring laminectomy. He returned to work after three months but with a substantial degree of pain, which has gradually improved and his capacity for work gradually improved and his capacity for work gradually increased. He is now fit to do his former job but requires some help. He permanently faces constant pain which will worsen with age and limitation of movement to his back. He is unfit for heavy work and is at some disadvantage on the labour market. His recreations have been gravely impeded. He may need another fusion operation. He recovered \$20,000 for non-economic losses, \$12,500 for past and future loss of earning capacity (the past being for \$2,550) and \$1,286 special damages.⁸

5. *Slatter v. Kyalde* Judgment 4458. Cox J. 11 September, 1979.

6. *Day v. Matson* Judgment 3976. Mitchell J. 25 September, 1978.

7. *Santos Ltd. v. Ironside* (1978) 79 L.S.J.S. 464. Hogarth A.C.J., Bright and King JJ. dismissed an appeal as to liability and damages. The plaintiff's damages were reduced by 20% for contributory negligence.

8. *Hohn v. Waye* Judgment 3865. King J. 15 June, 1978. The plaintiff's damages were reduced by 10% for contributory negligence.

\$9,000 Retired carpenter, aged 70, sustained general bruising, aggravation of a pre-existing asymptomatic degenerative back condition and some neck injury. He now has persisting painful backaches and frequent persisting headaches which effectively prevent him from pursuing his pre-accident interests, training trotting horses and doing occasional carpentry work. His special damages were \$309.⁹

LEG INJURIES

- \$117,081 Diesel mechanic, aged 21, sustained a fractured left thigh, fractures of both lower legs and severage damage to the bones of both feet. He was hospitalised and underwent several operations. He returned to work after about 6 months on light duties and completed his apprenticeship. His treatment was painful and lengthy. He is employed in a secure job, but he continues to suffer pain and instability, particularly in his right leg, and needs specially made shoes because of deformities of his feet, and also wears a caliper on his right foot. He is unfit for work requiring him to be on his feet all day, field service work, heavy lifting or climbing or working in awkward spaces, and cannot work overtime. His right foot condition will deteriorate and he will require an operation in the future to stiffen the joint of the hind foot. He also has weakness in the left knee, which will deteriorate and may also need a stiffening operation. He has less prospect of promotion than previously and is more vulnerable on the labour market. He is very restricted in his activities away from his employment. He was awarded \$30,000 for non-economic losses, \$31,703 (including \$3,203 for the past) for lost earning capacity and \$5,378 for further expenses. His special damages totalled \$3,650.¹⁰
- \$63,390 Male, aged 23, sustained a very severe compound fracture of the left tibia and fibula requiring prolonged and extensive treatment including three periods of hospitalisation of two months each to secure union. His left leg is 4.5 centimetres shorter than the right, his left foot is turned outwards and upwards, and there is some clawing of the left foot, he has very limited movement of the foot, some restriction of movement of the knee and weakness of the left leg. The cosmetic deformity is significant. He is now suitable only for clerical work and work where he is not required to do a lot of standing or walking. He needs special shoes costing \$150.00 extra per pair. He cannot run or play sport or dance or do much work around his home. He recovered \$22,500 for non-economic losses, \$17,894 for past economic loss and \$20,000 for future loss of earning capacity and \$3,000 for future expenses.¹¹
- \$47,000 Female unskilled labourer, aged 21, suffered a dislocated left hip, including a small fracture of the socket, a rupture of the anterior cruciate ligament of the left knee, and ligamentous injuries to the low back and to the neck. The dislocation was reduced and she was immobilized in traction for 2 weeks and subsequently mobilized on crutches. Her left hip injury produced significant pain, including sciatic neuritis and some limitation of movement. There is a risk of deterioration in the hip joint and in the knee. She is unfit for her previous labouring work and is restricted in the range of housework which she can do, although she is now fit for part-time suitable physical work. She has since the accident married and has a young family. She suffers pain and tenderness in the left knee. She also has suffered recurrent low back pain and neck pain and frontal headaches initially of some frequency but now only intermittent. Non-economic losses were assessed at \$20,000, past loss of earning capacity at \$12,000 and future loss of earning capacity at \$15,000. Special damages totalled \$1,627.40.¹²

9. *Heath v. Sugars* Judgment 4300. Cox J. 23 May, 1979.
 10. *Brock v. Cavill Power Products Pty. Ltd.* Judgment 441. Cox J. 20 August, 1979.
 11. *Sabey v. Northcott* Judgment 4361. Legoe J. 25 July, 1979.
 12. *Winther v. Barrett* Judgment 4417. Hogarth J. 20 August, 1979.

- \$45,000 Female, aged 17, sustained a compound fracture of the right ankle and general injuries to her right leg. Her treatment was prolonged and painful, including bone grafting at two operations initially and subsequently because of gross deformity and damage to the right ankle joint a further period of hospitalisation when osteotomy and arthrodes of the right ankle joint was carried out. She has a gross physical deformity from wasting and marked asymmetry and bad scarring on the right leg. She has a latent osteomyelitic infection which may flare in the future intermittently and which at worst would cost \$800 p.a. for treatment on an average. Her delayed return to school possibly contributed to her failure to matriculate. She is now unfit for heavy occupation. Her natural sporting ability is somewhat diminished, although she is relatively active. She recovered \$23,000 for non-economic losses, \$17,000 for future treatment allowances and \$5,00 for future economic losses. Her special damages totalled \$6,981.¹³
- \$41,615 Male fitter, aged 23, suffered an injured right knee, damage to his front teeth for which future immediate treatment would cost \$1,830, and a laceration near his right eye for which future immediate treatment would cost \$400. The knee-cap was removed from the right knee and subsequently loose bone fragments removed from it. He was off work for two years, and his apprenticeship completion delayed by that period before he qualified for an adult wage. He has a permanently weak and inefficient right knee which gives away on occasions, and he has difficulty squatting and kneeling or moving over rough surfaces or on awkward areas or on ladders. The knee has a swollen appearance. He has lost 30% function of his right leg. He also suffered frequent disabling headaches which have gradually diminished and are now only occasional. His social activities are restricted. He has a secure job doing bench work with no immediate loss but he has reduced opportunities for promotion and reduced choice of jobs in the future. He will require future dental treatment costing about \$880 every 12 to 15 years, allowance which was included in the non-economic losses. He was awarded \$20,000 for non-economic losses, \$11,885 for past loss of earning capacity, \$7,500 for future loss of earning capacity and \$2,230 for future expenses. His special damages totalled \$1,511.¹⁴
- \$26,000 Female shop assistant, aged 20, sustained a fractured left leg, forehead lacerations which healed after suturing, with no scarring, and teeth damage which was fixed. She was hospitalised for four weeks and her leg was in plaster for a further three weeks. She then mobilized on crutches and a stick. She returned to work after about 10 months and coped with difficulty. Because of persistent bowing in the leg, it was further straightened at operation, requiring 9 weeks hospitalisation and a repeat of the mobilization process. Her treatment was complicated and prolonged. She became embarrassed and self-conscious as a result. She has lost some mobility, instability in her ankle, and limps slightly when she is tired but she will ultimately have a fairly small residual disability. She has noticeable scarring on her left leg. She had not worked for some 18 months prior to the trial, including the second period of treatment and convalescence but was now fit to return to her former job, although it was no longer available. She is likely to get work within 6-12 months. Non-economic losses were assessed at \$15,000, loss of earning capacity to trial at \$7,500 and in the future at \$3,500. Special damages totalled \$1,561.00.¹⁵

13. *Larcombe v. Razborsek & Hill* Judgment 4327. Jacobs J. 21 June, 1979.

14. *Aldridge v. Anderson* Judgment 4387. White J. 9 August, 1979.

15. *Earley v. Johnson* Judgment 4419. Cox J. 20 August, 1979. The plaintiff's damages were reduced by 15% for contributory negligence.

\$15,000 A Machinist, aged 17, suffered a fractured left femur when aged 12. He was hospitalised and underwent treatment by traction, wearing a caliper and using crutches for about 5 months. His left leg is one inch shorter than the right, and he has a slight limp and some tenderness in the leg and the leg aches after being on his feet for a long time. He also has some laxity of the ligaments in the left knee, producing a slight instability, exposing him to risk of injury on vigorous activities. He is unfit for very heavy labouring work and so has a slight disadvantage on the labour market. He is employed in a secure job, not aggravating his condition, but there is a significant risk of a need for further operative treatment. Some of his problems could be relieved by his wearing a built-up shoe which he chooses not to do. Non-economic losses were assessed at \$10,000, and loss of earning capacity all in the future at \$2,500, together with \$2,500 for allowance for future expenses.¹⁶

ARM INJURIES

\$29,000 Pine feller, aged 36, sustained an oblique fracture of the mid shaft of the right humerus which did not unite despite treatment and required a bone graft some two years after the accident, leading to firm and successful union. He has permanent limitation of movement of the right elbow to a small degree and some reduction in muscle bulk and power in the right arm. He suffers pain on changes of weather and on strenuous or repetitive movement. He is unfit for his previous work as a pine feller or as a pine log truck driver or another very heavy occupation. The opportunities for him to continue in those heavy occupations had substantially diminished by the time of trial due to mechanisation in the industry. He recovered \$11,000 for non-economic losses and \$18,000 for past and future loss of earning capacity.¹⁷

\$26,390 A retired factory foreman, aged 65, who was very active in gardening and maintenance work for himself and others, and was also earning \$21.00 in gardening work per week. He injured his right shoulder, right knee and his neck. The shoulder injury included rotator cuff damage and aggravation of a degenerative acromio-clavicular joint which was acutely painful until remedial operative treatment including an acromionectomy. He now has a painful right shoulder and major restriction of movement to the shoulder, frequent severe headaches, partial restriction of his right knee and depression. He cannot carry on any of his previous interests at all. He will incur future expenses for medication. He recovered \$17,500 for non-economic losses, \$7,390 for past and future loss of earning capacity and \$1,500 for future expenses. His special damages totalled \$2,748.¹⁸

\$15,500 Teacher, aged 25, sustained injury to his left arm, multiple facial lacerations, which required about 90 sutures, a subsequent excision operation, and left with him permanent significant but not gross cosmetic defects and not such as to affect his earning capacity or social life, and severe teeth damage, involving the four upper and four lower front teeth, requiring the insertion of a bridge and crown on certain of the teeth over a six-month period and with some cosmetic disadvantage but no effect upon his earning capacity and with the possibility of replacement of the bridge or crowns at a cost of up to \$750 in the future. His arm injury involved an ulnar nerve lesion, operative repair, and ultimately with moderate to severe disability in his left arm and hand, represented by marked impairment in fine skilled use and some weakness of the hands for heavy functions, a lack of sensitivity in the ring and little fingers, and difficulty in getting a firm grip. His sporting activities were impeded. He had no past loss of earning capacity and he

16. *Oates v. Taylor* Judgment 4412. Cox J. 20 August, 1979.

17. *Dodemaide v. Gabrielli* Judgment 4005. King J. 26 October, 1978.

18. *Venturato v. Cindric* Judgment 4337. Legoe J. 29 June, 1979.

was unlikely to return to teaching in the future by personal preference. His non-economic losses ere assessed at \$10,000 and his future loss of earning capacity at \$5,000 together with special damages of \$2,506.25 and further dental expenses allowed at \$50.¹⁹

EYE INJURIES

- \$35,600 Farm worker, aged 26, sustained concussion, a broken left wrist, facial lacerations, displacement of two teeth and a penetrating injury to the right eye. He was hospitalised for four weeks. He had extensive teeth treatment and his facial lacerations operated upon for cosmetic improvement. His right eye was removed and an artificial eye fitted. He now has a little aching in his left wrist, noticeable facial scarring, loss of the right eye with consequential greater risk from injury to the other eye, and he cannot quite close his right eye. He faces longer periods of incapacity and runs some restriction on the choice of his employment in the future. He recovered \$23,000 for non-economic losses, \$1,800 for past loss of earning capacity and \$8,000 future loss of earning capacity and \$280 for the future expenses which he will incur His special damages totalled \$548.²⁰
- \$15,864 Female Machine Operator, aged 31, suffered a whiplash injury, a laceration below the right eye which healed with scarring and superficial corneal abrasions to the right eye including pieces of glass in the eye which was successfully treated with no disability. She suffered from significant persisting headache and dizziness associated with anxiety producing total incapacity for 12 months and which gradually reduced so that by the trial she is only partially unfit for work and would be fit to return to full work between May and September, 1980. General damages were assessed at \$5,000 for non-economic losses and \$10,864.00 for economic losses including \$1,000 for economic loss subsequent to the trial.²¹
- \$14,000 Technician, aged 29, suffered injury to his left eye, producing constant intense pain for about five weeks, which gradually diminished. He has lost 55% uncorrected vision of the eye and 25% corrected vision. He is prone to headaches from glare, reading, and watching television and his sporting abilities are impaired. He runs, of course, a risk of far greater consequences if his other eye is damaged.²²

MISCELLANEOUS AND COSMETIC INJURIES

- \$48,000 A young woman sustained a fractured thyroid cartilage and severe laceration and damage to her throat, a spiral comminuted fracture of the right upper arm, concussion, fractures of two upper teeth, a lacerated tongue and abrasions. Her injuries were repaired under operation and treatment for her throat injury was prolonged. She now has unsightly noticeable scars on her neck, and after extensive speech therapy, she has only a voice level to not much greater than a whisper, with very substantial loss of voice power, which affects her enjoyment of life and her earning capacity. She has a bridge as a consequence of the teeth damage and some aching in the upper arm. She recovered \$32,500 for non-economic losses, \$500 for the value of voluntary services needed by her, and \$15,000 for past and future loss of earning capacity.²³

19. *Allen v. Paton & Allen* Judgment 4425. Matheson J. 24 August, 1979.

20. *Vincent v. Faehrmann* Judgment 4284. Cox J. 16 May, 1979.

21. *Tsimiklis v. State Transport Authority* Judgment 4459. Williams A.J. 18 September, 1979.

22. *Goode v. Nash* Judgment 4328. Full Court (Hogarth, Jacobs and Mohr JJ.) dismissed an appeal as to liability and damages from the Local Court of Full Jurisdiction.

23. *Paull v. Gloede* (1979) 83 L.S.J.S. 157. The Full Court dismissed the appeal as to damages, but allowed appeal as to interest.

\$38,000 Female, now aged 17, suffered extensive burns to her legs, chest and abdomen, involving 30% of her body. She was off school for one term and had prolonged and painful treatment involving multiple skin grafts over four operations. She is now left with ugly keloid scarring on her legs, chest and abdomen, which can largely be concealed with normal clothing, but which has caused and will continue to cause her great embarrassment. She needs to take great care to avoid troubles with the scarring including the regular application of a moisturizer, and must be careful not to expose her skin to much sunlight. The future expenses for the cost of moisturizer were allowed at \$8,000. She has no significant loss of earning capacity. She was awarded \$30,000 for general damages. Her special damages were \$3,780 and the costs of her mother for attendances and medication bought by her were allowed at \$2,000.²⁴

*J. R. Mansfield**

24. *Young v. Woodlands C.E.G.S.* Judgment 4265. Hogarth J. 2 May, 1979.

* A Barrister of the Supreme Court of South Australia