

Quantum of a Head Injury

Dr Robert Whittock

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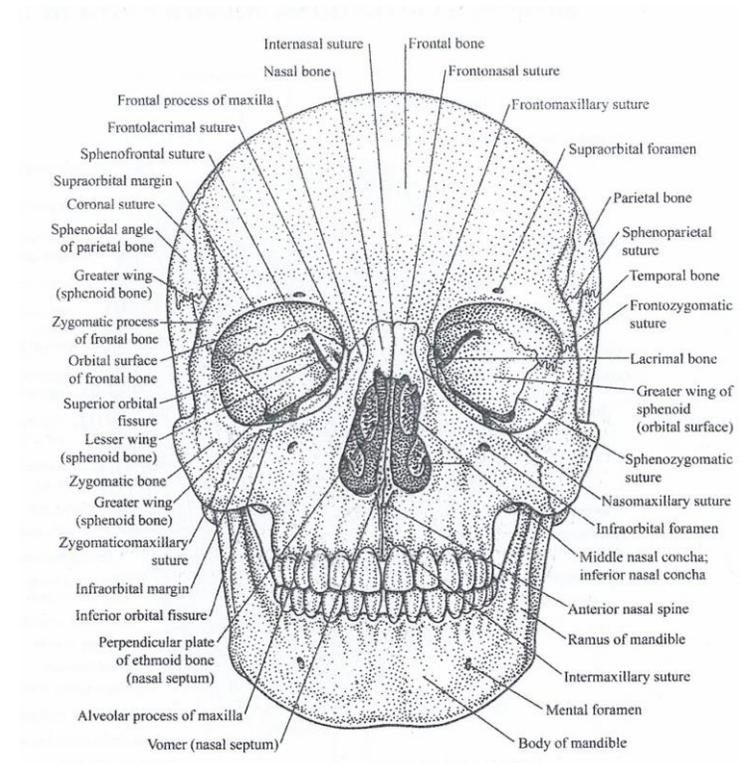
Contents

- Head Injury
- Quantum
- General Damages
- Case Study

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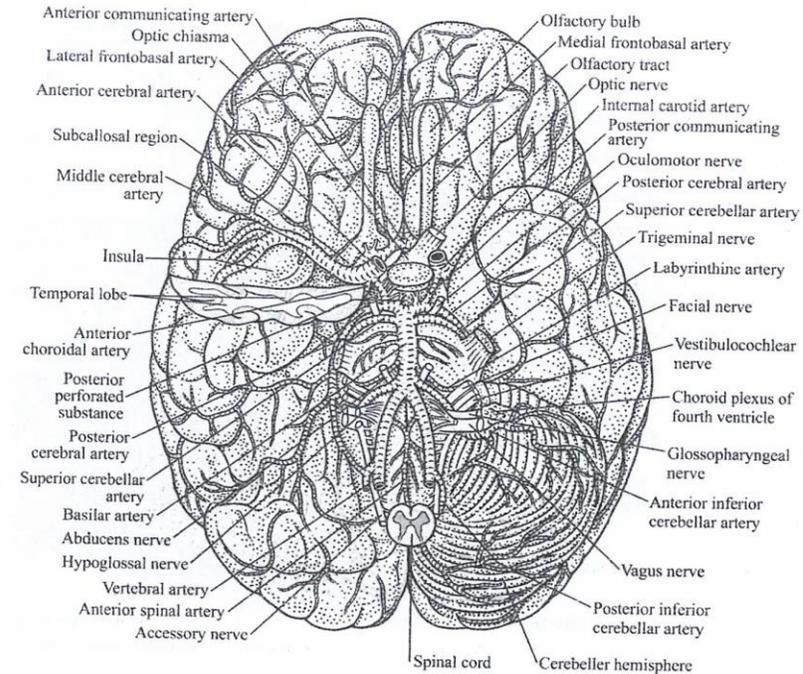
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Head Injury



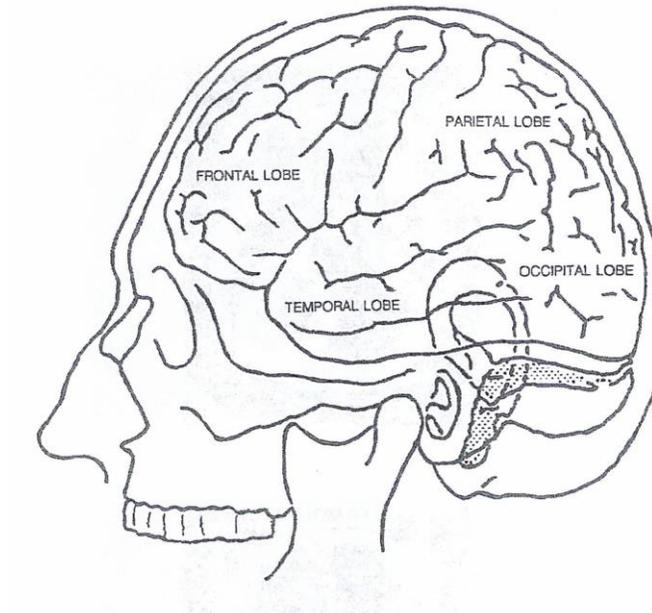
Medical illustration – Facial Expression ²

Head Injury



Medical illustration – arteries at base of brain ³

Head Injury



Medical illustration – outline of skull and lobes of the brain⁴

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Quantum

- Twin Town (1997)
- “Fatty Lewis” falls from a ladder and his two sons (‘the Twins’) demand compo from Bryn Cartright, a businessman and small time ganster.

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General Damages

- General Principles

“It will be appreciated that...the law cannot attempt to attribute any particular figure of damages to any particular physical injury, serious or trivial. There is no way in which it can be said that such-and-such an injury is worth so much in terms of money...in most cases anybody would say ‘I would rather have avoided the injury than have any amount of money whatever in compensation’...”

Megaw L. J. *Fuhri v Jones* Unreported CA, March 30 1979

General Damages

- General Principle

“The aim of the award of damages for personal injury is to provide compensation. The principle is that ‘full compensation’ should be provided. ... This principle of full compensation applies to pecuniary [(special damages)] and non-pecuniary [(general)] damages alike. ... Compensation must remain fair, reasonable and just. Fair compensation for the injured person. The level must also not result in injustice to the defendant, and it must not be out of accord with what society as a whole would perceive as reasonable”.

Lord Woolf M.R. *Heil v Rankin* [2000] 2 W.L.R. 1173

General Damages

P – pain: physical pain caused by or consequent upon an injury

S – suffering: mental element of anxiety, fear, embarrassment

L

A – loss of amenity: everything that reduces the claimant's enjoyment of life or impairs any of the five senses.

General Damages

- Pain and Suffering – depends on the Claimant's personal awareness of pain and capacity for suffering
- Loss of amenity – not dependent on the Claimant's personal awareness of the loss of amenity

General Damages

What's important ?

- Nature and severity of injury, its impact on the claimant and any disability
- Duration – Claimant's age and life expectancy
- Particular features of the Claimant –retired person maybe more significantly affected by loss of amenity, feeling about scars
- Shock and nature of incident – higher awards for major events e.g. Kings Cross disaster

General Damages

Assessment?

“...The appropriate approach in addition to relying on the current JSB guidelines, is that which has been generally successfully adopted hereto. Appropriate guideline cases updated by the RPI should be used to find the appropriate level of award.”

Heil v Rankin [2001] P.I.Q.R. Q.3.

General Damages

'...these guideline figures should be increased by the appropriate index for inflation between August 2023 and the date of any assessment of damages.'

Christina Lambert, Introduction to Judicial College Guidelines

General Damages

Not set in stone

Not necessarily accurate

General Damages

Multiple Injuries ?

'It is in my judgment always necessary to stand back from the compilation of individual figures, whether assistance has been derived from comparable Cases or from [Judicial College] guideline advice, to consider whether the award for pain, suffering and loss of amenity should be greater than the sum of the parts in order properly to reflect the combined effect of all the injuries upon the injured person's recovering quality of life or, on the contrary, should be smaller than the sum of the parts in order to remove an element of double counting. In some cases, no doubt a minority, no adjustment will be necessary because the total will properly reflect the overall pain, suffering and loss of amenity endured. In others, and probably the majority, an adjustment and occasionally a significant adjustment may be necessary.'

Pitchford LJ in *Sadler v Filipiak* [2011] EWCA Civ 1728

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Case Study

Pedestrian hit by a car

Multiple Injuries

- Head
- Ribs – contusion to lung
- Liver, kidney and spleen
- Pelvis
- Soft tissue injuries
- Scarring
- Psychological

Case Study

Pedestrian hit by a car

Head

- Brain
 - Subdural haematoma
 - Multiple head fractures
- Nose
 - Loss of smell
- Eye
 - Loss of vision in left eye, Homonymous hemianopia
- Ear
 - Hearing loss
- Face
 - Scarring
- Psychological
 - PTSD
 - Depression

Case Study

Pedestrian hit by a car

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 - PTSD
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Guidelines

1. Injuries resulting in Death
2. Injuries involving Paralysis
3. Brain and Head Injury
4. Psychiatric and Psychological Damage
5. Injuries Affecting the Senses
6. Injuries to Internal Organs
7. Orthopaedic Injuries
8. Work-Related Limb Disorders
9. Chronic Pain
10. Facial Injuries
11. Scarring to Other Parts of the Body
12. Damage to Hair
13. Dermatitis and Other Skin Conditions
14. Minor Injuries

Case Study

3. Brain and Head Injury

- (A) Injury Resulting from Brain Damage
(c) Moderate

(ii) Cases in which there is a moderate to modest intellectual deficit, the ability to work is greatly reduced if not removed, and there is some risk of epilepsy.

£110,720 to £183,190

(iii) Cases in which concentration and memory are affected, the ability to work is reduced, fatigue may be a feature, where there is a small risk of epilepsy, and any dependence on others is very limited. There may nonetheless be vestibular symptoms and an effect on senses.

£52,550 to £110,720

(d) Less Severe

In these cases the injured person will have had similar problems to (c)(iii) above but will have made a good recovery and will be able to take part in normal social life and to return to work. There may not have been a restoration of all normal functions so there may still be persisting problems such as poor concentration and memory or disinhibition of mood, which may interfere with lifestyle, leisure activities, and future work prospects. At the top of this bracket there may be a small risk of epilepsy or some seizures in the past.

£18,700 to £52,550

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Case Study

4. Psychiatric and Psychological Damage

(B) Post-Traumatic Stress Disorder

(b) Moderately Severe

This category is distinct from (a) above because of the better prognosis which will be for some recovery with professional help. However, the effects are still likely to cause significant disability for the foreseeable future. While there are awards which support both extremes of this bracket, the majority are between **£35,100** and **£45,300**.

£28,250 to £73,050

(c) Moderate

In these cases the injured person will have largely recovered, and any continuing effects will not be grossly disabling.

£9,980 to £28,250

(d) Less Severe

In these cases a virtually full recovery will have been made within one to two years and only minor symptoms will persist over any longer period.

£4,820 to £9,980

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5. Injuries Affecting the Senses

(A) Injuries Affecting Sight

(e) Complete Loss of Sight in One Eye This award takes account of some risk of sympathetic ophthalmia. The upper end of the bracket is appropriate where there is scarring in the region of the eye which is not sufficiently serious to merit a separate award.

£60,130 to £66,920

(f) Cases of serious but incomplete loss of vision in one eye without significant risk of loss or reduction of vision in the remaining eye, or where there is constant double vision. A case of constant blurred vision and sensitivity to light in both eyes requiring constant wearing of dark glasses would be at the top of the bracket.

£28,900 to £48,040

(g) Minor but permanent impairment of vision in one or both eyes, including cases where there is some double vision, which may not be constant, and cases of permanent sensitivity to bright light but not sufficient to require constant wearing of dark glasses.

£11,120 to £25,600

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Case Study

10. Facial Injuries

(B) Facial Disfigurement

(c) Significant Scarring Where the worst effects have been or will be reduced by plastic surgery leaving some cosmetic disability and where the psychological reaction is not great or, having been considerable at the outset, has diminished to relatively minor proportions. Will include cases where the scarring is visible at conversational distance.

£11,120 to £36,720

(d) Less Significant Scarring In these cases there may be but one scar or, though there are a number of very small scars, the overall effect is to mar but not markedly affect the appearance and the reaction is no more than that of an ordinarily sensitive person. Cases involving one single scar (not hyperpigmented or keloid) that can be hidden or camouflaged and do not represent any significant cosmetic blemish are likely to attract an award at the lowest end of the bracket.

£4,820 to £16,770

(e) Trivial Scarring In these cases the effect is minor only.

£2,080 to £4,310

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Case Study

Pedestrian hit by a car

Assessment of PSLA

- Early stage – ‘feel’ of the award of quantum
- Incomplete medical evidence – ‘guestimate’
- Trial – accurate

More serious cases – special damages will dwarf award for PSLA

References

1. Kemp & Kemp: The Quantum of Damages, July 2020, DMI001
2. Kemp & Kemp: The Quantum of Damages, July 2020, DMI002
3. Kemp & Kemp: The Quantum of Damages, July 2020, DMI005
4. Kemp & Kemp: The Quantum of Damages, January 2021, 52103

Thank you!

Any questions?

Dr Robert Whittock

robert.whittock@gatehouselaw.co.uk

+44 (0) 020 7691 0061