



1962

Recent Heart Injury Awards

James A. Thomas

Follow this and additional works at: <https://engagedscholarship.csuohio.edu/clevstlrev>

 Part of the [Legal Remedies Commons](#)

How does access to this work benefit you? Let us know!

Recommended Citation

James A. Thomas, Recent Heart Injury Awards, 11 Clev.-Marshall L. Rev. 226 (1962)

This Article is brought to you for free and open access by the Law Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

Recent Heart Injury Awards

James A. Thomas*

THIS SURVEY PRESENTS a collection of reported damage awards since the year 1950 for heart injury not resulting in death. Assuming proof of injury and liability, the statement of the case is limited to the amount of damages and elements of the injury relied upon to justify the court's decision. The survey is preceded by a brief treatment of recent trends in appellate court reviews of heart injury damage awards and a short summary of pre-existing heart condition problems.

Appellate Court Review of Heart Injury Damage Awards—There being no exact standard whereby physical injuries may be translated into sums of money, the amount of such damages is left largely to the discretion of the jury. However, increasingly appellate courts are viewing damage awards with a critical eye and more often are adjusting the size of the award.¹ The most frequently used basis for these monetary adjustments is that the size of the award is so flagrantly excessive as to shock the conscience or raise a presumption that the award was the result of passion, prejudice or undue influence.² In *Prince v. Kansas City Southern R. Co.*,³ the Supreme Court of Missouri reduced a \$44,000 jury verdict to \$27,000 in an action in which a 37 year old railroad worker earning \$250 per month had received permanent and progressive heart injury. The Louisiana Court of Appeals recently reduced a \$70,000 award by the trial judge to \$45,000 in an action where a 26 year old married woman suffered a sub-acute bacterial endocarditis.⁴ In *Magee v. General Motors Corporation*,⁵ the District Court remitted a \$50,000 jury verdict to \$31,000, in an action where a 70 year old, practicing physician sustained a heart attack as a result of an auto collision. However, it is not unusual to find disagreement among appellate courts as to what constitutes an excessive award. For instance, in *Johnson*

* B.A., Baldwin-Wallace College; Third-year student at Cleveland-Marshall Law School.

¹ Wright, *Damages For Personal Injuries*, 19 Ohio St. L. J. 155 (1958).

² McCormick, *Damages*, sec. 18 (1935); Oleck, *Damages to Persons & Property*, c. 9, 10 (1961 revision).

³ 360 Mo. 580, 229 SW. 2d 568 (1950).

⁴ *Crowther v. Fenstermaker*, 96 So. 2d 91 (La. App. 1957).

⁵ *Magee v. General Motors Corp.*, 117 F. Supp. 101 (D. C. Pa. 1953).

v. Howard,⁶ a 49 year old gardener sustained, among other things, an injury to the heart. The jury returned a \$25,000 verdict for the plaintiff. The trial court and appellate court thought that the award was so excessive as to require a new trial, but the state Supreme Court approved the jury's verdict.

In determining whether an award is excessive or inadequate, the court may make a comparison of recent verdicts,⁷ but evidence of comparable verdicts is inadmissible in the jury trial.⁸ In comparing verdicts the court will take notice of the depreciation of the United States dollar.⁹

Pre-Existing Heart Condition—Heart injury damage assessment is most difficult in cases where the victim was suffering from a pre-existing heart condition. Since a tortfeasor takes his victim as he finds him, it is no defense that plaintiff's pre-existing heart condition made him more susceptible to injury.¹⁰ However, the tortfeasor is liable only for the increased or augmented suffering proximately caused by his wrongful act.¹¹ The amount of "increased aggravation" is for the jury to determine.¹²

*Walker v. St. Louis Public Service Co.*¹³ exemplifies the complexity of this area. The question before the court was whether there was substantial evidence from which the jury could reasonably find that the aggravation of plaintiff's pre-existing, long-standing, permanent and progressive heart condition was a permanent injury. Plaintiff's own doctor testified that her rheumatic heart disease was of the type that in and of itself tended to get "worse"; that plaintiff's pregnancy possibly sped up the development of congestive heart failure; that any shock could have caused same; and that plaintiff's prior mitral stenosis in all probability would have resulted in the development of congestive heart failure. The court concluded that an aggravation which results in adding a permanent condition to two other permanent conditions is itself a permanent injury even though the permanent injury probably would have occurred anyway.

⁶ 45 Wash. 2d 433, 275 P. 2d 736 (1954).

⁷ *Supra*, n. 4.

⁸ *Quednau v. Langrish*, 144 Conn. 706, 137 A. 2d 544 (1957).

⁹ *Waterloo Sav. Bank v. Waterloo, C. F. & N. R. Co.*, 244 Iowa 1364, 60 NW. 2d 572 (1953).

¹⁰ Restatement, Torts, § 461.

¹¹ 25 C. J. S., Damages, § 21 (1955).

¹² *Supra*, n. 9.

¹³ 362 Mo. 648, 243 SW. 2d 92 (1951).

In *Zito v. Schneller*,¹⁴ a 69 year old salesman sustained a coronary occlusion 20 days after an auto collision. Plaintiff received a \$6,500 verdict, despite expert medical testimony that a heart attack cannot be connected with a traumatic episode occurring over two weeks prior thereto.

There is a conflict of authority upon the question of whether aggravation of a pre-existing heart condition must be alleged in the pleadings to permit recovery for it.¹⁵ *Varley v. Motyl*¹⁶ presents both views, the majority holding that an allegation in the complaint that the accident "affected and injured plaintiff's heart" gave defendant sufficient notice of plaintiff's type of injury. A vigorous dissent maintained that plaintiff's pleadings were not designed to give the defendant the information to which he is entitled in order to prepare his defense properly.

Survey of Recent Awards

Pre-existing Heart Condition

\$2,580—54 year old retired postal employee, hit from behind while waiting for traffic light; prior to accident had been suffering from a myocardial infarction requiring anticoagulant therapy and digitalis. The collision "increased his pain and symptoms in his chest" and caused a whiplash injury to his neck. (Medical expenses of \$166, and no loss of wages.) *Spivey v. Mills-Marris Co. of Columbus*, 133 So. 2d 620 (Miss. 1961).

\$6,500—69 year old salesman escaped auto collision without cuts or bruises and refused to seek medical attention. Following day, plaintiff became extremely nervous, developed shoulder, back and chest pains. Twenty days after the accident had an acute posterior myocardial infarction; was hospitalized for 16 days, bed patient at home for about two months, and away from work for five months. (Verdict included \$1,500 for special damages.) *Zito v. Schneller*, 133 So. 2d 169 (La. App. 1961).

\$14,000—Jury verdict reduced to \$10,000 by State Supreme Court; 36 year old woman's permanent and progressive heart condition was aggravated by trauma received in auto collision. Before accident, plaintiff had been able to do light household work, afterwards unable to do any work.¹⁷

¹⁴ 133 So. 2d 169 (La. App. 1961).

¹⁵ Annot., 32 A. L. R. 2d 1447 (1953).

¹⁶ 139 Conn. 128, 90 A. 2d 869 (1952).

¹⁷ *Supra*, n. 13.

\$50,000—Jury verdict reduced to \$30,000 by District Court. Seventy year old practicing physician with life expectancy of 9.42 years, suffered the effects of a heart condition, permanent injuries to the neck and excruciating pain, in an auto accident caused by the defective steering apparatus of his car. Plaintiff was hospitalized for 17 days and under the care of a physician for six months; failed to prove any impairment of earning power.¹⁸

\$7,500—Sixty year old realtor with pre-existing arteriosclerosis for which he had been receiving disability compensation from the Veteran's Administration, sustained a myocardial infarction from illness caused by eating impure food at defendant's hotel. *Tvitt v. Shamrock Hotel*, 143 F. Supp. 376 (D. C. Tex., 1956).

\$125,000—Mechanic slipped and fell on floor, causing back injury, pain, worry, anxiety and nervousness, all of which precipitated a coronary thrombosis. *Martin v. Tindell*, 98 So. 2d 473 (Fla., 1957).

\$6,000—Plaintiff, who in 1944 had been forced to cease work for two years because of heart condition, received bruises on head, shoulder, hip, testicles and mashed bladder passage in an auto accident. Plaintiff's pre-existing condition was greatly aggravated, causing more severe pain than previously. Plaintiff had earned \$200 per month, now totally disabled and would require medical treatment for life. *Clark v. Gilmore*, 213 Miss. 590, 57 So. 2d 328 (1952).

\$1,100—Plaintiff's pre-existing heart condition was aggravated by nicotine poisoning incurred from drinking one of defendant's soft drinks which contained the unsmoked portion of a cigar. *Coca Cola Bottling Co. v. Tannahill*, 235 SW. 2d 244 (Tex. Civ. App. 1951).

\$6,000—Female passenger's pre-existing heart and lung condition were aggravated by injuries received from being thrown on the floor of defendant's bus by a sudden stop. Plaintiff was in a state of dangerous shock for about 24 hours, in severe shock for a week, and hospitalized for 72 days. Medical and hospital bills totalled \$1,079.00.¹⁹

¹⁸ *Supra*, n. 5.

¹⁹ *Supra*, n. 9.

\$12,000—Plaintiff's pre-existing heart condition aggravated by collapse of bed on which he was sleeping. Dealer liable on theory of breach of warranty and negligence, and manufacturer liable for breach of warranty. *Workstel v. Stern Bros.*, 3 Misc. 2d 358, 156 N. Y. S. 2d 335 (1956).

\$10,000—Sixty-one year old turret lathe operator, with serious pre-existing heart condition, involved in rear-end auto collision, sustaining no apparent ill effects until a week later when hospitalized because of pneumonia and a coronary thrombosis, which ultimately led to cardiac decomposition. Plaintiff's prior earnings were \$46 per week; following the accident he was unemployed for one year and nine months, and afterwards forced to accept job as a night watchman at \$50 per month.²⁰

\$5,000—While driving by on a public street, husband's pre-existing, serious heart condition was aggravated by inhaling "smog" emitted from defendant's plant. *Hagy v. Allied Chemical & Dye Corp.*, 122 Cal. App. 2d 361, 265 P. 2d 86 (1953).

\$25,000—Plaintiff's pre-existing heart condition was reactivated by the severe impact of an auto collision. Two months after the accident, plaintiff suffered another heart attack and was then advised by his physician to move from his upstairs apartment and to work shorter hours. *Pearson v. City of New York*, 142 N. Y. S. 2d 114 (Sup. Ct., 1955).

No Pre-existing Heart Condition

\$26,000—Auto collision, 56 year old man with life expectancy of 17 years and work expectancy of 9 years, received multiple injuries to the chest area, including a serious injury to the heart which would require the taking of digitalis for the remainder of his life. Plaintiff hovered between life and death for weeks, was hospitalized for 64 days and unable to return to work for four months. Hospital and medical bills totalled \$1,892.00. *Weilbrenner v. Owens*, 246 Iowa 580, 68 NW. 2d 293 (1955).

\$72,500—Forty-four year old log truck driver with wife and three children, literally crushed in collision with another truck, sustained a severely bruised heart producing angina pectoris. Plaintiff was hospitalized for 26 days, suffered numerous attacks after the accident involving great pain, relieved only partially by nitroglycerine, and is totally disabled and semi-invalid. Medi-

²⁰ *Supra*, n. 16.

cal bills to average \$20 per month rest of life. *Primm v. Continental Gas Co. & United Van Lines, Inc.*, 143 F. Supp. 123 (D. C. La., 1956).

\$5,000—Eleven month old child badly crushed in auto collision, causing his heart to shift to the right and left lung to collapse; remained in hospital for several days under oxygen tent, then confined to bed at home for four months; would never be able to pass an army examination, and would have difficulty obtaining life insurance or engaging in sports. *Viccinelli v. Pecue*, 48 So. 2d 679 (La. App., 1950).

\$10,200—Male motorist involved in auto collision received cerebral concussion, severe shock, contusions of the heart and left chest wall, and whiplash injury to the neck. Plaintiff was hospitalized for 18 days and the heart contusions and bruises of the chest area caused acute pain and discomfort for four months after the accident. Verdict included \$2,700 for special damages. *Salter v. Acme Well Point Corp.*, 116 So. 2d 351 (La. App., 1959).

\$17,000—Thirty-seven year old welder developed heart trouble and permanent injuries to the eyes and brain when crane on which he was working contacted 7,200 volt wire. Plaintiff was hospitalized for seven weeks and treated for two months; too frightened to weld again, took job as truck driver thereby reducing annual salary \$1,000.00. *James v. Bowman*, 331 SW. 2d 866 (Ark., 1960).

\$44,000—Jury verdict reduced to \$27,500 by State Supreme Court. Thirty-seven year old, heavy manual laborer earning \$250 per month, sustained numerous injuries including a thickening pleura which reduced the right lung to about 50% of its normal size, thus pulling the heart about 1½ inches to the right. This displacement interfered with circulation, causing numerous black-outs. Plaintiff, unable to resume former occupation, was forced to accept lighter work as a general handy man and porter.²¹

\$70,000—Trial judge award reduced to \$45,000. Attractive, married woman 26 years old, fractured both legs and left hip, and shattered left thighbone in auto accident; hospitalized for three weeks. After being home two weeks, forced to return to hospital by sub-acute bacterial endocarditis (prolonged inflammation of lining membrane of the heart) resulting from the entry of infecting organisms through the compound fractures; hos-

²¹ *Supra*, n. 3.

pitalized for 42 days and treated with massive doses of penicillin. Plaintiff was confined to cast for two and one-half months, in wheelchair two months, on crutches for four months, wore braces six months, and presently walks with a permanent crippled gait.²²

\$54,000—Window washer with life expectancy of 21.12 years, earning \$2,500 per year, in an auto accident, suffered damage to the left ventricle muscle of the heart, fracture of collarbone, and loss of normal rotation and motion of the neck; leaving plaintiff permanently and totally disabled. *Robinson v. Butler*, 234 Minn. 252, 48 NW. 2d 169 (1951).

\$1,500—Male motorist suffered a moderate cardiac contusion, also contusions of the chest wall, left wrist and right thigh, in auto collision. (\$500 special damages.) *Taylor v. Fidelity & Casualty Co.*, 55 So. 2d 307 (La. App., 1951).

\$9,000—Married practical nurse earning \$200 per month, sustained injuries resulting in thrombophlebitis and a coronary insufficiency, when taxi driver closed door on her coat and drove off dragging plaintiff; rendered totally and permanently disabled; medical bills of \$3,800. *Adams v. Summers*, 222 Ark. 924, 263 SW. 2d 711 (1954).

\$25,000—Forty-nine year old gardener with life expectancy of 23 years, in auto collision, sustained a marked lardosis of the low back, limitation of neck movement, roughening of disc, all resulting in a heart beat above normal in spite of thyrodictory. *Johnson v. Howard*, 45 Wash. 2d 433, 275 P. 2d 736 (1954).

\$12,500—Plaintiff endured intense pain and suffering from a cardiac murmur, crushed ribs and permanent eye injury; hospital and medical bills totalled \$2,500.00. *Giovannelli v. Fike*, 19 Fay. L. J. 161 (Pa. Comm. Pl., 1960).

²² *Supra*, n. 4.