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Recent Back Damage Awards

Carl H. Miller*

INJURIES TO THE HUMAN BACK have long perplexed the legal world.¹ This is especially true of the *soft tissue* area² of the back, where objective medical tests give way to the vagueness of a "sprained" muscle,³ and the court finds itself torn between the desire to adequately compensate⁴ an injured plaintiff and the caution that must prevail where objective tests are inadequate.

A full description of this portion of the human anatomy, due to its complexity, would be inadequate without the aid of anatomical charts.⁵ Generally speaking however, we will be concerned with that portion of the back that is not skeletal in nature, and though the interaction of the spine with the muscular structure permits little latitude in separating them, we will do so for the purpose of limiting the area of discussion.

Basically, the muscles of the back are arranged in five layers. The trapezius, and the latissimus dorsi, together form the superficial or covering layer of the back. The trapezius is a larger diamond shaped muscle arising from the region of the 12th thoracic vertebra, fanning out to the spine of the scapula (a bone) in each shoulder, and then converging again to the base of the skull and over the shoulder to the clavicle (collarbone). The latissimus dorsi, overlapped by the trapezius at its upper end, extends down, covering the remainder of the lower back. The sideward extension of this muscle converges into a four-sided tendon which is inserted into the lower part of the intertubercular groove of the humerus (upper arm bone).

Another muscle of particular importance in considering back injuries is the sacrospinalis (erector spinae), which forms one of the deep layers. The sacrospinalis begins at the lower

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¹ The Aching Back—a Symposium, 19 *Curr. Med.* 4 (1958); The Back: A Law-Medicine Problem, *W. Res. Univ.* (1956).

² *W. Res. Univ.*, *Supra* n. 1, at 158-176.

³ Larson, *Low Back Pain*, 26 *Ins. Counsel J.* 612 (1959); Burman, *Low Back Pain*, 6 *Med. Trial Tech. Q.* 23 (1960).

⁴ Krusen & Ford, *Compensation Factor in Low Back Injuries*, 26 *Ins. Counsel J.* 158 (1959).

⁵ Hamilton, *Textbook of Human Anatomy* 193 (1956). See also Kimber, *Anatomy & Physiology* 138 (12th ed. 1946).

end of the spine, and runs parallel with the spine before branching out into three distinct columns, namely, a lateral, the iliocostalis, an intermediate, the longissimus, and a medial, the spinalis. These columns attach to the vertebrae and ribs all the way up the back, and serve to hold the spinal column erect. The deep muscles of the back are covered by an investing membrane, the lumbodorsal fascia, which holds the muscles in place and separates them into groups.

Injuries to the soft tissue portion of the back generally fall into two basic categories, although it is not uncommon for both to be found in the same injury. The first, generally inflicted upon the superficial or covering layer, consists of bruises,⁶ lacerations, burns, and punctures. These injuries, by their very nature and with the continuing advances of the antibiotic, usually heal quickly and leave little, if any, residual permanent disability.

The second basic group is by far the most prominent, and most difficult to test by objective medical tests. While many a defendants' attorney will claim that there is a definitive correlation between these two facts, still, injuries consisting of muscle sprains, strains, and ruptures can result in at least partial permanent disability. A sprain (twist or wrench)⁷ is a condition normally created by the application of a force upon a muscle when that muscle is in an abnormal position. A strain⁸ is a local condition resulting from the excessive use of a particular muscle. A rupture⁹ of the muscle or fascia consists of a protrusion from its natural cavity and generally is the result of a direct or indirect blow. In many instances the condition, with proper medical treatment, is merely temporary; in other instances it can be a source of painful aggravation for many years.¹⁰ The treatment itself,¹¹ often a back brace arrangement, can be quite

⁶ Flaxman, Bumps and Bruises, 7 Med. Trial Tech. Q. 47 (1960).

⁷ Burman, *op. cit. supra* n. 3 and see 2 Frankel, Lawyers Medical Cyclo-
pedia 16.75 (1959); Flaxman, Low Back Affections—Aggravation of Pre-
existing Ailments, Med. Trial Tech. Q. 47 (1956).

⁸ Taber, Cyclopedic Medical Dictionary S-89 (6th ed. 1954).

⁹ *Id.* at H-27.

¹⁰ For an excellent treatment of the aggravation of pre-existing ailments,
see Flaxman, *op. cit. supra* n. 7.

¹¹ Frankel, *op. cit. supra* n. 7. Also, 1 Piersol, Cyclopedic of Medicine,
Surgery, Specialties 983 (1960).

bothersome, and is often accompanied by the necessity of numerous visits to a physician.

It should be noted that *whiplash* injuries are treated in a separate article in this survey of damage award trends. Another separate article covers *spine* injuries.

1956

\$62,283. *Tellefesen v. Key System Transit Lines*, 158 Cal. App. 2d 243, 322 P. 2d 469. Warehouse superintendent, 53 yrs. old, suffered a brain injury, along with injury to the soft tissues of the neck and back.

\$18,208. *Girouard v. Houston Fire & Cas. Ins. Co.*, 85 So. 2d 664, (La. App.). Injury to the muscles and ligaments of the back, and two fractured ribs. Medical expense of \$595.

\$12,000. *Murphy v. Graves*, 294 S. W. 2d 29, (Mo.). Woman stabbed in back, resulting in a lung puncture. Case returned to trial court indicating that prejudice originating in first trial had not been cured by reducing the award from \$17,500 to \$12,000.

\$6,500. *Joshmer v. Fred Weber Contractors, Inc.*, 294 S. W. 2d 576, (Mo. App.). Muscles in the back left spastic and tender, pre-existing arthritis aggravated, and knee joint permanently injured. Award includes \$1600 in special damages.

\$5,500. *Botta v. Brunner*, 42 N. J. Super. 95, 126 A. 2d 32. Woman's back sprained, with continuing disability which the court said might have been simulated or grossly exaggerated. A \$5,500 award, notwithstanding special damages of over \$8,000.

\$5,000. *Pfeifers of Ark. v. Rores*, 225 Ark. 840, 286 S. W. 2d 1. Woman hospitalized for 41 days as a result of a bruised hip, strained thigh muscles, and muscular strain in lower part of back.

\$4,721. *Fitzpatrick v. State*, 2 Misc. 2d 253, 151 N. Y. S. 2d 534. A 19 year old handy man suffered a sacrolumbar back sprain, affecting his lifting ability, comminuted fracture of the left elbow, and headaches. Disabled for 3 months and sustained \$421 of medical expense.

\$3,950. *Chiodini v. Terminal R. R. Assoc.*, 287 S. W. 2d 357, (Mo. App.). Muscle spasm and soft tissue swelling about the manubrial sternal junction, but X-ray indicated no bone fracture. Medical expense \$125; loss of wages \$1,325.

\$3,500. *Barber v. Jones*, 296 S. W. 2d 404, (Ark.). Truck driver, 37 years old, suffered a wrenched back, which aggra-

vated a prior disc injury, and resulted in myositis, an inflammation of the muscle tissue. Earnings reduced \$20/week and medical expense of \$89.

\$2,500. *Moncrieff v. Lacobic*, 89 So. 2d 471, (La. App.). Injuries to a married woman consisted of lumbosacral sprain, rigid muscle spasms of the lumbar muscles, concussion of the brain, and contusions of head and hip. Hospitalized for 2 days.

\$1,000. *Fitzpatrick v. State*, 2 Misc. 2d 253, 151 N. Y. S. 2d 534. An unemployed mason sustained injuries consisting of a back and neck sprain, and a laceration of the leg. \$40 medical expense.

\$718. *DeForest v. Balwick*, 20 Conn. Supp. 58, 122 A. 2d 301. An 18 yr. old typist suffered a sprain of the back, and a possible concussion. Medical \$110; lost wages \$108.

\$650. *Jordan v. Fidelity & Cas. Co.*, 90 So. 2d 529, (La. App.). Pregnant woman sustained minor injury to muscles of the back and hip. Award contained \$500 for worry and fear as to possible injury to unborn child.

1957

\$38,000. *Sears, Roebuck & Co. v. Jones*, 303 S. W. 2d 432 (Tex. Civ. App.). A 62 yr. old cattleman suffered bruised ligaments and nerves of the back, neck and shoulder. Injury also resulted in traumatic neurosis. Annual lost profits \$4500.

\$12,000. *Johnson v. Toscano*, 144 Conn. 582, 136 A. 2d 341. Low back sprain, contusions of the right leg, and a traumatic hernia sustained by a grinder. Court stated that the jury could have found the back sprain to be greatly exaggerated. \$323 medical; \$1000 loss of earnings.

\$9,000. *Junquera v. Knowles*, 4 A. D. 2d 798, 164 N. Y. S. 2d 387. Permanent residual back injury after strain of recto-abdominal muscles. Lost 5 months of work; husband awarded an additional \$1000.

\$7,500. *Jesse v. Werner & Werner Co.*, 248 Iowa 1002, 82 N. W. 2d 82. Truck driver's chronic back sprain required back brace and resulted in 10% permanent disability. Earnings curtailed; \$47 medical expense. Award reduced from \$12,366.

\$7,500. *Harding v. Pennsylvania R. R. Co.*, 147 F. Supp. 704, (W. D. Pa.). Action brought under the Federal Employer's Liability Act by a railroad employee who suffered a ligamentous sprain of the lumbar region of the back, sprained foot and fracture of the big toe.

\$5,000. *Texarkana Bus Co. v. Carter*, 301 S. W. 2d 300 (Tex. Civ. App.). Injury to the muscles of the lumbar region of the back of a motorcycle policeman resulted in loss of 30 days of work, continuing pain in his back and necessitated the wearing of a back brace. Award reduced from \$10,000.

\$3,500. *Statler v. St. Louis Public Service Co.*, 300 S. W. 2d 831 (Mo. App.). A 65 yr. old female elevator operator suffered a tearing of the soft tissues and ligaments of the back, and aggravation of a hypertrophic arthritic condition. \$290 medical expense.

\$2,500. *Handley v. Capital Co.*, 152 Cal. App. 2d 758, 313 P. 2d 918. Woman bruised hip and severely strained back muscles, which required a shoulder support, and resulted in muscle spasm in region of shoulders and neck. Necessitated 40 visits to her physician.

\$2,500. *Murganti v. Panama Canal Co.*, 9 Misc. 2d 60, 167 N. Y. S. 2d 811. Recovery by a seaman for a lumbosacral strain. No proof of permanency of the injury, but did prove \$400 loss of wages.

\$1,500. *Cavalier v. Nola Cabs, Inc.*, 96 So. 2d 102 (La. App.). Married woman with a lumbosacral sprain, hospitalized one day, but bedridden intermittently for 2½ months. Verdict of \$2400 held excessive and reduced.

\$1,033. *Roux v. Attardo*, 93 So. 2d 332 (La. App.). Cab driver disabled from work for several weeks because of lumbosacral sprain and strain, and general contusions of the back, chest, and both legs.

\$377. *Cormier v. Southern Farm Bureau Cas. Ins. Co.*, 94 So. 2d 901 (La. App.). Moderate lower back strain with some muscle spasm, but no swelling or bruise. Complete recovery after 12 days and 3 visits to the physician. Special damages of \$27.

1958

\$25,000. *Closser v. Becker*, 308 S. W. 2d 728 (Mo.). Truck driver sustained ligamentous sprain of back, diffuse abrasions of back and upper extremities, multiple rib fractures, concussion, extensive scalp laceration and contusion, fracture of the right scapula and severe shock.

\$25,000. *Kansas City Southern Ry. Co. v. Haynes*, 320 P. 2d 404 (Okla.). Railroad signal helper, 34 yrs. of age, suffered 35% permanent disability as a result of severely strained back muscles

and ligaments. Injury aggravated spinal defect and created nerve root irritation which required corrective surgery.

\$20,000. *Kiger v. Terminal R. R. Assoc.*, 311 S. W. 2d 5, (Mo.). Soft tissue injuries to the neck and lower back area of a 30 yr. old man. Contusions of the knee. Award reduced from \$30,000.

\$13,000. *Thompson v. Yellowstone Livestock Commission*, 133 Mont. 403, 324 P. 2d 412. Cattle purchaser suffered bruised back, which aggravated arthritic condition, fractured leg and nervous condition. \$1268 medical expense.

\$10,000. *Marcantel v. Southern Farm Bureau Cas. Ins. Co.*, 102 So. 2d 879 (La. App.). Storekeeper's low back sprain still causing trouble at time of trial. Award reduced from \$15,000.

\$10,000. *Reich v. Evans*, 7 App. Div. 2d 765, 180 N. Y. S. 2d 159. Severe sprain in lumbar region leaving a weak back, and accompanied by sprained shoulder and arm, multiple contusions, abrasions and lacerations. Evidence of muscle spasm and inability to flex and extend back for 4 to 6 weeks after accident.

\$8,000. *Hicks v. Kosa*, 167 F. Supp. 289 (E. D. S. C.). Truck driver, 27 yrs. of age, with lumbosacral sprain and back muscle spasm which required the wearing of a back brace. Permanently disabled from working requiring any lifting.

\$6,500. *Abraham v. Jones*, 228 Ark. 717, 310 S. W. 2d 488. Farm laborer, 68 yrs. old, suffered a back sprain, broken foot and concussion. Ability to work impaired and \$77 medical expense incurred.

\$6,000. *Cermak v. Hertz Corp.*, 53 N. J. Super. 455, 147 A. 2d 800; affd. 28 N. J. 568, 147 A. 2d 795. Subjective claims of back and head pains, with loss of hearing. Award reduced from \$15,000 to \$8,500; further reduction to \$6,000 on review.

\$5,000. *Lopez v. Price*, 145 Conn. 560, 145 A. 2d 127. Lumbosacral strain left housewife with 10% permanent partial disability. Also abdominal injuries, cerebral concussion, and chest contusions.

\$3,800. *Wilkinson v. State*, 14 Misc. 2d 616, 178 N. Y. S. 2d 55. Neck and low back sprain, cerebral concussion and neurosis. All objective evidence of injuries cleared up within a week; permanent partial disablement due to precipitation of a psycho-neurosis.

\$750. *Reininger v. Delta Fire & Cas. Co.*, 106 So. 2d 746 (La. App.). Filling station attendant with only his own testi-

mony of back and knee pain. Treated himself with aspirins and a heating pad. Loss of wages \$225; medical expense \$72.

1959

\$20,000. *Rice v. Philadelphia Transportation Co.*, 394 Pa. 454, 147 A. 2d 627. Tears, sprains and hemorrhage of the soft tissues left a longshoreman with a weak back. Earning power impaired.

\$15,963. *Policare v. United States*, 174 F. Supp. 782 (E. D. N. Y.). Permanent lumbosacral sprain and back muscle spasm, accompanied by fractures of ischium and pubis ramus, and general contusions. \$713 medical expense; \$5250 lost wages.

\$15,000. *Hudson v. American Employers Ins. Co.*, 113 So. 2d 340 (La. App.). Housewife, age 27, suffered pulled or ruptured muscles with spasm. Pre-existing, but controllable, epilepsy aggravated, causing threefold increase of seizures.

\$8,000. *Morgan v. Thompson*, 325 S. W. 2d 794 (Mo.). Laborer sustained a lumbosacral sprain whose permanency was speculative. Also sustained general bruises, fractured and disfigured nose, and lacerations. Lifting ability impaired.

\$5,821. *Goutierrez v. Travelers Ins. Co.*, 107 So. 2d 847 (La. App.). Housewife with severe sprain of back, blow to head and ankle. Required a special shoe to retain mobility. Award reduced from a previously granted \$7500.

\$5,000. *Laukaitis v. Kikta*, 20 Misc. 2d 449, 189 N. Y. S. 2d 673. Married woman with lumbosacral strain, cerebral concussion and sprain of right foot. Additional \$1500 awarded to husband. Hospitalized 10 days, in cast 4 weeks, on crutches 4 months.

\$3,500. *Crosby v. St. Louis County Cab Co.*, 320 S. W. 2d 944 (Mo. App.). Chronic neck and back sprain leaving some permanent disability, knee bruised, and ankle bruised and swollen. Back brace required. \$327 medical expense resulting from 15 visits to physician.

\$3,000. *Durham v. United States*, 174 F. Supp. 410 (D. Md.). Female machine operator, 53 yrs. old, suffered back bruises requiring diathermy treatment, and resulting in persistent pain. No objective symptoms for backaches; x-rays negative. Award included \$358 for medical expense and \$283 for loss of wages.

\$1,500. *Rice v. Traders & General Ins. Co.*, 114 So. 2d 92, (La. App.). Recovery for 64 yr. old woman for mild soft tissue

sprain of spinal area. Sprain lasting 6 to 7 months due to prior osteoarthritic condition of spine.

\$1,200. *Adams v. Pacific Motor Trucking Co.*, 172 Cal. App. 2d 505, 342 P. 2d 351. Back injury without any objective manifestation. Award of \$1200 even though loss of wages alone came to \$1200, with an additional \$569 claimed for medical expense. Some evidence of pre-existing shoulder and back complaints.

\$500. *Klein v. Wilson*, 167 Neb. 779, 94 N. W. 2d 672. Subjective complaints of back injury causing pain. Special damages claimed in excess of \$850; however there was some evidence of comparative negligence on plaintiff's part.

1960

\$50,000. *Scho v. Socony Mobil Oil Co.*, 360 Mich. 353, 103 N. W. 2d 469. Severe facial injuries to a 47 yr. old man, accompanied by a back sprain, traumatic nervousness, and deformation of the nose.

\$27,800. *Bell v. Yellow Cab Co.*, 399 Pa. 332, 160 A. 2d 437. Reduction of award to \$17,000 reversed and original award reinstated for 55 yr. old pet shop operator suffering an acute lumbosacral sprain, cerebral concussion, contused kidneys, bursitis of greater trochanter, sprained knee, and multiple contusions. Plaintiff required back brace and was 50 to 60% disabled for former business, which he had to sell.

\$12,500. *Lacey v. Beck*, 161 A. 2d 579 (Del.). Plaintiff suffered permanent back sprain, scars, intercranial pressure, severe bruise of left hip, and soft tissue injury of the knee.

\$11,667. *Souza v. Richardson*, 177 Cal. App. 2d 93, 1 Cal. Rpts. 863. Storekeeper with extensive wound on lower back required operation to remove clotted blood. Back strained, scalp lacerated, and general contusions sustained, amounting to \$1867 in special damages.

\$10,307. *Jones v. Hogan*, 351 P. 2d 749 (Wash.). Married woman suffered pain and disability for 2 years as a result of a severe lumbosacral strain. Hospitalized and in traction for 5 days, with \$307 in special damages.

\$5,000. *Turner v. Johnson*, 333 S. W. 2d 749 (Ky.). Subjective claim of back injury with continuing pain. The court, noting the absence of any attempt to have medical attention and that normal activities were not limited, returned the case to the lower court for a new trial on damages only.

\$3,023. *Griffith v. Yellow Cab Co. of Shreveport*, 123 So. 2d 769 (La. App.). Woman received nose laceration, a muscular and ligamental type of sprain to the cervical and thoracic spine, general bruises on the body, and limited impairment of the function of the left arm. Injuries not of a permanent nature, but recovery prolonged by an osteoarthritic condition. Award included \$523 for property damage and medical expense.

\$1,387. *Cofield v. Burgdorf*, 117 So. 2d 663 (La. App.). Cotton picker-janitor, 63 yrs. old, received contusions and abrasions of the lumbar region of the back; complicated by pre-existing chronic arthritis. \$147 medical expense.

\$865. *Dugas v. Le Blanc*, 120 So. 2d 111 (La. App.). Complete recovery from back injury in 2 weeks; lacerations of shins and face, and shoulder sprain. Hospitalized 12 days with \$115 medical expense.

\$417. *Morseman v. Mangum*, 177 Cal. App. 218, 2 Cal. Rpts. 67. Alleged back injury causing disability and continuing pain; however, some evidence that condition did not result from accident. Amount of award was the amount of claimed medical expense and property damage.

Conclusion

In reviewing these cases in order to determine a trend, the conclusion is that if there is a trend it is not discernible. Possibly the period of time chosen is too short to show the establishment of any definite tendency. Probably, however, these awards are largely based on the circumstances surrounding each particular case.¹²

¹² As to sufficiency of awards for injuries to various portions of the body see 16 ALR 2d 3 and 16 ALR 2d 393. Information on current personal injury damage awards can be found in Oleck's Negligence and Compensation Service (bi-weekly, Central Book Co.).