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Volume 10
Issue 2 *Personal Injury Damage Award Trends*
(A Survey)

Article

1961

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Recommended Citation

Sheldon E. Baskin, *Recent Spine Damage Awards*, 10 *Clev.-Marshall L. Rev.* 240 (1961)

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Recent Spine Damage Awards

Sheldon E. Baskin*

DAMAGES HAVE BEEN DEFINED as indemnity to the person who suffers loss or harm from an injury.¹ With respect to injuries affecting the spine it is extremely difficult to determine an adequate award because evaluation of the amount of disability is so difficult. In *Kiggins v. Butler*,² the court said,

it is practically impossible to determine with mathematical exactness the monetary value of what is lost when illness displaces health, pain ousts well-being, discomfort de-thrones comfort, and bodily misery banishes physical contentment.

Spinal injuries generally include trauma to the vertebrae, the intervertebral discs and the ligaments which serve to hold the spinal column together. For the purpose of avoiding duplication this paper will confine itself to the subjects of fractures and dislocations of the vertebrae, injuries to the discs and direct injuries to the spinal cord, excluding discussion of soft tissue back injuries and injuries of the cervical or neck area generally referred to as whiplash injuries.

In order to appreciate the extensiveness of spinal injuries it is necessary that the reader have some knowledge of the anatomical structure of the spinal column.

Anatomy

In an adult the spinal column is composed of 26 segments or vertebrae situated one above the other and connected by fibrocartilages (intervertebral discs) and ligaments.³ The vertebral column extends from the base of the skull and continues down the back to a point midway through the pelvic area. The column is divided into two main areas, the true and movable vertebrae and the fused or immovable vertebrae.⁴

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¹ Ballentine, *Law Dictionary* (1948 ed.); and see, Oleck, *Damages to Persons and Property*, § 1 (1961 revision).

² *Kiggins v. Butler*, 386 Pa. 474, 126 A. 2d 460 (1956).

³ *Cunningham's Textbook of Anatomy*, p. 94 (1927).

⁴ *Wiltberger, Medicolegal Aspects of Low Back Pain*, 389 *Ins. L. J.* 410 (1956).

The true vertebrae division is still further divided into three main areas: the cervical, composing the bony axis of the neck; the thoracic, which is the chest area and to which the twelve ribs are attached and; the lumbar, the loins or small of the back and the only area belonging solely to the abdomen proper.⁵ This latter area is less supported by the skeleton than any other part of the body.⁶

The fused or immovable vertebrae consist of the sacrum, a triangular bone composed of five fused vertebrae upon which the fifth lumbar vertebra rests and which forms the dorsal wall of the pelvis, and the coccyx, or tail bone which has no movement.

Between each pair of vertebrae is the intervertebral disc composed of a circumferential portion, the annulus fibrosis, and the nucleus pulposis,⁷ or gelatinous material having a spongy consistency which when compressed has a springlike movement capable of cushioning force applied to the vertebral column. It has been estimated that a man of average height lifting a hundred pound weight from the floor with the spine flexed in the region of the fourth and fifth lumbar discs brings a force of sixteen hundred pounds to bear upon the lumbosacral region.⁸ For the intervertebral discs to withstand such forces and to perform their functions in the normal manner it is obvious that they must be unique structures.

Running through an opening (the vertebral foramen) in every vertebra is the spinal cord. The cord itself is suspended and enveloped within a fibrous membrane known as the pia mater.⁹ Surrounding the pia mater is a delicate transparent membrane known as the arachnoid.¹⁰ It should be noted that a considerable interval exists between the arachnoid and the pia mater, in which there is a varying amount of cerebro-spinal fluid.¹¹ This interval is known as the subarachnoid space.¹² Finally there is a wide, dense, fibrous, tubular sheath which en-

⁵ *Supra* n. 3.

⁶ *Supra* n. 3.

⁷ *Injuries of the Brain and Spinal Cord and Their Coverings*, p. 586 (1949).

⁸ *Supra* n. 7, at 588.

⁹ Cunningham, *op. cit. supra* n. 3, at 519.

¹⁰ *Supra* n. 9.

¹¹ *Supra* n. 9.

¹² *Supra* n. 9.

velopes the arachnoid and which is known as the dura mater.¹³

Emanating from the sides of the cord itself are thirty-one pairs of spinal nerves.¹⁴ These nerves are bifurcated into an anterior or ventral efferent portion and a posterior or dorsal root which is the sensory or efferent nerve root. Further away from the cord these two portions unite and continue on toward the point of attachment. Thus an injury to a nerve root close to the cord may cause either motor or sensory reactions, depending on which root they affect, while an injury to a peripheral segment may affect both functions.

Fractures and Dislocations of the Vertebral Column

The greatest danger in a fracture of a vertebra is its forward displacement so that the spinal cord will be compressed, lacerated, or transected. Unless nerve involvement is prevalent, fractures and dislocations are usually treated in accordance with conservative treatment consisting of bed rest, immobilization of the fracture through the use of casts and/or braces, massage, diathermy, and manipulation.

Herniated Discs

Sudden and extreme force exerted on a portion of an intervertebral disc, causing a break in the hard outer annulus fibrosus, results in the gelatinous material of the inner core (the nucleus pulposus) flowing through the break and impinging on the nerves. Solidification of this exudated substance causes pain and possible impairment of the functions of the extremities. To be a true herniated disc, the nucleus pulposus *must* flow through the rupture at a place where it can irritate nerve roots.¹⁵

Laminectomy

In order to surgically explore and subsequently repair or remove a herniated disc, incision is made in the back, and the necessary laminae (the flattened portion of either side of a vertebral arch)¹⁶ are removed. Since the spinal cord passes through each of the vertebrae, such an operation brings the surgeon's scalpel in very close proximity to the cord itself. The operation

¹³ *Supra* n. 9.

¹⁴ Cunningham, *op. cit. supra* n. 3, at 520.

¹⁵ Smith, *The Intervertebral Disc in Forensic Medicine*, 24 *Indust. Med. & Surg.* 36 (1955).

¹⁶ Steadman, *Medical Dictionary* (9th rev. ed., 1926).

has been considered to be of sufficient danger that the refusal of a workman's compensation claimant to submit to such an operation in mitigation of his damages was held valid, as paralysis of the legs may result.¹⁷

Spinal Fusion

The consensus of opinion among orthopaedic surgeons is that if there exists an unstable back, laminectomy is insufficient and bone fixation or spinal fusion is desirable.

The operation consists of grafting a bone onto the vertebrae between which the removed disc was located. Such fusion restricts the movement of the patient because of the immobility of the two vertebrae. Generally it is deemed preferable to fuse only in those cases with x-ray or operative evidence of instability apart from that due to the herniated disc.

Injuries to the Spinal Cord

Injuries to the spinal cord are usually thought of as involving concussion, contusion, laceration, or compression, or a combination of several.

Concussion can result from direct or indirect blows to the vertebral bodies, such as blows to the back causing an abnormal straightening of the spine as in automobile accidents, or the sudden stopping of a fast moving train.¹⁸ The resultant loss of spinal cord function may be either temporary or permanent. Neurological symptoms are often found in an area far distant from the original site of the injury. The cord is usually swollen immediately or within a few days following the injury.

Contusion is the most frequent type of injury to the cord, due to dislocations or fractures of the vertebral column.¹⁹ Contusions, unlike concussion, cause local changes and involve the injured area directly.²⁰

Piercing, stab or gunshot wounds usually result in a laceration or tearing of the cord.²¹ The possibility of infection or meningitis is increased because of the rupture of the membranes surrounding the cord, causing a leakage of the cerebro-spinal

¹⁷ *Curr. Med. for Attorneys*, p. 29 (Sept. 1953); 4 *Oleck, Negl. and Comp. Serv.* 7 (No. 1), Oct. 1, 1958.

¹⁸ *Injuries, op. cit. supra* n. 7, at 473.

¹⁹ *Injuries, op. cit. supra* n. 7, at 480.

²⁰ *Injuries, op. cit. supra* n. 7, at 481.

²¹ *Injuries, op. cit. supra* n. 7 at 482.

fluid.²² If the cord is completely transected, paraplegia, paralysis of both lower extremities, usually results.

Compression is the squeezing together, pinching, or the exertion of pressure on the cord.²³

Fractures and Dislocations

1960

\$100,000. *Barkovic v. Penn. R. Co.*, 180 F. Supp. 495 (D. C., Pa.), compression fracture of the thoracic vertebrae resulting in total disability for manual labor sustained by a 28 year old lineman with a life expectancy of 38 years. He fell while climbing a transformer pole. Lost wages \$23,700.

\$91,000. *Forsman v. Penn. R. Co.*, 180 F. Supp. 882 (D. C., Pa.), a 35 year old brakeman with a life expectancy of 36 years sustained a crushed fracture of the 12th thoracic vertebra and disc and nerve damage resulting in permanent 20% disability totally incapacitating him from his occupation. Lost wages \$20,000.

\$30,000. *Aylesworth v. London*, Fla. App., 119 So. 2d 816, an automobile collision resulted in a compression fracture of the first and third lumbar vertebrae to a 56 year old machine operator earning \$100 a week. 25-35% disabled.

\$27,467. *Dowden v. Audubon Ins. Co.*, La. App., 120 So. 2d 106, automobile collision resulted in fractures of four lumbar vertebrae.

\$20,000. *Adamson v. Peoria City Lines Inc.*, 24 Ill. App. 2d 562, 164 N. E. 2d 828, a 47 year old woman bus passenger suffered severe contusions of the hip and pelvis and a displaced vertebra and fractured rib requiring the permanent use of a back brace. Medical expenses \$1,716.

\$15,000. *Brooks v. Mock*, Mo., 330 S. W. 2d 759, a 20 year old housewife and mother suffered a compression fracture of the first lumbar vertebra and soft tissue injuries to her back and a cut forehead requiring 13 stitches to close and leaving a permanent scar. At the time of trial she could not lift anything heavy and required her mother to help with the housework and care of her children. Her right foot is larger than the other due to fractures to the metatarsal bones of her right foot, precluding her wearing heels or dancing.

²² *Supra* n. 21.

²³ *Stedman, op. cit. supra* n. 16.

\$15,000. *Lawrence v. Nelson*, W. Va. App., 113 S. E. 2d 241, a 19 year old pregnant woman suffered a fractured pelvis limiting future deliveries to Caesarian section, and fractures to four vertebrae.

\$15,000. *Madsen v. U. S.*, 186 F. Supp. 577 (D. C., Pa.), a 57 year old seaman sustained a compression fracture of the first lumbar vertebra which healed with a $\frac{2}{3}$ loss of vertebral height, traumatic spondylitis and chronic lumbosacral strain, which condition was permanent. He maintained himself for 116 days and was entitled to the contract rate for maintenance and cure of \$8 per day.

\$7,500. *Henning v. Reigler Water Well Drilling Inc.*, 360 Mich. 288, 103 N. W. 2d 429, severe facial injury and pain of a broken jaw and a subluxation involving the fourth and fifth cervical vertebrae resulted in extreme pain and double vision for a period of 5-6 months.

\$6,988.70. *Josey v. Granite State Fire Ins. Co.*, La. App., 122 So. 2d 303, a 23 year old married draftsman suffered a compressed fracture of the second lumbar vertebra accompanied by fracture of the right pedicle and facet of the said vertebra. He was hospitalized for a period of several days and was required to wear a full body cast for two months. His vertebra will remain permanently compressed and he will never have a normal back. Permanent disability 10-15%.

1959

\$50,000. *Breland v. Gulf Mobile & O. R. Co.*, Mo., 325 S. W. 2d 9, a 48 year old railroad fireman earning \$404 a month sustained a fracture of transverse process of a lumbar vertebra. Additional injuries occurred to the head, legs, pelvis and nerves resulting in arthritis, neuritis, insomnia and disability from heavy work. Lost wages, \$13,000.

\$25,180. *Kissinger v. U. S.*, 176 F. Supp. 828 (D. C., N. Y.), a 36 year old ship workman suffered a fracture of the left transverse process of the fourth lumbar vertebra resulting in permanent partial back disability. The award included \$1,652 for medical expenses, \$9,510 lost wages, \$9,018 for impairment of future earnings and \$5,000 for pain.

\$20,000. *Baer v. Schaap*, 168 Neb. 578, 97 N. W. 2d 207, a compressed fracture of the vertebra was received by a 46 year old construction foreman, resulting in 15% permanent disability.

\$17,500. *Ruhe v. North German Lloyd Line*, 177 F. Supp. 368 (D. C., N. Y.), a 19 year old boy who tended animals aboard ship sustained a compression fracture of the thoracic vertebra. Hospitalized 9 days and in a cast for two months.

\$15,000. *Reynolds v. Forbes*, Miss., 116 So. 2d 539, an automobile collision resulted in a fracture of the transverse processes of the second, third and fourth lumbar vertebrae. Special damages, \$4,042.

\$12,500. *Hayes v. Kirk*, Ohio App., 159 N. E. 2d 920, for alleged non-payment of \$25, the plaintiff was assaulted and consequently sustained a dislocated vertebra in his neck and back, contusions about the face and body, injuries to his eyes and ears and a hernia. He was unable to attend to his business as a commission merchant for over a year. Lost wages, \$5,000 and medical expenses, \$163.

\$10,000. *Barnard v. Binns*, Tenn. App., 326 S. W. 2d 676, a 26 year old employed housewife suffered a fracture of the lateral processes of the fourth and fifth lumbar vertebrae, resulting in continued pain in the back and impairment of her ability to work.

\$4,150. *Hargett v. Chemical Service Inc.*, La. App., 116 S. 2d 855, a compression fracture of the eleventh thoracic vertebra, and multiple lacerations of both ears were received by a truck passenger when the truck in which he was riding was hit by another car. He was disabled for 29 weeks and required to wear a brace for six months.

\$4,000. *Fulco v. Lumberman's Mut. Cas. Co.*, La. App., 110 So. 2d 871, a 50 year old housewife received a slight compression fracture of the first lumbar vertebra. While there was only moderate residual disability she would have pain for the rest of her life.

1958

\$155,000. *Lamb v. Hart Furniture Co.*, 9 TAPA Bull 3 (Nov. 1958), a young boy fell three floors thru a hole in the floors of a department store, sustaining fractures of the skull, three vertebrae and the shoulder. He also suffered brain damage causing a diminution of school intelligence. The case was settled and \$1,600 for prior medical expenses and \$5,000 to the boy's father for loss of services were also paid.

\$125,820. *Bosch v. Pellegrini, Vadon & Std. Oil of Calif.*,

22 NAACA L. J. 404, a road construction laborer was struck by a Standard Oil truck, sustaining multiple fractures of the spine and pelvis.

\$45,000. *Atl. Coast Line R. R. Co. v. Bennett*, 251 F. 2d 934 (C. A. 4, So. Car.), plaintiff suffered a fracture of the third and fourth lumbar vertebrae requiring his wearing an arm-chair back brace likely to cause increased fibrosis, and a fracture of the left arm with residual disability of 10% in flexibility of the left wrist and diminution of sensation in the forearm. \$3,853.21 allowed for medical expenses and \$4,370 for one year and two days loss of wages.

\$20,000. *Louisville & N. R. Co. v. Mattingly*, Ky., 318 S. W. 2d 844, 339 S. W. 2d 155, new trial granted because of excessive damages when evidence was introduced indicating a pre-existing back injury plus the fact that the plaintiff, a 41 year old laborer, although sustaining a compression fracture of the third lumbar vertebra was never hospitalized and never ceased working.

\$16,000. *Panichella v. Penn. R. Co.*, 167 F. Supp. 345 (D. C., Pa.), a railroad laborer received a lumbar fracture. Lost wages, \$1,500.

\$15,000. *Dillon v. Pepper*, 11 Misc. 2d 1041, 173 N. Y. S. 2d 845, mod. oth. gds. 7 A. D. 2d 1003, 184 N. Y. S. 2d 273, a lower thoracic spine fracture, resulting in limitation of motion, hospitalized a female patient for 93 days. \$3,600 medical expenses.

\$13,700. *Korpela v. Redlin*, 3 Wis. 2d 591, 89 N. W. 2d 305, a 43 year old carpenter's helper with a life expectancy of 26 years suffered a fracture of the left transverse process of the third lumbar vertebra. His ability to bend was subsequently impaired. \$1,220 lost wages and \$313 medical expenses were also allowed.

1957

\$45,000. *Bunton v. Ill. Cent. R. Co.*, 15 Ill. App. 2d 311, 146 N. E. 2d 205, minepumper received fractures of the third, fourth, and fifth lumbar vertebrae resulting in permanent displacement of the fifth lumbar vertebra as well as fractures of ten ribs, a hemothorax, pneumothorax, pleuritis and injury to his wrist.

\$17,500. *Bresley v. O'Connor Inc.*, 163 Neb. 565, 80 N. W. 2d 711, a housewife suffered a vertebral fracture and fractures

to her ribs and pelvic bones, and concussion. Disabled, 13 months.

\$16,000. *Williams v. Yellow Cab Co.*, Ill. App., 136 N. E. 2d 582, a charwoman sustained a compressed fracture of her vertebra, necessitating the wearing of a back brace. Medical expenses, \$800.

\$10,000. *Ragon v. Day*, 228 Ark. 815, 306 S. W. 2d 687, a compression fracture of the fourth and fifth thoracic vertebrae resulted in disability for 36 months for a 19 year old college student. Medical expenses, \$548.

\$5,000. *Paddock v. Patrick*, Neb. 79 N. W. 2d 701, automobile accident resulted in a minor fracture of the transverse process of a 33 year old married waitress whose monthly earnings were \$130. She was disabled from returning to her job.

1956

\$90,000. *Atl. Coast Line R. Co. v. Bargainer*, 264 Ala. 474, 88 So. 2d 823, 258 Ala. 94, 61 So. 2d 35, railroad spikemaster and sub-foreman sustained permanent disability, loss of sexual capacity, a sprained back and fractured spine, in a railroad crossing accident. In the first trial a \$60,000 jury verdict was reduced by the trial judge. Reversed on appeal on the grounds that the verdict was against the weight of evidence on the issue of contributory negligence.

\$55,527. *Crumady v. The Joachim Hendrik Fisser*, 142 F. Supp. 389 (D. C., N. J.) revd. on oth. gds. 249 F. 2d 818, judgment of District Court reinstated in 358 U. S. 423, 3 L. ed. 2d 413, 79 S. Ct. 445, a 43 year old longshoreman with a life expectancy of 25 years received transverse fractures of the lumbar vertebrae resulting in partial disability to his hip. His yearly salary to the time of injury was \$4,070. Medical expenses, \$5,527.

\$50,000. *Morton v. Louisville & N. R. Co.*, 8 Ill. App. 2d 474, 131 N. E. 2d 816, 52 year old railroad employee suffered serious impairment of his earning capacity following a compression fracture of the fourth thoracic vertebra resulting in curvature of the spine, general weakness and fainting spells. He was knocked from a ladder of a railroad car during a switching operation. F. E. L. A. case.

\$35,000. *Dodds v. Chi. Transit Auth.*, 9 Ill. App. 2d 388, 132 N. E. 2d 816, a lumbar vertebral fracture and fractures of the ribs resulting in traumatic neuritis of the nerve roots in the

lumbar region were sustained by a 61 year old steam table worker.

\$25,000. *Hicks v. Gillespie*, 346 Mich. 593, 78 N. W. 2d 145, the earnings of an employed married man were seriously impaired when he sustained both a vertebral fracture and a cerebral concussion. Injuries permanent to some degree.

\$18,000. *Kiggins v. Butler*, 386 Pa. 474, 126 A. 2d 460, 32 year old housewife and mother of three children received a fracture of the right side facet between the fourth and fifth lumbar vertebrae. An earlier award of \$23,500 was reduced by the trial court.

\$18,000. *Twin City Lines v. Houck*, Ark. 289 S. W. 2d 198, a beauty shop operator accustomed to earning \$5,000 a year was compelled to wear a rigid back brace for the rest of her life following an accident resulting in fracture to the vertebrae in her neck.

\$2,500. *Jackson v. Fireman's Ins. Co.*, La. App., 86 So. 2d 220, married woman, severe pain, inability to sit for two months, shock, and nervousness resulted from a fractured coccyx.

Herniated Discs

1960

\$91,000. *Forsman v. Penn. R. Co.*, 180 F. Supp. 888 (D. C., Pa.), 20% disability resulted to a 35 year old brakeman with a 36 year life expectancy when his twelfth thoracic intervertebral disc was crushed and the nerves damaged. Totally disabled and lost \$20,000 in wages.

\$75,000. *Missouri Pac. R. Co. v. Young*, Tex. Civ. App., 335 S. W. 2d 679, 34 year old railroad employee with a prior 10% military disability was thrown from a train during switching operations. The car ran over his foot, crushing it. His intervertebral disc *may* be herniated.

\$72,000. *Missouri Pac. R. Co. v. Yarbrough*, Tex. Civ. App., 336 S. W. 2d 884, a 37 year old carpenter with a fifth grade education suffered a herniated nucleus pulposis resulting in nerve root pressure. His muscles atrophied. The condition was diagnosed as permanent and he was confined to tasks requiring no physical exertion. Life expectancy, 32 years.

\$70,155. *James v. Ferguson*, 401 Pa. 92, 162 A. 2d 690, 31 year old married laborer and the father of six children all under 12 years of age suffered a herniated disc in the lower lumbar

region. Constantly in pain and the only possibility of relief is by submitting to a major operation. He had performed heavy laboring type of work but must now earn a livelihood through light employment.

\$55,000. *Ferris v. Riley*, Iowa 101 N. W. 2d 176, 40 year old automobile salesman accustomed to earning \$100 per week sustained a 25% disability due to a back injury causing a bulging disc and irritation to the nerves. A bone from his leg was grafted to his spine. Medical expenses, \$6,561 and lost wages, \$8,900.

\$36,000. *Kelly v. Kan. City Public Service Co.*, Mo., 335 S. W. 2d 159, trolley bus struck plaintiff's car causing a ruptured disc which was surgically removed leaving his back unstable and incapacitating him from his former employment.

\$30,000. *Lupak v. Karalekas*, Conn., 162 A. 2d 180, general damages of \$27,000 received by a 30 year old plaintiff injured in auto collision. 25% permanent disability including residuals of head trauma with post concussion syndrome resulted from a laminectomy required as a result of a herniated disc and traumatic neurosis.

\$10,000. *Cavazinni v. Liberty Ready Mix Concrete Inc.*, 206 N. Y. S. 2d 1003, a sudden start of a cement mixer upon which the plaintiff was standing threw him to the ground and resulted in his sustaining a herniated disc, contused elbow and other less serious injuries. His back will be permanently painful.

\$10,000. *McDaniel v. Audubon Ins. Co.*, La., 121 So. 2d 531, auto collision resulted in a herniated disc between the fourth and fifth lumbar vertebrae and possibly to the disc between the third and fourth. \$750 was also awarded as the estimated cost of an operation for the ruptured disc.

1959

\$90,000. *Missouri Pac. R. Co. v. Ramirez*, Tex., 326 S. W. 2d 50, uneducated railroad laborer with 20 year life expectancy was totally disabled when the disc in his lower back was ruptured. Resultant nerve root injury caused limited motion of his foot and ankle.

\$90,000. *Missouri Pac. R. Co. v. Kimbrell*, Tex., 326 S. W. 2d 720, 20% permanent disability to a 33 year old railroad car inspector with a 35 year life expectancy resulted from a ruptured disc at the fifth lumbar region, necessitating a spinal fusion because of nerve involvement. Lost wages \$7,000.

\$75,000. *George C. Vaughn & Sons v. Dyess, Tex.*, 323 S. W. 2d 261, 42 year old sheet metal worker earning \$60 per week was disabled from heavy work when he received a ruptured disc, fractures of the transverse processes of the lumbar spine and head and body lacerations. Life expectancy 25 years.

\$62,400. *Van Norman v. Ill. Cent. R. Co., Mo.*, 320 S. W. 2d 512, 28 year old railroad worker earning \$300 a month ruptured three intervertebral discs which were surgically removed. Permanent lameness and constant pain resulted. On remittitur the verdict was reduced to \$47,400.

\$45,000. *Texas & Pac. Ry. Co. v. Moore, Tex.*, 329 S. W. 2d 293, 62 year old oil driller earning \$7000 a year prior to the injury, had his earnings reduced to \$2450 per year when he sustained ruptured discs in both the cervical and lumbar regions.

\$32,000. *Greco v. Hendricks, Mo.*, 327 S. W. 2d 241, auto collision resulted in a ruptured intervertebral disc and corresponding disability to a 21 year old man. The verdict was remitted to \$12,000.

\$7,500. *Publix Cab Co. v. Fessler*, 138 Colo. 1547, 335 P. 2d 865, reh. den., truck driver sustained 6-7% permanent disability due to degenerated disc injured when the taxi which plaintiff was entering was hit by a backing truck.

1958

\$90,000. *Murray v. Gulf M. & O. R. Co.*, 23 NAACA L. J. 277, in Mississippi a 42 year old brakeman received a ruptured cervical disc resulting in a nervous condition and general weakness. Prior to trial the case was settled for \$50,000 cash and an agreement (estimated at \$40,000) to retain plaintiff on the seniority roster as an employee without service for a sufficient time to entitle him to compensation under the Railroad Retirement Act at \$150 per month for permanent total disability.

\$90,000. *Coleman v. Gulf, Mobile & O. R. Co.*, 17 Ill App. 2d 220, 149 N. E. 2d 656, 43 year old railroad conductor struck his head in the line of duty and suffered a ruptured intervertebral disc requiring surgery and traction. Plaintiff has permanent pain and is unable to work. At the time of the injury he was earning \$7,277 and had a raise coming.

\$82,500. *Jess Edwards Inc. v. Goerger*, 256 F. 2d 542 (C. A. 10), a housewife who assisted her husband in business sustained a herniated disc, injury to the spinal cord, nerve pressure re-

sulting in 30% loss of total body functions, a skull and rib fracture and 20% loss of hearing. Her personality was changed and her walking was impaired.

\$67,324. *Johnston v. Milwaukee Gas Light Co.*, 22 NACCA L. J. 408, plaintiff was injured in an explosion in 1951 in which he received minor injuries. He saw no doctor for 3½ years when he became disabled with a herniated intervertebral disc injury. The pre-existing condition was caused by trauma and a later minor incident caused the herniaion. A neurosurgeon and pathologist traced the injury back to the trauma received in the explosion by examining fibrous scar tissues removed at the time of operation.

\$60,000. *Missouri Pac. R. Co. v. Rhoden*, Tex. Civ. App., 310 S. W. 2d 607, 50 year old railroad machinist earning \$2.03 per hour received a 20% permanent partial disability when a disc was ruptured. A fusion operation was required. He has lack of coordination to guide his legs. \$2751, lost wages.

\$50,000. *Parlow v. Carson, Union, May, Stern Co.*, Mo., 310 S. W. 2d 877, 34 year old employee of an independent contractor received a ruptured intervertebral disc and a hairline fracture of the os calcis when a sectional scaffold furnished by a third party fell over on its side. Plaintiff's recovery was good but mild traumatic arthritis developed at the fracture site of the os calcis.

\$50,000. *McCall v. Pittsburgh C. & Y. R. Co.*, 168 F. Supp. 665 (D. C. Pa.), disc involvement in the lower back aggravated a pre-existing cervical condition. Myositis and neuritis resulted in partial disability. Verdict subsequently reduced 35% for plaintiff's contributory negligence.

\$40,000. *Wehril v. Wabash R. Co.*, Mo., 315 S. W. 2d 765, 358 U. S. 932, 3 L. ed. 2d 304, 79 S. Ct. 321, 46 year old signal maintenance man suffered a permanent ruptured disc, broken ribs, a fractured left hand and traumatic myositis to the muscles of his left shoulder and the posterior portion of his neck.

\$19,000. *Re-Mark Chemical Co. v. Ross*, Fla. App., 101 So. 2d 163, \$60 per week laborer ruptured an intervertebral disc in an auto-bus collision. Some degree of permanent disability and some loss of employment.

\$17,500. *Amerphol v. Ill. Cent. R. Co.*, 17 Ill. App. 2d 416, 150 N. E. 2d 212, a fall on an icy path near a yard office by a railroad yard master resulted in a herniated disc. F. E. L. A. case.

1957

\$81,000. *Texas & N. O. R. Co. v. Jacks*, Tex. Civ. App., 306 S. W. 2d 790, due to a fall from a moving freight train a 45 year old brakeman with a life expectancy of 22.88 years sustained a ruptured disc and a lumbar subluxation. Prior to the injury he had been earning \$5,287-6,284 annually.

\$75,000. *Picar v. Pittsburgh & O. V. Ry. Co.*, 153 F. Supp. 583 (D. C. Pa.), sexual impotency and injuries to his back muscles following a herniation of an intervertebral disc rendered a 39 year old brakeman totally disabled from his former employment. Medical expenses \$1400. 35.9 year life expectancy and prior to injury was earning \$6,400 annually.

\$65,850. *McElveen v. Atl. Transit Syst. Inc.*, 20 NACCA L. J. 406, probable rupture of an intervertebral disc and other injuries were sustained by a woman trackless trolley passenger when she was thrown against a stanchion as the trolley ran off the edge of the pavement and into a ditch.

\$20,000. *Devine v. United Elec.*, 35 R. I. 170, 128 A. 2d 334, rupture to the fourth and fifth lumbar discs resulted from a fall by a bus passenger when the bus stopped suddenly. Plaintiff's left elbow struck the floor and his body twisted, causing sharp pains in his abdomen. While his rupture was diagnosed as being permanent he was advised to forego any operation because of the potential threat to his life. No loss of wages but plaintiff had difficulty in performing his normal duties and in climbing stairs. Award remitted to \$5,000.

\$18,000. *Tucker v. Tolerton & Warfield Co.*, 249 Iowa 405, 86 N. W. 2d 822, 26 year old soft drink route salesman with a life expectancy of 41.24 years ruptured his fourth and fifth lumbar disc following a fall on a piece of lettuce while making delivery to defendant's store. In 8 months between his injury and the time of trial he earned \$133 at light work while formerly he was guaranteed a salary of \$73.50 per week and was accustomed to earning between \$80-\$100 per week during the summer months. Medical expenses \$1,567 and would have been higher but for the fact that during his hospitalization plaintiff's wife and mother acted as his nurse.

1956

\$85,000. *Ellars v. General Rug & Furn. Cleaners*, 18 NACCA L. J. 437, a rear end collision resulted in injury to a printer

which after an extended and interesting medical history resulted in a ruptured intervertebral disc necessitating spinal fusion. Two and one half years later the plaintiff was still disabled.

\$76,000. *Lange v. Kansas City So. Ry. Co., Mo.*, 290 S. W. 2d 71, total permanent disability resulting from a herniated disc and slipped vertebra which aggravated a pre-existing arthritic condition; complete anesthesia in both legs and a mental condition resulting in speech difficulty; 30 year old railroad gang worker. Life expectancy 33.21 years. Award remitted to \$50,000.

\$72,813.90. *Darnold v. Voges*, 143 Cal. App. 2d 230, 300 P. 2d 255, reh. den. 18 NACCA L. J. 429, a milker was crushed when a cow was frightened by flash photography. The milker sustained herniation of the fourth lumbar disc with nerve root atrophy causing radiating pain. A spinal fusion resulted in permanent limitation of motion. Remittitur to \$25,000.

\$60,000. *Terwilliger v. Yerdon*, 18 NACCA L. J. 440, 32 year old mechanic received a chip fracture of the vertebra and a herniated disc following an automobile collision. Case settled for \$50,000.

\$55,000. *Constantine v. Aliquippa & So. Ry. Co.*, 144 F. Supp. 30 (D. C. Pa.), the disc structure of the spine was permanently injured and arachnoiditis resulted. \$8,432, lost wages, trackman with 36 year life expectancy.

\$50,000. *Bowers v. Patapsco & Back River R. Co.* (Maryland), 18 NACCA L. J. 441, a grade crossing accident resulted in a herniated disc and aggravation of a spinal arthritic condition to a 52 year old truck driver.

\$45,000. *Bordanaro v. Burstiner*, 2 Misc. 2d 176, 151 N. Y. S. 2d 450, when the police car in which he was sitting was struck from behind, a policeman with a 35 year life expectancy sustained a lacerated herniated low lumbar disc. Partial permanent disability for lifting or bending resulted. A spinal fusion operation was advised, but the trial court held his right to damages was unaffected by his refusal to submit to the operation.

\$30,000. *Parks v. Thompson*, 363 Mo. 791, 253 S. W. 2d 796, 365 Mo. 700, 285 S. W. 2d 687, 52 year old fireman earning \$300 per month sustained a ruptured intervertebral disc at the fourth and fifth lumbar interspace when a train ran into the rear of the Pullman on which plaintiff was riding. First trial resulted in \$25,000 verdict, which was subsequently reversed as excessive. \$30,000 awarded at the second trial after jury had been waived;

reduced award to \$20,000 because of the plaintiff's contributory negligence. Case remanded with directions to enter judgment for \$15,000 inasmuch as the plaintiff was able to earn \$150 per month as a taxi cab driver subsequent to injury. Motion picture introduced in evidence showed plaintiff carrying luggage for a passenger.

Injuries of the Spinal Cord

1960

No cases of injuries to the spinal cord were found.

1959

\$100,000. *Fleury v. State*, 9 A. D. 2d 838, 192 N. Y. S. 2d 825, married woman suffered severance of her spinal cord resulting in complete quadriplegia.

\$60,000. *Schultz v. U. S.*, 176 F. Supp. 405 (D. C., Me.), a bullet passing through the eleventh thoracic vertebra caused neurological lesions to the spinal cord of a 15 year old high school student. His liver was punctured and extensive surgery was required. He was left with a poor gait and tilt of his spinal structure, poor bladder control and chronic constipation. A laminectomy was performed in which the spinous processes and laminae of the tenth, eleventh, and twelfth thoracic vertebrae were removed. Acute embarrassment and anxiety over his condition seriously impeded his recovery. Life expectancy was reduced from 54.95 years to 49.46 years.

1958

\$248,245. *Ft. Worth v. Barlow*, Tex. Civ. App., 313 S. W. 2d 906, severance of the cord of a 23 year old man resulted in permanent paralysis from the shoulders down. Plaintiff was earning over \$5,000 annually.

\$243,000. *Burrell v. U. S.*, Jacksonville Fed. D. C. No. 3601 3 N. C. S. 189, No. 24, Sept. 15, 1958, 30 year old farmer with a 35 year life expectancy became a total paraplegic as a result of a spinal cord lesion. Yearly income \$13,000. Non-jury award was less \$16,700 veteran's benefits.

\$60,000. *Yellow Cab Co. of Nashville v. Pewitt*, Tenn., 316 S. W. 2d 15, concussion of the spinal cord resulting in 25% permanent partial disability was sustained by a 41 year old

mechanic. He also received a brain concussion and fractures of the arm and leg. Wages lost \$8,908 and medical expenses \$2,049.

1957

\$100,000. *Missouri Pac. Transp. Co. v. Miller*, 227 Ark. 351, 229 S. W. 2d 41, lumber mill worker suffered spinal cord injury resulting in paralysis from the waist down. Prior to the injury he was earning \$2,900 annually. 27 year life expectancy. Award subsequently reduced to \$75,000.

\$86,500. *Kuhns v. Brugger*, 390 Pa. 331, 135 A. 2d 395, gunshot wound severing the spinal cord rendered a 12 year old boy a paraplegic. His parents were awarded \$30,104.50. An earlier verdict of \$145,332 for plaintiff and \$37,764 for his parents had been reduced.

\$50,000. *Donahoo v. Ill. Terminal Ry. Co., Mo.*, 275 S. W. 2d 244, 300 S. W. 2d 461, 38 year old refinery employee sustained cord injury and injuries to his brain, abdomen, lungs and kidneys when the transverse process of his fourth lumbar vertebra was broken off. Lost \$6,500 in wages and medical expenses \$1,700.

1956

\$75,000. *Ambrosius Indust. Inc. v. Adams*, Ky. App., 293 S. W. 2d 230, 45 year old mechanic with a life expectancy of 27 years sustained several crushed vertebrae resulting in damage to his spinal cord. Complete cessation of feeling from his hip downward. Permanently disabled from physical work.

Conclusion

A recapitulation of the damage awards herein expressed covering a five year span *tends* to indicate that:

- (1) the minimum award of damages for either a fractured or dislocated vertebra was \$2,500. The maximum award was \$175,000. The mean award totalled \$31,978.
- (2) an intervertebral disc injury is worth a minimum of \$7,500 up to a maximum award of \$91,000. The mean award for disc injuries was \$55,488.
- (3) although few cases of spinal cord injuries have been reported, those that were were worth no less than \$50,000 and no more than \$248,000. The mean award amounting to \$111,250.