1961

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Recommended Citation

Margaret Mazza, Recent Eye Damage Awards, 10 Clev.-Marshall L. Rev. 212 (1961)
Recent Eye Damage Awards
Margaret Mazza*

Impairment of vision may be either temporary or permanent and may be caused by direct trauma, burns, or any other injury to the face near the area of the eyes. Vision may be impaired or completely lost due to injury to the brain or associated nerves. The list of cases below gives descriptions and awards in some recent eye injury suits.

Diseases of the eyes such as prior glaucoma, hypertensive retinopathy, diabetic retinopathy, detachment of the retina and oculomotor disturbances can be aggravated by subsequent head injuries or blows to the face. Although prior cataracts do not seem to be aggravated by subsequent head injuries, a $5,000 award was given when a blow to the side of the face caused cataracts to grow.

The pupil of the eye is controlled in part by the sympathetic nervous system. It is this part of the nervous system that is generally affected by whiplash injuries. Therefore eye injury may result from whiplash, and eye tests can be used in some measure to determine the validity of the alleged whiplash injury.

Proof, Disproof, and Mitigation of Awards

One of the best methods of proving impairment of vision or blindness is by the expert testimony of an ophthalmologist. Scientific methods are available by which such injuries can be ascertained with great accuracy. Demonstrative evidence also can be of substantial aid in the presentation of such cases. Expert testimony as to the possible restoration of vision may result in a mitigation of damages. In Gangl v. The Barberton Citizens Hospital the plaintiff suffered severe eye burns due to administration of 75% silver nitrate solution. A doctor testi-

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1 1 Curr. Med. for Attys. 3 (Feb. 1954).
4 Common Pleas, Summit County, Ohio, Docket No. 214574, April 7, 1960.
fied that the prospect was good of 100% vision restoration by a corneal transplantation. The award in this case was $65,000, which appears low when the long hospitalization and the seriousness of the injury are considered.

Current Medicine for Attorneys\(^5\) lists the following criteria for determining the validity of eye injury claims:

(a) Objective signs, such as scarring or defects of the various parts of the eye, are corroborative evidence of claims.

(b) Shock, psychic injury and hysteria may cause bona fide eye impairment where there are no objective signs in the eye.

(c) Conflict in describing visual symptoms or inconsistent visual symptoms which may not be regularly recurring are evidence of feigning or exaggerating. Thus, the "acuity of vision" and/or the "visual field" frequently change on repeated or follow-up eye examinations in such cases.

(d) "Acuity of vision" and "color sense" may not be correctly or consistently related.

(e) Normal reaction of pupils to light casts doubts on symptoms (abnormal reactions are suggestive of injury to the pupil-reacting mechanism).

(f) Where there is a claim of a small visual field following injury (such as complaints of "telescope vision") body movements should be insecure due to the fact that the individual has trouble seeing. Thus, a party who moves about with speed and alertness is showing evidence of an inconsistent claim.

The plaintiff's failure to properly care for his eyes medically may be grounds for having damages diminished, and such an issue can be submitted to the jury. This applies whether or not treatment has been recommended by a physician.\(^6\) In *Freeman v. Wilson* eye treatment was recommended by plaintiff's doctor but counsel advised against it because of possible adverse effects on recovery at trial.\(^7\)

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\(^7\) Tex. Civ. App., 149 S. W. 413 (1912), rev'd on other grounds 108 Tex. 121, 185 S. W. 993 (1918).
Trends in Awards

Awards for blindness or impairment of vision caused by brain injury, burns, or trauma show few trends. The reason is the composite nature of the injury, in which the factor of eye damage may be minor as compared to the total injury claimed. On the other hand the eye injury may be the basis for the greater part of the award.

In 1957 two cases were decided which involved extensive burns and vision impairment to the plaintiffs, both of whom were in their twenties. Both accidents occurred while plaintiffs were at work and both were caused by gas explosions. One award was for $300,000⁸ and the other was for $273,345.38.⁹

In 1957 a railroad employee received $15,000, his vision being impaired when he was struck by a piece of metal.¹⁰ In 1955 the award was identical in a case involving the same set of facts and similar injury.¹¹

Awards for total blindness range from $273,345.38¹² to $60,000.¹³ These awards show a general trend upward except for a $92,628 award in 1958 to a 13 year old boy who was blinded in both eyes by the explosion of dynamite caps.¹⁴ This amount appears low as compared with two 1957 cases in which $120,000 was awarded to a 48 year old man who was totally blinded,¹⁵ and $194,529.52 to a man blinded by a gunshot wound.¹⁶

Amounts received for the loss of sight in one eye vary from $200,000¹⁷ to $9,785,¹⁸ and there appears to be no trend in this

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¹⁶ Karas v. Snell, rev'd on grounds other than damages, 11 Ill. 2d 233, 142 N. E. 2d 46 (1957).
area. This fact is best illustrated by an examination of the cases involving injury to children. In 1955 the awards varied from $110,000 received by a nine year old boy\(^{19}\) to $25,000 received by a 13 year old girl.\(^{20}\) In 1956 a four year old child received $52,717.62\(^{21}\) The awards in 1958 appear more consistent. Two were for $50,000\(^{22}\) and one was for $45,884.\(^{23}\) The highest award for loss of one eye was received in 1959 by an 11 year old boy.\(^{24}\) In that same year a 12 year old boy received $30,000.\(^{25}\)

### Conclusion

Some sources claim that the awards for personal injury are increasing at a phenomenal rate. Others claim that injury awards are becoming smaller.\(^{26}\) There does not appear to be a clear trend in eye damage awards except those involving total blindness. The other awards seem to be based upon the extensive nature of the injuries, the age of the plaintiff, his earning capacity after recovery, and other elements used to arrive at an adequate and fair damage award. Sight has been described as "that one talent which is death to hide,"\(^{27}\) and all would agree that it is perhaps the most valuable of the senses. No award can compensate completely for its loss or impairment. The most a jury or court can do is to attempt, as far as possible, to compensate the plaintiff monetarily for an irreplaceable loss.

\(^{19}\) Lavanco v. New York City, (Supr. Ct., New York County, 1955).


\(^{24}\) Supra n. 17.

\(^{25}\) U. S. v. Stoppelmann, 266 F. 2d 13 (8th Cir. 1959).

\(^{26}\) Cleveland Plain Dealer, Oct. 5, 1960, pg. 1.

\(^{27}\) Milton, On His Blindness.
RECENT CASES INVOLVING EYE INJURY*

Total Blindness


$120,000. 48 year old man, total permanent blindness, broken ribs, fractured skull, auto accident, case settled before trial. *Mack v. Minute Maid Corp.*, (Cir. Ct., Orange County, Fla. No. 31269 Oct. 25, 1957).


Loss of Vision of One Eye


*These cases have been compiled from various sources including Oleck, *Damages to Persons and Property* (1961 revision); Belli, *Modern Damages* (1959); Oleck, *Negligence and Compensation Service* (current issues); Statewide Jury Verdicts.*

$225,000 (Reduced to $175,000). Before injury plaintiff had 20/20 vision in left eye, after loss of right eye he was permanently and totally unemployed industrially but could get about by himself and was able to do some reading with the aid of glasses. Hogue v. Permanent Mold Die Co., 177 F. Supp. 299 (D. C. Mich. 1959).


$75,000. Child with life expectancy of 65.64 years, loss of vision in right eye, severe contusions of right side of face and head, cerebral concussion with multiple contusions and abrasions, fracture of right clavicle. Lopez v. Prince, 145 Conn. 560, 145 A. 2d 127 (1959).


$80,000. 32 year old railroad employee, loss of one eye, after injury able to work at odd jobs, wages before injury $450 per month and after injury $113 per month. Missouri-Kansas Texas R. Co. of Tex. v. Bush, 310 S. W. 2d 404 (Tex. Civ. App., 1958).

$50,000. 9 year old boy, loss of sight of left eye, fractured skull, loss of hearing in one ear, struck by auto while walking in crosswalk. Mar v. Frates, (Super Ct., San Francisco County, Calif., No. 477067, Sept. 5, 1958).


$17,500 ($10,500 medical, $4,500 loss of earnings). 45 year old man, loss of left leg, 90% blind in one eye, auto struck by train. *LaBelle v. Southern Pacific R. Co.* (Super Ct., Los Angeles County, Calif., Nos. 662408, 666305, June 1957).


$125,000. 45 year old ship yard worker, multiple skull fracture resulting in loss of brain tissue and blindness in one eye with impaired vision in the other. *Sachau v. Pacific Greyhound Lines* (Super Ct., San Francisco, Calif., Mar. 27, 1956).

$85,000. 18 year old railroad employee, loss of vision in left eye, injury to eyelid, disfigurement and numbness over left side of forehead, at time of trial employed as filling station attendant. *Gehrirsch v. Pennsylvania R. Co.* (D. C. N. D. Ohio, No. 30149, May 17, 1956).


$110,000. 9 year old boy, severed optic nerve caused loss of vision in right eye, stick entered side of face when he fell in playground. *Lavanco v. New York City* (Supr. Ct., New York County, 1955).


$45,573.73 ($573.73 loss of wages, $108 maintenance, $35,000 future earnings, $10,000 pain and suffering). Seaman, almost complete blindness in one eye, struck by glob of paint. *Dietz v. U. S.*, 228 F. 2d 494 (3rd Cir. 1955).


$15,000 ($400 medical, $2,000 to husband). 52 year old married woman, loss of right eye, difficulty in performing household duties and work in store. *Blalock v. Temple*, 38 Tenn. App. 450, 276 S. W. 2d 493 (1955).
Eye Damage Associated with Brain Injury


$17,000. 37 year old welder, eyes and brain injury, heart damage, electric shock, earning reduced $1,000 per year. James v. Bowman, 331 S. W. 2d 866 (Ark., 1960).

$15,000 ($700 loss of wages). Married woman, impairment of visual field of right eye and permanent head injuries causing dizziness and headaches. Neal v. Linnel, 156 Me. 1, 157 A. 2d 231 (1960).


$87,500. 41 year old truck driver, head-on auto collision, concussion, damage to right eye, cuts and bruises, burns on legs, memory loss, internal injuries with crippling effects. Groshelle v. Northern Pacific Transport Co. (13th Dist. Ct., Yellowstone County, Mont. 1957).


$72,000. 40 year old railroad employee, fractured skull, brain injury resulting in permanent impairment of vision, settled on...
EYE DAMAGE


$115,000. 24 year old teacher; injury to brain, right eye, and left arm as a result of truck-auto collision. Jarrell v. Pearce Produce Co., (Cir. Ct., Dade County, Fla., 1955).

$4,500. 5 year old girl, contusion and abrasion of head, arms, and shoulders; cerebral concussion, laceration of lower lip; partial paralysis of muscle of left eye causing double vision when she looked up and to the right. Pecor v. State, 207 Misc. 606, 139 N. Y. S. 2d 838 (1955).

Impairment of Vision Due to Other Causes


$65,000 ($1,500 medical, $500 loss of earnings). 36 year old partner in masonry contracting business, intern in hospital treated eye with 75% silver nitrate solution which burned eyeballs and eyelids, 25 days in hospital, 87% vision remains in left eye, prospect of corneal transplant and restoration of 100% vision. Gangl v. The Barberton Citizens Hospital, (Common Pleas, Summit County, Ohio, Docket No. 214574, April 7, 1960).

$60,000 ($1,879 medical). 15 year old boy, perforation of right cornea, 40% loss of vision, plaintiff has 20/200 vision, possible future infection and sympathetic effect on left eye, bottle attachment of oxygen equipment exploded during medical treatment. Landerson v. Hospital Oxygen Inc., (Supr. Ct., Jamaica, N. Y., No. 6113-55, Sept. 21, 1960).


$10,000. 45 year old man, left eye eviscerated by gunshot pellet, loss of depth perception, plaintiff became nervous, irritable and self-conscious, award of $3,000 increased. Theriot v. Gianellone, 121 S. 2d 275 (La. App. 1960).


$8,500. 20 year old male student, contusion and laceration of left eye, concussion, collar bone fractured, no permanent disability. Goch v. Lake, 327 S. W. 2d 132 (Mo. 1959).


$5,000 ($300 damage to auto). Man sustained blow to side of face causing cataracts to grow. Tynes v. McLendon, 143 Miss. 231, 108 S. 2d 716 (1959).


EYE DAMAGE


$35,000. 35 year old housewife, partially blinded, permanently scarred, internal injuries, janitor of apartment hurled lye mixture in her face, sued apartment house owner. *Boyd v. Willis* (Ct. unreported, Arlington, Va., May 1958).

$20,000 (reduced to $10,500). Plumber, punctured eyeball, tetanus injection, inability to flex fingers, no interference with ability to work. *Gorlin v. Master Contracting Corp.*, 15 Misc. 2d 1, 180 N. Y. S. 2d 84 (1958).

$10,000 ($1,400 special). 41 year old railroad employee, left eyelid almost torn off requiring surgery, one tear duct destroyed, dropping eyelid which partially impaired vision in one direction. *Afflect v. Chicago N. W. Ry. Co.*, 253 F. 2d 249 (7th Cir. 1958).


$30,000 (reduced to $15,000). Railroad welder, corneal scarring and impaired vision, struck by piece of metal, on motion for new trial award reduced. *Pate v. Southern Pacific R. R. Co.*, (Super. Ct., Sacramento Calif., No. 92063, April, 1957).

$17,500 ($5,929 special damages). Truck driver, double vision, neck and head injuries, concussion, wrist fracture, earning ability impaired. *Ferguson v. Post*, 243 F. 2d 144 (2d Cir. 1957).


$12,500 (Reduced to $6,000). Railroad brakeman, temporarily blinded for 4 days, headaches on sunny days unless wearing dark glasses, original verdict of $12,500 reduced to $2,500 because of plaintiff's contributory negligence and $4,000 because excessive in amount. *Stamp v. Union Pacific R. R. Co.*, 5 Utah 2d 397, 303 P. 2d 279 (1956).


$2,500 ($360.83 medical, $570 loss of wages). Laceration of eye reducing vision to 20/70, missed 3 months and 10 days from work, returned to same employment. Wilt v. Blazier, 383 Pa. 143, 114 A. 2d 111 (1955).