

ASSESSING DAMAGES IN SOUTH AUSTRALIA FROM 1 DECEMBER 2002

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The Wrongs Act 1936 governs the assessment of damages for causes of action arising between 1 December 2002 and 1 May 2004. The Civil Liability Act 1936, which is essentially the same Act by another name, governs the assessment of damages for causes of action arising after 1 May 2004.

The key elements of the assessment of damages under these Acts are:

- a threshold test for general damages. Significant impairment for at least seven days or medical expenses in excess of a prescribed minimum;¹
- a 60 point scale for the calculation of non economic loss;
- abolition of interest on non economic loss;
- no liability for economic loss for the first week after an incident;
- a cap on the award of non-economic loss at a prescribed maximum;²
- a 5% discount rate for future economic losses;
- limitation of recovery for voluntary services to those provided by a 'parent', 'spouse' or 'child' (as defined);
- caps on the awards for voluntary services to four times state average weekly earnings; and
- abolition of management fees.

The most unique aspect of the assessment under these Acts is the award of damages for non economic loss by reference to a points scale. The concept of the scale is not new. Damages for non economic loss for personal injury suffered in a motor vehicle accident have been assessed with reference to the points scale since 1987.

The assessment of damages for personal injury therefore now has three stages.

THRESHOLD

Has the injured person's ability to lead a normal life been significantly impaired by the relevant injury for a period of at least 7 days, or have medical expenses of at least the prescribed minimum been reasonably incurred in connection with the injury?

The first limb of the threshold test has been judicially considered. The South Australian Supreme Court has warned against a technical definition of what is 'significantly impaired' but as a guide has stated:

... the impairment must be something more than appreciable. It must connote something which has an active adverse effect on the ability of the claimant to lead the sort of life which that claimant normally led ... a consideration of condition and activity before and after the event will give a mental picture of significant impairment ...'

'... the test in the sub-section is not very demanding. It is there to oust from compensation very trivial complaints of very minor aches and pains.'³

MULTIPLIER

What is the relevant multiplier?

Damages for non economic loss are to be calculated having regard to a scale between 0 and 60. Unlike the multipliers that applied to motor vehicle accidents which were fixed irrespective of the point allocation, there is now a sliding scale of multipliers depending on number of points allocated. In 2003 the values were as follows:

0 — 10	\$1,150.00
10 — 20	\$11,500.00 plus \$2,300.00 for every point above 10
20 — 30	\$34,500.00 plus \$3,450.00 for every point above 20
30 — 40	\$69,000.00 plus \$4,600.00 for every point above 30

40 — 50 \$115,000.00 plus
\$5,750.00 for every point above 40

50 — 60 \$172,000.00 plus
\$6,900.00 for every point above 50

E.g. for an accident occurring
in 2003, 24 points has a value of
\$48,300.00.

\$34,500.00 plus (4 x \$3,450.00) =
\$48,300.00

The multipliers change annually
and therefore you must ascertain
the multipliers for the year of the
accident giving rise to the cause
of action.

POINTS

How many points on the scale
should be awarded to the injured
person?

In the context of motor vehicle
claims, the South Australian
Supreme Court enunciated a
number of principles for the
assessment of non economic loss
under the scale.⁴

There is to be a single award that
includes both the past and future
non economic loss.

There must be a comparison of
the severity of the loss sustained,
with the most and least severe
loss that anyone could suffer.
One does not consider the worst
loss that might be suffered by the
particular plaintiff, but rather the
worst loss that might possibly
befall an ordinary person in the
plaintiff's position.

Fractions of points are not
prohibited but this has not been
the practice.

It is anticipated that the same
principles will now be adopted
for all assessments. There is still
no reported decision applying the
points scale outside motor vehicle
accidents.

Even though the High Court
discourages the assessment of
damages by comparison with like
cases,⁵ it will be a useful exercise
to consider the South Australian
cases relating to motor vehicle
accidents.

REFERENCES

1. 2002 = \$2750; 2003 = \$2850;
2004 = \$2960; 2005 = \$3030

2. 2002 = \$2,200,000; 2003 =
\$2,281,300; 2004 = \$2,364,230;
2005 = \$2,422,760

3. SGIC & Squire v Fiorenti (1991)
Aust Torts Reports 81 114; King v
Deguglielmo (1991) 161 LSJS 196

4. Packer v Cameron (1989) 54
SASR 246; Percario v Kordysz
(1989) 54 SASR 259

5. Planet Fisheries Pty Ltd
v LaRosa (1968) 119 CLR
118; Bresatz v Prizibilla
(1962) 108 CLR 541

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