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Just and Reasonable Compensation

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JUST AND REASONABLE COMPENSATION

I. INTRODUCTION

It is the purpose of this Comment to explore what sums have represented, to appellate courts, "just and reasonable compensation" in certain personal injury areas; how the courts have arrived at these sums; and particularly Missouri's position in comparison with that of other jurisdictions.[1]

The reader will find herein a chart containing a synopsis of cases involving the loss of legs, arms and fingers in the last ten years together with a few earlier cases. It is suggested that an examination of this chart will enable the reader to more easily distinguish and compare the cases in the field.

In determining what constitutes "just and reasonable compensation," many factors are taken into consideration. One Illinois appellate court stated that consideration must be made of plaintiff's "wages at the time of the accident and his probable earnings during his expectancy; of the pain and suffering he has undergone and will undergo; of the deprivation of the privileges and enjoyments common to men in like circumstances, . . . and his medical expenses and the probable expenses of attending him in the future."[2]

These, among others, are the items that this Comment will use for comparing the cases. It will also examine the amounts ordered remitted by the trial and appellate courts and the reasons therefor.

II. LOSS OF BOTH LEGS AND AN ARM

IDAHO-FEDERAL.—In *Union Pac. R.R. v. Johnson*,[3] 1957, the United States Court of Appeals for the Ninth Circuit upheld a jury verdict of $225,000 for twenty-three year old LaVerl Johnson's loss of both legs below the knee and his right arm near the shoulder. He had a life expectancy of forty years and was earning $300 per month. The court stated that, "We do not mean by dicta to resolve other cases, but it is reasonable to say the case would have been different if Johnson had been older and his life's pattern had become set."[4]

ILLINOIS.—In *Goertz v. Chicago & N. Ry.*,[5] 1958, the Appellate Court of Illinois for the First District allowed a recovery of $200,000 for sixty-two year old dress cutter Edward Goertz's loss of both legs ten inches below the groin and his left arm nine inches above the elbow. Plaintiff had a life expectancy of twelve years and his pecuniary loss was $69,978.03. He wore an artificial arm, but did not now wear artificial legs due to the pain they produced. In finding the jury verdict of $300,000

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1. See generally Annot., 16 A.L.R.2d 3 (1951) for cases in the area but not covered in this Comment. For unreported cases in this area the reader is referred to "Awards Over $50,000, Unreported Cases" appearing in each volume of the NACCA L.J.

2. Smith v. Illinois Cent. R.R., 343 Ill. App. 593, 612, 99 N.E.2d 717, 726 (1st Dist. 1951).

3. 249 F.2d 674 (9th Cir. 1957), Note, 21 NACCA L.J. 269 (1958).

4. *Id.* at 679.

5. 19 Ill. App. 2d 261, 153 N.E.2d 486 (1st Dist. 1958).

grossly excessive, the court stated, "Taking all the imponderable elements which might have been considered by the jury, and giving the plaintiff the benefit of all doubt, we do not feel that the evidence warrants a judgment of a sum greater than $200,000."[6] The concurring opinion, per Kiley, J., pointed out that the average allowance for pain and suffering in relevant Illinois cases was about forty per cent, while in this case it was over seventy per cent.

The age of these two plaintiffs differed by thirty-nine years; their life expectancy by twenty-eight years. Goertz would be able to use artificial limbs; Johnson was using them at his trial. The injuries were substantially the same; the difference in the awards sustained was $25,000 more to the man who was thirty-nine years younger. Yet, each court felt that the award granted was the maximum, or nearly the maximum, award which it could sustain.[7] It would appear that if the *Johnson* case had been in Illinois an award of over $225,000 might well have been sustained in his favor.[8]

III. Loss of Both Legs

Since 1944 there have been fourteen reported cases in which the plaintiff lost both legs. In ten of these cases he was able to use artificial limbs. Because of the difference in degree of disability and possibility of rehabilitation attendant upon the ability to use prostheses, these ten cases will be discussed separately.

A. *Plaintiff Could Use Prostheses*

California.—In *McNulty v. Southern Pac.*,[9] 1950, the California District Court of Appeals for the First District upheld a $100,000 award for the loss of Thomas McNulty's left leg three inches below the knee and his right leg three inches above the knee.[10] Plaintiff had been assistant cashier with the American Trust Co.[11] at $365 per month, was forty-two years old and had a life expectancy of twenty-six years. Even though there were many factors which would tend to reduce the verdict, including the fact that his employer paid him throughout his absence, the court recognized that "the fact remains that respondent, in the very prime of life, must carry on for the remainder of it with this serious handicap,"[12] that he would

6. *Id.* at 274, 153 N.E.2d at 493.

7. In *Union Pac. R.R. v. Johnson*, the court was of the opinion "that the verdict almost reaches the area of too much, but we believe it is one which it is our duty to let stand." 249 F.2d at 679. In the *Goertz* case the court reduced the verdict to $200,000 finding that to be the largest amount which could be sustained.

8. See note 16 *infra*.

9. 96 Cal. App. 2d 841, 216 P.2d 534 (1st Dist. 1950).

10. "Respondent's right leg was cut off by the wheels of the train, and he testified that at the time, as he lay helpless on his back, he knew this. . . . His left leg was badly mangled but not severed, and at the hospital it had to be amputated three inches below the knee. In the same operation the amputation of the right leg was completed three inches above the knee." *Id.* at 846, 216 P.2d at 538.

11. Plaintiff had recently taken a special training course which would enhance his position.

12. 96 Cal. App. 2d at 848, 216 P.2d at 539.

never have the freedom of movement of the ordinary person and that this might not only retard his advancement but cause the loss of his present position.[13]

ILLINOIS.—In *Avance v. Thompson*,[14] 1943, the Appellate Court of Illinois for the Fourth District upheld a recovery of $100,000 for thirty-three year old brakeman Harry Avance's loss of his right leg three inches above the knee and his left leg four inches below the knee. His life expectancy was 40.17 years. A jury award of $125,000 was cut to $100,000 by remittitur in the trial court. In upholding this sum the court stated:

> Nor can we in a personal injury case, reduce the amount of the verdict to a matter of mathematical computation. . . .
>
> It is difficult to appraise scientifically human pain and suffering and a mutilated body. . . . [U]nless we are able to say that the verdict is so excessive as to indicate that the jury was moved by prejudice or passion, we would not be warranted in reversing the judgment on the ground that the verdict is excessive.[15]

In *Smith v. Illinois Cent. R.R.*,[16] 1951, the Appellate Court of Illinois for the First District upheld a recovery of $185,000 for twenty-one year old Marion Smith's loss of both legs at mid-thigh.[17] He had a life expectancy of forty-five years and an average annual wage of $2,860. In upholding the jury's award the court set out the "reasonable men" test of excessiveness of the verdict:

> The question is whether reasonable men might differ in their answers to the question. We cannot say that reasonable men would not differ on the question whether $185,000 was too great an amount to allow plaintiff who was so badly injured. . . .[18]

The court distinguished the *Avance* case, by implication, in stating: "We need not cite authority for the statement that we must consider the fact that this verdict reflects an inflationary period in our economy."[19]

NEW JERSEY.—In *Greenburg v. Garfield-Passaic Bus Co.*,[20] 1946, the Supreme Court of New Jersey upheld a total recovery of $85,000[21] for the loss of both legs below the knees by a fifty-five year old woman with a life expectancy of 17.4 years. The court stated that:

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13. However, it is pointed out in 3 BELLI, MODERN TRIALS 2475 (1954) that the plaintiff was earning more after the accident than before.

14. 320 Ill. App. 406, 51 N.E.2d 334 (4th Dist. 1943).

15. *Id.* at 419, 421, 51 N.E.2d at 341.

16. 343 Ill. App. 593, 99 N.E.2d 717 (1st Dist. 1951). In Goertz v. Chicago & Northwestern Ry., *supra* note 5, at 275, 153 N.E.2d at 493, Kiley, J., specially concurring, stated that "it seems unlikely that this court would disturb, as excessive, in 1958 a verdict for $300,000 in a case on all fours with the Smith case."

17. He also suffered a comminuted fracture of the breast bone and a straightening of the spine.

18. 343 Ill. App. at 612, 99 N.E.2d at 726.

19. *Ibid.*

20. 134 N.J.L. 371, 48 A.2d 389 (1946).

21. The jury allowed Mrs. Greenburg $50,000 for her injuries and Mr. Greenburg $35,000 for the damage sustained by him by reason of his wife's injury.

> The verdict in favor of Mrs. Greenburg of *$50,000 as compensation for the pain and suffering which she has and will suffer* as a result of the accident seems to us not to be excessive. Before the accident, it appears that she was an active woman. Assuming that artificial limbs may be secured, it seems unlikely that her household duties may be easily performed without constant help. (Emphasis added.)[22]

NEW YORK-FEDERAL.—In *McKinney v. Pittsburgh & L.E. R.R.*,[23] 1944, the United States District Court for the Southern District of New York allowed a recovery of $100,000 for forty-three year old railroad employee James McKinney's loss of both legs midway between the knee and ankle. His total pecuniary damage was $60,000. In reducing the jury verdict of $130,000, Judge Goddard pointed out that all above $60,000 was to compensate him for pain and suffering, humiliation and disfigurement and that: "[T]here must be some uniformity in verdicts for these elements of damage."[24]

In *Hubbard v. Long Island R.R.*,[25] 1957, the United States District Court for the Eastern District of New York upheld an award of $226,000 for twenty-three year old brakeman Ronald Hubbard's loss of both legs below the knees. His life expectancy was 45.61 years; medical expenses were in excess of $11,000; and his average annual wage was $5,500. The court, in replying to defendant's contention that the verdict was excessive because plaintiff could be rehabilitated, evinced a different attitude than that taken in 1944 by the United States District Court for the Southern District of New York, in the *McKinney* case, by asserting that it appeared that the jurors believed plaintiff could earn little, if anything. "Even if I entertained a different view, I could not with propriety substitute my judgment for theirs, since I do not believe that the verdict was so flagrantly excessive as to offend my sense of judgment."[26]

OHIO.—In *Beam v. Baltimore & O.R.R.*,[27] 1945, the Ohio Court of Appeals upheld a recovery of $75,000 for a brakeman's loss of both legs about seven inches below the knee. His monthly income was $280. In upholding the jury's verdict, the court stated:

> The verdict, while large, is such that we are unable to say it is excessive, taking into consideration the nature and extent of the injuries, their permanency, and the disabling character thereof.
>
> There appears to us to be nothing in this record upon which a claim of passion and prejudice would be predicated.[28]

In *Bartlebaugh v. Pennsylvania R.R.*,[29] 1948, the Ohio Court of Appeals upheld a recovery of $225,000 for twenty-three year old brakeman Edward Bartle-

22. 134 N.J.L. at 372, 48 A.2d at 390.
23. 57 F. Supp. 813 (S.D.N.Y. 1944).
24. *Id.* at 813.
25. 152 F. Supp. 1 (E.D.N.Y. 1957).
26. *Id.* at 2.
27. 77 Ohio App. 419, 68 N.E.2d 159 (1945).
28. *Id.* at 433, 68 N.E.2d at 166.
29. 78 N.E.2d 410 (Ohio App. 1948), *modified*, 150 Ohio St. 387, 82 N.E.2d 853 (1948).

baugh's loss of one leg four inches below the hip, and the other eight inches below the hip. Further surgical treatment was necessary before he could use artificial limbs.[30] On appeal to the Supreme Court of Ohio the judgment was reduced to $150,000 on the purported ground that "the erroneous introduction of evidence relative to refund annuities . . . injected into the case an improper standard, and apparently influenced the jury to award an excessive sum for the loss of future earnings."[31] However, the majority opinion also stated:

> Reducing this judgment to $150,000 would leave $92,383 for claimed damages other than loss of earnings. An amount beyond this we consider excessive.[32]

SOUTH CAROLINA-FEDERAL.—In *Atlantic Coast Line R.R. v. Robertson,*[33] 1954, the United States Court of Appeals for the Fourth Circuit upheld a recovery of $80,000 for railroad employee H. L. Robertson's loss of both legs below the knees.[34]

TEXAS.—In *Texas & Pac. Ry. v. Crown,*[35] 1949, the Texas Court of Civil Appeals allowed a recovery of $12,500 for twenty-two year old Pete Crown's loss of one leg four inches below the knee, the other seven and one-half inches below the knee. In reducing the jury award of $50,000, the Texas Court of Civil Appeals pointed out that he suffered a minimum amount for such an injury, returned to work within a year after his injury and was earning twice as much as he had before the injury.[36] It was also stated that "under the verdict, we cannot consider suffering or any other thing that may occur after the trial as affecting the question of excessiveness of the verdict, except subsequent loss of earning capacity, if any."[37]

SUMMATION.—As the chart indicates the highest award for this period was $226,000 affirmed by the United States District Court for the Eastern District of New York in 1957 while the lowest was $12,500 affirmed by the Texas Court of Civil Appeals.

In contrast to the Ohio Court of Appeals attitude in the *Bartlebaugh* case that:

> There is no fixed standard by which to measure the damages for pain and suffering, mental anguish or shock to the nervous system or humiliation. Such matters rest in the sound judgment of the jury. The Court gave

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30. Two to three operations would be required.
31. 150 Ohio St. at 391, 82 N.E.2d at 855.
32. *Id.* at 390, 82 N.E.2d at 855.
33. 214 F.2d 746 (4th Cir. 1954).
34. No further facts were reported.
35. 220 S.W.2d 294 (Tex. Civ. App. 1949).
36. "He [plaintiff] testified that he had become skilled in making artificial limbs; that he has no trouble getting employment of that kind and that he is being paid $1.25 per hour for that kind of work. He testified that carpenters are paid 50c to 75c per hour more than men are paid for making artificial limbs. Plantiff testified that before his injury he had been working as a carpenter for his father . . . that his father paid him 50c per hour and room and board; that he 'imagined' he was making $1,000 to $1,500 per year. He testified: 'Q. Then you are making twice as much money as you made back before this accident, aren't you? A. Yes, sir.'" *Id.* at 300.
37. 220 S.W.2d at 300.

> complete and proper instructions to the jury on all these elements of damages. It must be presumed that the jury followed the instructions of the Court.[38]

the Supreme Court of Ohio felt that there should be some uniformity for these non-pecuniary elements of damage. Surely both views cannot be harmonious. Either the jury will have to decide it, or, if uniformity is desired, a scale of monetary retribution for pain, suffering, mental anguish and humiliation should be set up similar to the compensation scale used in Workmen's Compensation Laws.[39]

REASONS FOR REMITTITUR.—In the *McKinney* case the United States District Court based its reduction upon undue influence on the jury by the plaintiff.[40] This, of course, is always a good ground for reversal or the ordering of a remittitur. In the *Bartlebaugh* case[41] a remittitur was ordered by the Supreme Court of Ohio primarily upon the ground of an erroneous introduction of evidence at the trial with a perhaps implied holding that more than $92,383 for damages other than loss of earnings was excessive. The Texas court ordered a remittitur in the *Crown* case[42] because nothing after the trial but loss of earnings could be considered and the plaintiff was earning more after his injury than before.

These remittiturs easily lend themselves to the view that while the plaintiff may recover for all of his pecuniary damages, his recovery for non-pecuniary losses will, in some way, be limited. Perhaps it is limited by some hope for uniformity which Judge Goddard stated must exist.[43] If absolute uniformity is required, *e.g.*, $8,000 per injury, then nothing is taken from those who suffer a minimum and no more is given to those who suffer a great deal. If it is to be percentage uniformity, *i.e.*, non-pecuniary damages recovered may not exceed a certain percentage of the total verdict,[44] then the plaintiff who was employed at low wages would receive less than a highly paid plaintiff for non-pecuniary damages though both suffered precisely the same injury.

If either of these standards are invoked, they necessarily deprive the plaintiff of fair and reasonable compensation for his injury, or cost the defendant more, because the award is not based upon the injury and its attendant losses, but upon some scheme of enforced uniformity devised by the appellate tribunal. It should be kept in mind that a uniformity of awards for the loss of both legs does not

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38. 78 N.E.2d at 415.

39. See the opinions of Latimer, J., and Wolfe, J., in Bennett v. Denver & R. G. W. R.R., 117 Utah 57, 213 P.2d 325 (1950) for an excellent discussion of the amount of personal injury awards in relation to the amount of compensation recoverable under the state's workmen's compensation laws for similar injuries.

40. "I think that the members of the jury were unduly affected by sympathy. McKinney had a particularly winning and attractive personality and as he crept on his knees past the jury box to the witness stand and climbed upon the witness stand, he was quite an appealing sight." 57 F. Supp. at 813.

41. See note 29 *supra.*

42. See note 35 *supra.*

43. "There must be some uniformity in verdicts for these elements of damage." McKinney v. Pittsburg & L.E. R.R., *supra* note 23, at 813.

44. That was the amount given in the *Goertz* case.

magically equate the pain and suffering of the two plaintiffs, nor guarantee fair and reasonable compensation to both.

B. *Plaintiff Cannot Use Prostheses*

NEW YORK-FEDERAL.—In *Delaney v. New York Cent. R.R.*,[45] 1946, the United States District Court for the Southern District of New York upheld a verdict of $165,000 for thirty year old Richard Delaney's loss of both legs four inches below the buttocks. His medical expenses were not reported, annual earnings approximated $4,000, and discounted loss of past and future wages was between $104,000 and $114,000. The court, though cognizant of the fact that the verdict was large,[46] stated that:

> Adding all these items up I can't say that the jury in awarding $165,000 was so far wrong that passion or prejudice is manifested. It was a large verdict. However, I have no right to interfere with it unless it is so excessive as to appear to have been given under the influence of passion or prejudice.[47]

NEW YORK.—In *Conkey v. New York Cent. R.R.*,[48] 1954, the Supreme Court of New York allowed an award of $168,000[49] for forty year old brakeman Harold Conkey's loss of both legs near the pelvis. He had no medical expenses and loss of earnings totaled $110,000. After discussing several cases, the court reduced a jury award of $300,000 to $168,000 finding that:

> A verdict even of $168,000 is larger than any verdict which has been permitted to stand in any comparable case which has been cited or which the Court has been able to find. Any sum in excess of this amount is clearly excessive.[50]

OKLAHOMA.—In *Kurn v. Manley*,[51] 1944, the Supreme Court of Oklahoma allowed a recovery of $30,000, plus $700 medical expense for thirty-three year old manual laborer Buster Manley's loss of both legs shortly below the torso. He had a life expectancy of thirty-five years, had for about a year earned $1,600 to $1,800 and was not regularly employed most of the time. The jury gave damages of $50,000 which the Supreme Court of Oklahoma found "substantially excessive"[52] in the amount in excess of $30,000 plus the $700 medical bill.

MISSOURI.—In *Counts v. Thompson*,[53] 1949, the Supreme Court of Missouri allowed a recovery of $80,000 for thirty-six year old brakeman Pless Counts' loss of both

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45. 68 F. Supp. 70 (S.D.N.Y. 1946).
46. "When the jury returned a verdict of $165,000 for the plaintiff, my first impression was that it was a large verdict, but one which the jury might return and still not be out of line with the evidence in the case." *Id.* at 72.
47. *Id.* at 74.
48. 206 Misc. 1077, 136 N.Y.S.2d 189 (Sup. Ct. 1954).
49. The net award. Plaintiff had been found twenty per cent contributorily negligent.
50. 206 Misc. at 1085, 136 N.Y.S.2d at 197.
51. 194 Okla. 574, 153 P.2d 623 (1944).
52. *Id.* at 578, 153 P.2d at 627.
53. 359 Mo. 485, 222 S.W.2d 487 (1949).

legs below the upper two-thirds of his thigh. His average monthly wage was $228 and would increase with length of service. There were spurs on the stumps of his legs, which would have to be surgically removed before he could use artificial limbs, and there was evidence that due to the permanent weakening of his upper torso he would never be able to use artificial limbs. He had an attendant during a part of each week and could not be trained for clerical work because he was of below average mentality. The jury's verdict of $165,000 was reduced to $140,000 by the trial court. The Supreme Court of Missouri reduced the award to $80,000 stating:

> We do not find that a judgment for personal injuries has ever been permitted to stand in this state *for more than $50,000.* (Emphasis added.)[54]

In *Moore v. Ready-Mixed Concrete Co.*,[55] 1959, the Supreme Court of Missouri upheld a recovery of $150,000 for policeman Robert Moore's loss of his right leg at the knee, stiff left leg, multiple fractures and lacerations, concussion and severe brain injury.[56] He underwent a total of twenty-one operations under general anesthetic and received narcotics until he became an addict, but was cured of this before his release from the hospital.[57] From June 1956 until the spring of 1957 he was in a cast from the waist down, one doctor being of the opinion "that it would have been better to have amputated plaintiff's left leg but the only place that it could have been done was at the hip and that is a very unsatisfactory joint for fitting an artificial limb."[58] At the trial pus drained from both legs, the right hip joint was severely impaired, the left hip frozen and he was suffering "phantom pains."[59] His medical expenses to March 1, 1958 were $19,820.86, and his loss of earnings to time of trial was $12,656. A jury verdict of $200,000 rendered in the Jackson County Circuit Court was reduced to $150,000 by Circuit Judge Terte. This was upheld by the Supreme Court of Missouri.

The Supreme Court pointed out that at the time of trial he was thirty-four years old, had a life expectancy of 34.29 years, was previously in excellent health, had been in line for promotion and was now "permanently and totally disabled, from a physical standpoint."[60]

In reply to defendant's contention that the verdict was so grossly excessive as to show bias and prejudice on the part of the jury, the court stated that "while trial courts may infer bias and prejudice from the size of the verdict alone since they weigh the evidence, appellate courts, as a matter of policy, ordinarily will not do so but"[61] will only look at the record to see if the trial court abused its discretion.

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54. *Id.* at 504, 222 S.W.2d at 496.
55. 329 S.W.2d 14 (Mo. 1959) (en banc).
56. See *id.* at 28-29 for a detailed list of plaintiff's injuries.
57. "Plaintiff cannot be given any narcotics in the future without danger of immediate addiction." *Id.* at 29.
58. *Id.* at 29.
59. Pains which seem to come from the amputated limb.
60. 329 S.W.2d at 30.
61. *Id.* at 30, quoting from Myers v. Karchmer, 313 S.W.2d 697, 710 (Mo. 1958).

In reply to the contention that the verdict was excessive, the court compared this case to the *Counts* case[62] saying:

> When all of the foregoing factors and distinctions are considered we do not believe that the instant judgment of $150,000 is 'out of line' in comparison with the $80,000 judgment approved in the Counts case.[63]

The attitude of the Supreme Court of Missouri in this opinion is markedly different from that taken in its earlier opinions in this field. The emphasis here seemed to be more heavily upon the injuries sustained than upon prior approved awards. This is also in strong contrast to the view of the New York court in the *Conkey* case.[64] The monetary award in this case is still lower than either of the New York cases in this area. Whether the court would have affirmed a larger award we cannot know. It is to be hoped, however, that the court never again feels that it is "hamstrung," by not having precedent upon which to rely in affirming a reasonable award, as it did in the *Counts* case.

REASONS FOR REMITTITUR.—The Supreme Court of Oklahoma in the *Kurn* case ordered a remittitur because, in the language of the court:

> Viewing the amount of the verdict, the instruction as to detailed allegations of plaintiff's petition, the issues submitted, and the physical facts and evidence of plaintiff's actions, there is strong showing that the verdict was unduly influenced by bias, passion or prejudice.[65]

The Supreme Court of New York in the *Conkey* case based its order of remittitur upon the fact that since this was the largest verdict ever permitted any larger sum would be "clearly excessive." It is doubtful that this is a valid reason. The court is in actuality saying that if no other court has given the plaintiff his due, neither shall we. The Supreme Court of Missouri in the *Counts* case seemed to be also deeply enmeshed in the ties of precedent, which is evidenced by the court's refusal to allow a larger award, based largely upon the ground that no judgment for such injuries for more than $50,000 had previously been permitted.

MISSOURI'S COMPARATIVE POSITION.—The jury verdicts in the *Counts* case and the *Delaney* case were identical—$165,000.[66] The remittiturs ordered by the Missouri courts left the *Counts* award at less than half of what had been awarded three years earlier in the *Delaney* case and what the jury had awarded. Delaney's annual wage was $4,000 while Counts' was $3,000 per year. Delaney's life expectancy was longer than Counts'. Yet, it is doubtful that these factors, though weighty, alone would account for the difference in the permitted awards. It is more probable that the key to the discrepancy lies in the fact that the Missouri Supreme Court felt bound to precedent by the tie of uniformity, uniformity here meaning absolute uniformity of total awards. So long as an attitude such as this prevails it is bound to result

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62. See note 53 *supra.*
63. 329 S.W.2d at 31. This case is included here, in the "Loss of Both Legs" section, even though Moore only lost one leg, because of this comparison.
64. See note 50 *supra.*
65. 194 Okla. at 578, 153 P.2d at 627.
66. See "jury award" on the enclosed chart.

in the plaintiff not receiving just and reasonable compensation, much less attaining the "adequate award."[67]

In the *Moore* case, Commissioner Holman, for the court, quoted the following passage from *Jones v. Pennsylvania R.R.*:[68]

> All courts hold the recovery is measured by that which is 'fair and reasonable compensation'. . . . Fair and reasonable compensation in each case must rest upon the foundation of the facts of the case. Yet some consideration must be given to the amounts of award which have been held to be fair and reasonable compensation where plaintiffs have suffered similar injuries. There should be reasonable uniformity as to the amounts of verdicts.[69]

The court here may have had in mind the type of uniformity that is desirable: when two injuries are precisely alike in all aspects, then the awards should be uniform, but for every factual deviation a change in the award should be considered. The Supreme Court of Missouri further stated, in reference to earlier cases, that it did "not find those cases persuasive."[70] The *Moore* case may be a step forward for the Missouri court in the direction of granting the plaintiff fair and reasonable compensation regardless of whether those plaintiffs who proceeded him received it or not.[71] Only further decisions can tell if this is a stepping stone to reasonableness or just an exceptional case.

IV. Loss of One Leg

A. *Without Other Serious Injury*

California-Federal.—In *Southern Pac. v. Guthrie*,[72] 1949, the United States Court of Appeals for the Ninth Circuit upheld a recovery of $100,000 for fifty-eight year old engineer Garry Guthrie's loss of his right leg between the knee and hip. He had undergone two operations, might never be able to use an artificial limb and still suffered from pain. The present worth of $6,000 per year (the wage now earned by one who held the same position as Guthrie) for eleven years (Guthrie would then be seventy) was found to be $55,515.74. Even though the court felt that the "verdict is too high,"[73] the majority of the court felt that "the amount of this verdict left it within the area of the trial court's discretion"[74] and affirmed the judgment.

On rehearing of the *Guthrie* case,[75] 1951, the United States Court of Appeals, sitting in bank, recalculated the present value of the loss of future earnings and

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67. See Belli, *The Adequate Award*, 39 Calif. L. Rev. 1 (1951).
68. 353 Mo. 163, 175, 182 S.W.2d 157, 161 (1944).
69. 329 S.W.2d at 30-31.
70. *Id.* at 31.
71. See note 199 *infra*.
72. 180 F.2d 295 (9th Cir. 1949), *aff'd on rehearing*, 186 F.2d 926 (9th Cir. 1951).
73. *Id.* at 303.
74. *Id.* at 306.
75. 186 F.2d 926 (9th Cir. 1951).

found that it could exceed $60,000, but was of the opinion that the verdict was still too high. The judgment was affirmed, however, because, as the court stated:

> [W]e cannot here reverse the action of the trial court unless the verdict can be said to be 'grossly excessive,' or as stated in the Affolder case, 'monstrous.' We think that the verdict in this case cannot be so characterized.[76]

CALIFORNIA.—In *Leming v. Oilfields Trucking Co.*,[77] 1955, the Supreme Court of California upheld a recovery of $213,460.22 for forty-seven year old Harvey Leming's loss of his right leg at the upper third of the femur. His life expectancy was 23.08 years and he claimed pecuniary damages of $175,258.42 plus $38,201.60 for other damages. This is the largest award granted in this area.

FLORIDA.—In *Braddock v. Seaboard Air Line R.R.*,[78] 1955, the Supreme Court of Florida upheld a total recovery of $193,911[79] for eight year old Jimmy Braddock's loss of his left leg. The trial court ordered a remittitur of $127,780.85 from the jury's award of $254,939. Reinstating a part of this remittitur because of various errors by the trial court,[80] the Supreme Court of Florida affirmed an award of $193,911.

ILLINOIS.—In *Murphy v. Friel*,[81] 1946, the Appellate Court of Illinois for the First District found an award of

> $75,000 to incompetent person who had done only odd jobs for 20 years and whose injured leg could bear no weight and should be amputated was so excessive as to disclose prejudice, passion or misconduct, requiring a new trial notwithstanding plaintiff remitted $40,000.[82]

In *Reinmueller v. Chicago Motor Coach Co.*,[83] 1950, the Appellate Court of Illinois for the First District upheld a recovery of $45,000 for sixty-eight year old Kunigunda Reinmueller's loss of her left leg below the knee. She had undergone three major operations and had been taken to the operating room on eighteen to twenty other occasions; medical expenses to the time of trial totaled $5,325 and were continuing at $30 per week. The jury gave an award of $45,000 which the Appellate Court of Illinois did not find excessive.

MICHIGAN-FEDERAL.—In *Pennsylvania R.R. v. Ackerson*,[84] 1950, the United States

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76. *Id.* at 933. This case contains an excellent review of the cases dealing with the power of courts of appeal to order a remittitur, a power which some courts felt they possessed and other felt they did not.
77. 44 Cal. 2d 343, 282 P.2d 23 (1955).
78. 80 So. 2d 662 (Fla. 1955).
79. $187,411 for James and $6,500 for his father.
80. The court found a mathematical error in the trial court's calculation and that the trial court erred in reducing the amount given for pain and suffering to its present worth.
81. 328 Ill. App. 586, 66 N.E.2d 450 (1st Dist. 1946).
82. *Id.* at headnote 10. An abstract only was published.
83. 341 Ill. App. 178, 93 N.E.2d 120 (1st Dist. 1950).
84. 183 F.2d 662 (6th Cir. 1950).

Court of Appeals for the Sixth Circuit upheld a jury award of $25,000 for Cecile Ackerson's loss of one leg stating that:

> In view of the actual hospital and surgical expense incurred, the numerous operations to which appellee was necessarily subjected by the critical nature of her injuries, the amputation of her leg, and the loss of earning power, we conclude that the allowance is not so unreasonable as to amount to an abuse of discretion.[85]

NEW YORK-FEDERAL.—In *Cereste v. New York, N.H.&H. R.R.*,[86] 1956, the United States Court of Appeals for the Second Circuit affirmed a jury verdict of $125,000 for the loss of Frank Cereste's leg above the knee. No further facts were reported. OHIO-FEDERAL.—In *Ringhiser v. Chesapeake & O. R.R.*,[87] 1956, the United States District Court of the Southern District of Ohio overturned a jury award of $40,000 for Boyd Ringhiser's loss of his right leg because of insufficient proof to establish negligence. The only comment upon damages by the three courts which passed upon this case[88] was the following by the District Court:

> The plaintiff had lost five years of income at the time of trial. If the loss of earnings are considered, there is very little left for pain and suffering and the loss of the limb with the attendant permanent impairment.[89]

OKLAHOMA.—In *Horwitz Iron & Metal Co. v. Myler*,[90] 1952, the Supreme Court of Oklahoma upheld a recovery of $26,000 for Carroll Myler's loss of his left leg above the knee. Long hospitalization and repeated surgery were required. The court stated its rule as to excessiveness to be:

> In the case of City of Norman v. Lewis, 180 Okl. 344, 69 P.2d 377, we said:
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> 'In an action for personal injuries, the jury is charged with the duty of fixing the amount of damages, and its verdict will not be set aside as excessive unless it clearly appears that the jury committed some gross and palpable error or acted under some improper bias, influence or prejudice.'[91]

PENNSYLVANIA-FEDERAL.—In *Allen v. Simpson*,[92] 1951, the United States District Court for the Middle District of Pennsylvania upheld an award of $8,000 for twenty-three year old waitress Alice Allen's loss of her left leg below the knee.[93] Her loss of earnings were $2,553. The court held that "the verdict of the jury is

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85. *Id.* at 667.
86. 231 F.2d 50 (2d Cir.), *cert. denied*, 351 U.S. 951 (1956).
87. 148 F. Supp. 529 (S.D. Ohio 1956), *aff'd*, 241 F.2d 416 (2) (6th Cir. 1956), *rev'd and remanded*, 354 U.S. 901 (1957).
88. See note 87 *supra*.
89. 148 F. Supp. at 536.
90. 207 Okla. 691, 252 P.2d 475 (1952).
91. *Id.* at 694, 252 P.2d at 478.
92. 95 F. Supp. 535 (M.D. Pa. 1951).
93. Her husband, Merrill Allen, was injured in the same accident and it is possible that he showed damages for the entire medical expenses.

not so excessive as to shock the conscience of the Court, nor can it be said to be the result of bias, prejudice or caprice."[94]

In *Heckathorne v. Pennsylvania R.R.*,[95] 1957, the United States District Court for the Western District of Pennsylvania upheld a recovery of $35,000 for Robert Heckathorne's loss of one leg above the knee. The jury gave judgment for $105,000 but found plaintiff two-thirds contributorily negligent and reduced the verdict to $35,000. Plaintiff moved the court to enter judgment for $105,000 or order a new trial. Both motions were denied and the amount of damages was not discussed.

In *Russell v. Monongahela Ry.*,[96] 1958, the United States District Court for the Western District of Pennsylvania upheld a recovery of $149,388[97] for switchman James Russell, Jr.'s loss of his left leg below the knee. His life expectancy was 37.6 years and he had an earning capacity in excess of $6,000 per year. The Court pointed out that, assuming only a 50% disability, plaintiff had lost $112,000 in future income. In view of this plus the pain and suffering endured by plaintiff, the court found the verdict of $149,388 was not excessive and did not shock the conscience of the court.

PENNSYLVANIA.—In *Magerko v. West Penn. Rys.*,[98] 1950, the Supreme Court of Pennsylvania allowed a recovery of $16,000 for twenty-one month old Anthony Magerko's loss of his right foot. A jury award of $24,000 was reduced to $18,000 by the trial court. The Supreme Court of Pennsylvania further reduced the award to $16,000 stating that a "strong sympathy moved the jury"[99] into granting an excessive award.

TEXAS.—In *Texas & N.O. R.R. v. Darton*,[100] 1951, the Civil Appeals Court of Texas upheld a recovery of $21,236 for nineteen year old laborer Ike Darton's loss of his right leg above the knee. At the time of the accident he was earning 60c per hour. The jury verdict for $21,236, "of which $20,000 was for physical pain, mental anguish and loss of earning capacity,"[101] was held not to be excessive.

WASHINGTON.—In *Brown v. Intercoastal Fisheries*,[102] 1949, the Supreme Court of Washington upheld a recovery of $25,000 for twenty-eight year old seaman Robert Brown's loss of his left leg above the ankle. He had a life expectancy of thirty-six years, would need more operations and was gainfully employed although his income had been reduced. The court found that the jury's verdict for $25,000 was not so "*unmistakenly* excessive . . . as to require a new trial."[103]

WEST VIRGINIA.—In *Jones v. Ambrose*,[104] 1946, the Supreme Court of Appeals of

94. 95 F. Supp. at 537.
95. 156 F. Supp. 824 (W.D. Pa. 1957).
96. 159 F. Supp. 650 (W.D. Pa. 1958).
97. The jury reduced its verdict for $186,735 to $149,388 by finding plaintiff was twenty per cent. contributorily negligent.
98. 365 Pa. 609, 76 A.2d 618 (1950).
99. *Id.* at 613, 76 A.2d at 620.
100. 241 S.W.2d 181 (Tex. Civ. App. 1951).
101. *Id.* at 183.
102. 34 Wash. 2d 48, 207 P.2d 1205 (1949).
103. *Id.* at 54, 207 P.2d at 1208.
104. 128 W. Va. 715, 38 S.E.2d 263 (1946).

West Virginia upheld a recovery of $20,000 for fourteen year old John Jones' loss of one leg approximately two-thirds of the way up the thigh, pointing out that:

> There is no scale by which damages of this sort can be weighed, and *what seems otherwise to be a just verdict cannot be nullified unless the excess of its amount is plain.* (Emphasis added.)[105]

MISSOURI-FEDERAL.—In *Affolder v. New York, C. & St. L. R.R.*,[106] 1948, the United States District Court for the Southern District of Missouri allowed an award of $80,000 for thirty-five year old switchman Floyd Affolder's loss of his right leg four inches below the hip. He had a life expectancy of over thirty-seven years and his average monthly wage was $400. He had been in constant pain since the injury; further operations would be necessary before he could wear an artificial limb and by reason of the shortness of the stump he might never be able to use an artificial limb successfully. In reducing the jury verdict for $95,000 to $80,000 the United States District Court stated that $70,000 for the loss of future earnings would not be excessive enough to cause the court to overturn the verdict and that he was also entitled to compensation for pain, suffering, disfigurement, embarrassment and inconvenience. As to uniformity of verdicts the court stated:

> The cases cited by the parties do not help a great deal in deciding the questions presented. On the other hand we believe there should be some attempt at uniformity rather than a total disregard of the judgment of other courts.[107]

The court went on to point out that: "If no Court had approved a verdict of $60,000 for loss of a limb up to 1944, a verdict of $95,000 four years later is excessive."[108]

On appeal the United States Court of Appeals for the Eighth Circuit[109] stated that: "The assignment of error that the verdict is excessive is not properly addressed to this court."[110] On further appeal the United States Supreme Court stated that it did "agree with the Court of Appeals that the amount of damages awarded by the District Court's judgment is not monstrous in the circumstances of this case."[111]

As the chart indicates, this is the highest award allowed in a Missouri court to this time. Still the award was $15,000 less than what the jury felt would reasonably compensate the plaintiff. It is clearly seen from the chart that this award was higher than awards affirmed to this time, for similar injuries, in the other jurisdictions.

MISSOURI.—In *Petty v. Kansas City Pub. Serv. Co.*,[112] 1946, the Supreme Court of Missouri upheld a recovery of $18,000 for three year old Ruth Petty's loss of her

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105. *Id.* at 725, 38 S.E.2d at 268.
106. 79 F. Supp. 365 (E.D. Mo. 1948), *rev'd*, 174 F.2d 486 (8th Cir. 1949), *cert. granted*, 338 U.S. 813 (1949), *district court aff'd*, 339 U.S. 96 (1950).
107. 79 F. Supp. at 369.
108. *Id.* at 370.
109. 174 F.2d 486 (8th Cir. 1949).
110. *Id.* at 493.
111. 339 U.S. at 101.
112. 354 Mo. 823, 191 S.W.2d 653 (1945).

left leg three inches below the knee. The trial court had reduced a jury verdict of $30,000 to $18,000. The Missouri court pointed out the pain, scars and permanent damage which she had suffered and stated that the recovery should be fair and reasonable compensation and that "fair and reasonable compensation in a case must rest upon the facts as viewed in relation to economic conditions, and with a regard to reasonable uniformity."[113]

The court then cited a 1921 decision[114] in which the court allowed a recovery of $13,500 for a three year old boy's loss of one leg *above* the knee and a 1924 decision[115] in which the court allowed a recovery of $13,500 for a three year old girl's loss of one leg *below* the knee. On the basis of these cases the Supreme Court of Missouri held that the present award of $18,000 "should not be held to be 'out of line.'"[116] It would certainly not seem to be "out of line," particularly in view of the fact that only $4,500 less had been awarded twenty-two years earlier to a three year old girl suffering substantially the same injuries.

As the chart indicates, only the awards in the *Allen* case[117] and the *Young* case[118] were lower than the present award. However, it is also noteworthy to point out that the jury award in both of these cases was affirmed.

In *Young v. Terminal R.R.*,[119] also in 1946, the Supreme Court of Missouri upheld a recovery of $15,000 for sixty year old railroad employee Maurice Young's loss of his left leg eight inches below the knee. His life expectancy was 14.10 years and his average earnings were $212 per month. He could use an artificial limb only part of the time due to the painful condition of his stump. The court pointed out that:

> Had plaintiff not been injured and had he continued as an airman at the same wage scale from the date of the casualty . . . until he attained the age of sixty-five years, his earnings for such period of time would have exceeded the jury's award.[120]

This is the lowest verdict in Missouri in this injury area, as the chart indicates. However, the criticism of this verdict should be aimed at the jury; the court merely affirmed its award. This could truly be called an inadequate award and a failure to give fair and reasonable compensation in view of the fact that plaintiff did not even recover pecuniary loss, much less what he should have received as non-pecuniary damages.

In *Smiley v. St. Louis-San Francisco Ry.*,[121] 1949, the Supreme Court of Missouri allowed an award of $27,500 for twenty-six year old switchman Clifford Smiley's loss of his left leg six inches below the groin. His average monthly income for the

113. *Id.* at 835, 191 S.W.2d at 659.
114. Bryant v. Kansas City Ry., 286 Mo. 342, 228 S.W. 472 (1921).
115. Shields v. Kansas City Ry., 264 S.W. 890 (Mo. 1924).
116. 354 Mo. at 835, 191 S.W.2d at 659.
117. See note 92 *supra.*
118. See note 117 *infra.*
119. 192 S.W.2d 402 (Mo. 1946).
120. *Id.* at 406.
121. 359 Mo. 474, 222 S.W.2d 481 (1949).

year prior to the accident was $230.[122] The jury verdict of $50,000 was upheld by the trial court. However, the Supreme Court of Missouri stated that:

> We find no case like this as to injuries sustained and probable future results, but *no two cases will be alike. Attempting to maintain a standard of uniformity in judgments in personal injury cases presents vexing questions.* We consider economic conditions, earning losses and all other pertinent factors. And *each case must be considered upon its own facts* . . . . Under all the instant circumstances we believe this judgment is excessive, but that *the rule of uniformity will be observed if the instant judgment finally stands for $27,500.* (Emphasis added.)[123]

It would appear to present vexatious questions, indeed, if one attempts to decide each case on its own merits but have the result uniform with the result of similar, yet unlike, cases. As the chart indicates this is the only award in this area in which the award of the trial court was reduced on appeal. This reduction was made solely at the appellate level. It is also apparent that the award is not uniform with the *Affolder* award of $80,000 but seems to be more consistent with the awards in the *Young* and *Petty* cases decided five years earlier. It should be remembered, however, that the trial court awards in the latter cases were affirmed.

MISSOURI'S COMPARATIVE POSITION.—Missouri's awards in this area are not the lowest indicated by the chart, but they are much lower than the federal awards in Missouri and the later awards in other jurisdictions—disproportionately so. In the *Larsen* case the award was $50,000 for very similar injuries as those sustained by Smiley. Yet, the United States Court of Appeals for the Seventh Circuit did not find it to be excessive but stated that the fixing of damages lay within the province of the jury. Missouri could not agree with this view and reduced Smiley's award to $27,500. No reason for the reduction was specified except that the rule of uniformity would be observed if the award was reduced. It could hardly be said that the federal court allowed $22,500 more than fair and reasonable compensation for Larsen's injuries. Yet, if that award was right, and the cases during that period give every reason to think that it was, then the Missouri court in reducing the *Smiley* award gave less than fair and reasonable compensation by adhering to some undefined rule of uniformity.

B. *With Other Serious Injury*

CALIFORNIA.—In *Huggans v. Southern Pac. R.R.*,[124] 1949, the California District Court of Appeals for the First District upheld a recovery of $91,000 for twelve year old Earl Huggans' loss of his left leg below the knee and a major portion of his right foot. The child's life expectancy was fifty-four years. The court stated:

> The special damages pleaded were $11,000 and over $17,000 were proved at the trial without objection. By limiting the special damages to $11,000 and arbitrarily taking $10,000 as the measure for past and future pain and

122. Very few facts were reported in the case.
123. 359 Mo. at 484, 222 S.W.2d at 487.
124. 92 Cal. App. 2d 599, 207 P.2d 864 (1st Dist. Ct. App. 1949).

> suffering appellants arrive at a figure of $70,000 for general damages. Then by a series of calculation they seek to prove that amortizing $70,000 over 54 years the income to plaintiff will be extravagant. . . . The award for past and future pain and suffering including the mental anguish and humiliation to be reasonably expected cannot be arbitrarily limited to $10,000 for a 54 year period. . . . On the whole case unless we can find that the award shocks one's sense of justice and raises the presumption that it was the result of passion and prejudice our duty is to affirm the award. . . . Applying that rule we cannot find the award excessive.[125]

GEORGIA.—In *Western & Atl. R.R. v. Burnett*,[126] 1949, the Court of Appeals of Georgia upheld a recovery of $65,000 for fifty year old switchman J. G. Burnett's loss of his right leg below the knee, eight broken ribs, punctured lung,[127] broken left shoulder and certain back injuries.[128] Plaintiff had been earning about $10 per day on a regular seven day a week job and his life expectancy was 21.11 years. The court affirmed the jury award of $65,000 stating:

> As Judge Powell said in *Seaboard Air-Line Ry. v. Miller*, 5 *Ga. App.* 402, 406 (63 S.E. 299) 'The fact that a verdict is greatly larger in amount than the sums fixed usually by juries in similar cases is evidentiary as to bias or mistake, but is not conclusive.'[129]

The court then laid down the following rule:

> That case also holds that the right of appellate courts to grant new trials on excessiveness in verdicts must not be exercised unless the verdict is shown to be the result of bias or gross mistake, or shows itself to be so. This test is also applied: 'If the damages are "monstrous indeed, and such as all mankind must be ready to exclaim against, at first blush," or (we may add, after mature deliberation), if the thing speaks for itself, the verdict must be considered as the result of bias or mistake for there is no other reasonable hypothesis.'[130]

INDIANA.—In *New York Cent. R.R. v. Milhiser*,[131] 1952, the Supreme Court of Indiana upheld a recovery of $50,000 for thirty-nine year old athlete and referee Mike Milhiser's loss of one leg, crushed arm, severe head injury which badly damaged his eyesight and injured chest. His medical expenses were $7,000 to $10,000. The court, while of the opinion that the jury was impressed by the unusually severe injuries sustained, felt there was no indication of prejudice, partiality or corruption, stating:

> The rule is that appellate courts will not reverse judgments in actions of tort, on the grounds of excessive damages, unless the assessment is so

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125. *Id.* at 615-16, 207 P.2d at 873.
126. 79 Ga. App. 530, 54 S.E.2d 357 (1949).
127. Resulting in a deformed chest and difficult breathing.
128. See 79 Ga. App. at 543-44, 54 S.E.2d at 367 for a more detailed account of plaintiff's injuries.
129. 79 Ga. App. at 541, 54 S.E.2d at 366.
130. *Id.* at 542-43, 54 S.E.2d at 367.
131. 231 Ind. 180 106 N.E.2d 453 (1952).

> large as to induce the belief that the jury was actuated by prejudice, partiality or corruption.[132]

MICHIGAN.—In *Crase v. City of Detroit*,[133] 1954, the Supreme Court of Michigan upheld a recovery of $41,000 for sixty-six year old carpenter Charles Crase's loss of his right leg and badly injured left foot and ankle. Plaintiff's life expectancy was 9.48 years, annual wage was about $3,300, medical expenses were $3,840.30 and loss of future earnings was $24,000. The trial court in reducing the jury verdict of $56,350 stated that $41,000 would fairly compensate the plaintiff, such sum being "'far in excess of any jury verdict rendered in this Court and in this type of lawsuit during the recollection of this Court.'"[134] This action was upheld by the Supreme Court of Michigan.

NEW JERSEY.—In *Wytupeck v. City of Camden*,[135] 1957, the Supreme Court of New Jersey upheld an award of $170,000[136] for nine year old Henry Wytupeck, who lost his right leg at the upper one-third of the thigh, suffered third degree burns over a great part of his body, lost ninety per cent of the use of his left hand and suffered other injuries. Medical expenses were $9,155.65.[137] The court laid down the following rule:

> [T]here may be judicial intervention only if the verdict is so far contrary to the weight of the evidence as to give rise to the inescapable conclusion of mistake, passion, prejudice, or partiality.[138]

NEW YORK-FEDERAL.—In *Woodington v. Pennsylvania R.R.*,[139] 1956, the United States Court of Appeals for the Second Circuit upheld a recovery of $297,500 for fifty-three year old engineer Wallace Woodington's loss of his right leg above the knee. His left leg was stiff below the hip and he lost the use of his right arm and hand.[140] The court upheld the jury verdict of $297,500 stating:

> Nor on the evidence of serious and extensive injuries to plaintiff do we think there was any abuse of discretion [by the trial court] in failing to set aside the verdict as excessive.[141]

PENNSYLVANIA.—In *Riester v. Philadelphia Transp. Co.*,[142] 1949, the Supreme Court of Pennsylvania upheld a recovery of $25,000 for forty-eight year old Anna Riester's loss of her right leg below the knee and severe injury to her left leg. Her expenses were about $1,594 and her loss of wages approximated $1,500. The trial court's reduction of the jury award of $65,000 to $25,000 was upheld by the Supreme Court of Pennsylvania.

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132. *Id.* at 199-200, 106 N.E.2d at 462.
133. 341 Mich. 132, 67 N.W.2d 93 (1954).
134. *Id.* at 138, 67 N.W.2d at 96.
135. 25 N.J. 450, 136 A.2d 887 (1957).
136. $150,000 for the boy and $20,000 for his father.
137. The cost of the child's artificial leg during minority would be $1,800.
138. 25 N.J. at 466, 136 A.2d at 896.
139. 236 F.2d 760 (2d Cir. 1956), *cert. denied*, 352 U.S. 970 (1957).
140. He also suffered other minor injuries.
141. 236 F.2d at 764.
142. 361 Pa. 175, 62 A.2d 845 (1949).

RHODE ISLAND.—In *Di Biase v. Nardolillo*,[143] 1949, the Supreme Court of Rhode Island upheld an award of $14,500 for fifty-eight year old laborer Louise Di Biase's loss of his right leg five inches above the knee, nine fractured ribs, fractured left leg and other injuries. Plaintiff's life expectancy at time of trial was 15.77 years and there was evidence that he might have to use crutches the rest of his life. The Supreme Court of Rhode Island upheld the jury's award of $14,500 saying it would not upset the trial court's decision unless it was clearly wrong.[144]

TEXAS.—In *Fort Worth & D.C. Ry. v. Gifford*,[145] 1952, the Court of Civil Appeals of Texas upheld an award of $72,044.50 to a nineteen year old part-time agricultural worker for the following injuries: loss of left leg above knee, right foot completely turned around, left shoulder dislocated, some nerves stretched and broken and numerous other like injuries. He had a life expectancy of fifty years and was ninety to ninety-five per cent disabled. The jury award of $77,044.50 was reduced by the trial court to $72,044.50. This was upheld by the Texas Civil Appeals Court which concluded:

> [U]nder all of the facts and circumstances, for us to hold that this verdict is excessive would be in the nature of substituting our judgment for that of the jury. While this verdict might be more than the court would have awarded if we had been triers of the facts, nevertheless we are unable to say that the verdict, though large, shows of itself any bias, any prejudice or passion, or that it is not supported by the evidence . . . .[146]

WASHINGTON.—In *Snyder v. General Elec. Co.*,[147] 1955, the Supreme Court of Washington upheld a recovery of $42,356.50 for forty-four year old mechanic Homer Snyder's loss of his left leg at the knee and ten per cent impairment of his right shoulder. The trial court ordered the jury verdict of $42,356.50 to be reduced to $21,912.50, believing the jury had used an improper formula to arrive at general damages. The Supreme Court of Washington held the jury had not used an improper formula and reinstated the jury award.

MISSOURI-FEDERAL.—In *St. Louis S.W. Ry. v. Ferguson*,[148] 1950, the United States Court of Appeals for the Eighth Circuit upheld an award of $150,000 for switchman Archie Ferguson's loss of his left leg three inches below the hip joint, his right arm three inches above the wrist and all digits but the thumb and forefinger on his left hand. Plaintiff was a permanent "wheelchair case" for all practical purposes. The United States Court of Appeals upheld the jury award of $150,000 stating that rather than being "'monstrous'" or "'outrageous'" the verdict was "not out of

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143. 76 R.I. 143, 68 A.2d 89 (1949).
144. The court also stated that it felt "that the jury weighed the facts properly; brought in a proper verdict; estimated the damages fairly, in every way, and that their verdict does substantial justice between the parties." *Id.* at 151, 68 A.2d at 93.
145. 252 S.W.2d 204 (Tex. Civ. App. 1952).
146. *Id.* at 206.
147. 47 Wash. 2d 60, 287 P.2d 108 (1955).
148. 182 F.2d 949 (8th Cir. 1950).

line with what juries more and more generally have been doing under present economic conditions."[149]

In *Allis Chalmers Mfg. Co. v. Wichman*,[150] 1955, the United States Court of Appeals for the Eighth Circuit reversed an award of $50,000 for farm employee Marvin Wichman's loss of his left leg below the knee and thirty-five per cent impairment of his right hand, on grounds other than excessive damages. Plaintiff's medical expenses were about $2,000. The trial judge, Reeves, C.J., acting without jury, had assessed plaintiff's damages at $50,000 saying that his injury was not as great as those suffered by Guthrie in the *Guthrie* case[151] and that, in that case, the reviewing court had felt that verdict was too large.

MISSOURI.—In *Joice v. Missouri-Kansas-Texas R.R.*,[152] 1945, the Supreme Court of Missouri allowed a recovery of $50,000 for forty-seven year old section foreman Benjamin Joice's loss of his right leg, leaving a stump of about six and one-half inches; broken right arm; three cracked ribs and "traumatic-arthritic" changes in the spine. It was doubtful that he would be able to use the usual artificial leg;[153] his annual earnings approximated $2,000; and there was testimony to the effect that he was totally disabled for manual labor. The jury returned a verdict for $80,000 which was reduced by the trial court to $65,000. The Supreme Court of Missouri further reduced the award to $50,000. In passing upon the award, the Supreme Court considered three other cases, *Aly v. Terminal R.R. Ass'n.*,[154] *Bond v. St. Louis-San Francisco Ry.*,[155] and *Span v. Jackson Walker Coal & Mining Co.*,[156] in which the plaintiffs received $40,000, $35,000 and $50,000 respectively. The court stated that Joice's injuries were not as severe as those sustained by those three plaintiffs, and in the light of those awards the present verdict was excessive in the amount which exceeded $50,000.

In *Dickson v. Beemer*,[157] 1949, the Supreme Court of Missouri upheld an award of $5,000 for sixty year old Fred Dickson's loss of his right leg eight inches below the hip, laceration of the scalp and cerebral concussion. When injured he was earning $6 per day. Seven years later, at trial, he was earning $30 per week. Plaintiff appealed the jury verdict of $5,000 as inadequate. However, the Supreme Court of Missouri held that this was not grossly inadequate, nor the result of passion or prejudice and affirmed the award.

REASONS FOR REMITTITUR.—In *Magerko v. West Penn. Rys.*,[158] the Supreme Court of Pennsylvania ordered a $4,000 remittitur saying that a "strong sympathy moved the jury." There was no further explanation of this "sympathy." In *Joice v. Mis-*

149. *Id.* at 956.
150. 220 F.2d 426 (8th Cir. 1955), *reversing*, Wichman v. Allis Chalmers Mfg. Co., 117 F. Supp. 857 (W.D. Mo. 1954).
151. See note 72 *supra*.
152. 354 Mo. 439, 189 S.W.2d 568 (1945).
153. *Id.* at 453, 189 S.W.2d at 576.
154. 342 Mo. 1116, 119 S.W.2d 363 (1938).
155. 315 Mo. 987, 288 S.W. 777 (1926).
156. 322 Mo. 158, 16 S.W.2d 190 (1929).
157. 217 S.W.2d 515 (Mo. 1949).
158. See note 141 *supra*.

souri-Kansas-Texas R.R.[159] the Supreme Court of Missouri ordered a remittitur of $15,000 on the basis of a comparison of the *Joice* award with awards affirmed in 1938, 1926 and 1929 decisions.[160] This hints strongly of the desire for uniformity in awards on the part of the Supreme Court of Missouri which has been mentioned by it in many of its cases.[161] Whether this desire for uniformity has overshadowed the concept of fair and reasonable compensation can perhaps be answered by further examination of Missouri's comparative position.

MISSOURI'S COMPARATIVE POSITION.—The Missouri award in the *Joice* case (1945) would appear to compare favorably with the California decision in the *Huggans* case (1949) even though the *Huggans* award was $91,000 compared to the *Joice* award of $50,000. On the basis of *Joice* alone it would seem possible that if Missouri were faced with the factual situation obtaining in the *Huggans* case in 1949 that it could affirm such an award. Yet, when the other Missouri cases during this period and following are examined (as they appear on the chart), it is noted that not until 1959 did the Missouri court uphold an award for $150,000 for substantially the loss of both legs.[162]

A further examination of the chart also points out that there are many cases in which the plaintiff received less than $50,000. The factual differences in many of these cases will account for their low verdicts. As to the other cases it can only be said that, with the exception of the *Magerko* case,[163] the reduction was made by the trial judge who, it has been said, is in the best position to determine the true situation and to rule accordingly. In the *Joice* case, even though the trial judge had reduced the verdict from $80,000 to $65,000, the Supreme Court of Missouri saw fit to reduce further the award to $50,000. The only other similar action taken by an appellate court in this area was that of the Supreme Court of Pennsylvania in the *Magerko* case. The Pennsylvania court, however, based its reduction on a "strong sympathy" which moved the jury rather than upon earlier cases which affirmed lower awards. It is doubtful that the action of the Supreme Court of Missouri in the *Joice* case can be sustained on the ground that such a reduction would more nearly afford the plaintiff "just and reasonable compensation" for his injuries.

The *Dickson* award seems justified in view of the relatively small loss in wages and the short life expectancy of the plaintiff.

The position of the Missouri federal courts seems to be more in accord with that of other courts. The award in the *Ferguson* case ($150,000), is what the jury found to be "fair and reasonable compensation." Neither the trial nor appellate court altered the award. They cannot be criticized because the jury did not give a

159. See note 152 *supra.*
160. See notes 154, 155 and 156 *supra.*
161. *E.g.,* Scneder v. Wabash R.R., 272 S.W.2d 198, 208 (Mo. 1954) ("As to amount, the only standard available is a reasonable degree of uniformity . . . ."); Ketcham v. Thomas, 283 S.W.2d 642, 652 (Mo. 1955) ("[D]ue consideration should be given to approved awards in other cases, when a comparison can be made, so that approximate uniformity in awards for damages may be obtained").
162. Moore v. Ready-Mixed Concrete Co., *supra* note 55.
163. See note 141 *supra.*

larger verdict. On the whole it would appear that the federal courts in Missouri have come closer to meting out "fair and reasonable compensation" to plaintiffs than have the state courts.

V. Loss of Both Arms

It is a very rare occasion that a person loses both arms. Hence, there is only one reported case in this period in which the plaintiff did lose both arms. That is the case of *Pierce v. United States*[164] decided by the United States District Court for the Eastern District of Tennessee in 1955. James Pierce, a lineman, lost both arms below the elbow and suffered a concussion with possible brain damage as the result of having a 4160-voltage current pass through his body. The court, sitting without jury, set the award at $53,984.81 and costs. On appeal the United States Court of Appeals for the Sixth Circuit affirmed the decision. No mention was made of the amount of the verdict.

VI. Loss of One Arm

Alabama.—In *Southern Ry. v. Pullen*,[165] 1947, the Supreme Court of Alabama upheld a recovery of $40,000 for William Pullen's loss of an arm. The jury's award of $55,000 was reduced to $40,000 by the trial court. No further facts were reported.[166]

California.—In *Kircher v. Atchison, T.&S.F. Ry.*,[167] 1948, the Supreme Court of California upheld a recovery of $60,000 for twenty-three year old aviation cadet Kenneth Kircher's loss of his left hand. In affirming the jury's award the California court stated:

> An allowance of damages is primarily a factual matter . . . and it is well settled that even though the award may seem large to a reviewing court, it will not interfere unless the allowance is so grossly disproportionate to a sum reasonably warranted by the facts as to shock the sense of justice and raise a presumption that it was the result of passion and prejudice.[168]

Florida.—In *Florida Power & Light v. Hargrove*,[169] 1948, the Supreme Court of Florida upheld a recovery of $50,000 for forty-three year old lineman John Hargrove's loss of his right arm just below the elbow, burned right leg and other serious injuries. His life expectancy was twenty-five years and his annual wage was $6,500. The Supreme Court of Florida affirmed the jury verdict of $50,000 saying that:

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164. 142 F. Supp. 721 (E.D. Tenn. 1955), *aff'd*, 235 F.2d 466 (6th Cir. 1956).
165. 248 Ala. 665, 29 So. 2d 228 (1947).
166. This case is made almost useless, for purposes of analyzing the award, by the court's failure to report the essential facts.
167. 32 Cal. 2d 176, 195 P.2d 427 (1948), *reversing*, 183 P.2d 105 (Cal. App. 1947).
168. *Id.* at 434.
169. 160 Fla. 405, 35 So. 2d 1 (1948).

> There is not the slightest intimation that it was prejudiced or that it was influenced by improper motives. . . . It would be trite to argue that this Court is not authorized preemptorily to set a verdict aside because it would have awarded a different amount. It must be shown to be without justification in the record, and we find no such showing here.[170]

ILLINOIS.—In *Eizerman v. Behn*,[171] 1956, the Appellate Court of Illinois for the First District upheld a recovery of $70,000 for forty-eight year old Daniel Eizerman's loss of his right arm three and one-half inches from the shoulder stating that there was nothing in the record to indicate passion or prejudice on the part of the jury and that the verdict was not so palpably excessive as to indicate such passion or prejudice.

INDIANA.—In *Norwalk Truck Line Co. v. Kostka*,[172] 1949, the Appellate Court of Indiana upheld a recovery of $30,000 for Edward Kostka's loss of his left arm at the shoulder and concussion of the brain. In upholding the jury award of $30,000 the Indiana court stated:

> In view of the fact that the injury resulted in a serious, permanent handicap to a man 23 years old at the time of the accident and having a life expectancy between 39 and 40 years, it cannot be said that the verdict induces a belief that it was the result of prejudice, partiality, or corruption.[173]

LOUISIANA-FEDERAL.—In *Texas Pac.-Mo. Pac. Term. R.R. v. Welsh*,[174] 1950, the United States Court of Appeals for the Fifth Circuit upheld a recovery of $48,000 for switchman Leonard Welsh's loss of an arm stating that it did not have the power to reduce an award for excessiveness.[175] No further facts were reported.

LOUISIANA.—In *Davis v. Dept. of Highways*,[176] 1953, the Louisiana Court of Appeals upheld a recovery of $25,488.95 for forty-five year old oil field worker James Davis' loss of his left arm. He had been earning $200 per month prior to the accident. The Louisiana court upheld the jury award stating that it was neither excessive nor inadequate after a review of the awards in similar cases.

MINNESOTA.—In *Hallada v. Great Northern Ry.*,[177] 1955, the Supreme Court of Minnesota allowed a recovery of $105,000 for thirty year old switchman William Hallada's loss of his right arm two and one-half inches from the shoulder. He had a life expectancy of 38.80 years, had previously been earning $450 per month and could not use an artificial limb. The Supreme Court of Minnesota set out the following test:

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170. *Id.* at 409, 35 So. 2d at 3.
171. 9 Ill. App. 2d 263, 132 N.E.2d 788 (1st Dist. 1956).
172. 120 Ind. App. 383, 88 N.E.2d 799 (1949).
173. *Id.* at 402, 88 N.E.2d at 805-06.
174. 179 F.2d 880 (5th Cir. 1950).
175. See note 76 *supra*.
176. 68 So. 2d 263 (La. App. 1953).
177. 244 Minn. 81, 69 N.W.2d 673, *remittitur filed*, 245 Minn. 581, 72 N.W.2d 74, *cert. denied*, 350 U.S. 874 (1955).

> Whether an injured person has been made financially *whole* must be tested by determining what the total amount of damages awarded by the jury will accomplish for him if conserved and used with ordinary prudence.[178]

The court in reducing the jury award of $170,154.81, pointed out that by investing the jury award at three and one-fourth per cent, plaintiff would receive $5,530.03 interest annually, or slightly more than his annual pre-injury wage, and would still have the principal intact at his death. The court concluded that the award, though excessive, did not show passion or prejudice but was the result of totally relying upon mathematical formulas and not testing the reasonableness of the verdict from the standpoint of its overall effect.

> Whatever process is adopted in fixing an injured person's damages, the reasonableness of the lump sum awarded by the jury must, in the last analysis, also be tested from the unitary standpoint of what total financial benefits that lump sum will confer upon the injured person as a means of making him financially *whole*. No award can be sustained unless it stands the test of reasonableness in the light of its overall effect.[179]

NEW MEXICO.—In *Turrietta v. Wyche*,[180] 1949, the Supreme Court of New Mexico upheld a recovery of $15,000 for mechanic Ben Turrietta's loss of his left arm above the elbow stating that:

> While the verdict is large, it is supported by substantial evidence. We cannot say as a matter of law that it is excessive.[181]

NEW YORK-FEDERAL.—In *Fiskratti v. Pennsylvania R.R.*,[182] 1957, the United States District Court for the Southern District of New York upheld a recovery of $169,651.68 for twenty-four year old Martin Fiskratti's loss of his right forearm; third, fourth and fifth digits of his left hand; broken nose and other injuries. He had a life expectancy of 47.49 years, had had numerous operations and skin grafts, and was thought to be eighty to ninety per cent permanently disabled even with an artificial limb. In affirming the jury award, the court set out the following rule:

> In determining whether the amount of damages awarded to the plaintiff are excessive, this Court will be guided by the rule expressed in Barry v. Edmunds, 116 U.S. 550, 565, 6 S. Ct. 501, 509, 29 L. Ed. 729, which is as follows:
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> "* * * a verdict will not be set aside in a case of *tort* for excessive damages "unless the court can clearly see that the jury have committed some very gross and palpable error, or have acted under some improper bias, influence or prejudice, or have totally mistaken the rules of law by which the damages are to be regulated," that is, "unless the verdict is so excessive or outrageous," with reference to all the circumstances of the case, "as to demonstrate that the jury have acted against the rules of law, or have suffered their passions, their prejudices, or their perverse disre-

178. 244 Minn. at 97, 69 N.W.2d at 686.
179. *Id.* at 99, 69 N.W.2d at 687.
180. 54 N.M. 5, 212 P.2d 1041 (1949).
181. *Id.* at 17, 212 P.2d at 1049.
182. 147 F. Supp. 765 (S.D.N.Y. 1957).

> gard of justice to mislead them." In no case is it permissible for the court to substitute itself for the jury, and compel a compliance on the part of the latter with its own view of the facts in evidence, as the standard and measure of that justice, which the jury itself is the appointed constitutional tribunal to award.'[183]

OHIO.—In *Lucente v. Philipedes*,[184] 1945, the Court of Appeals of Ohio upheld a recovery of $10,000 for thirty-three year old Primio Lucente's loss of part of his left hand. He had been earning $60 to $65 per week. In affirming the jury's award of $10,000 the court stated:

> Considering the record with reference to the size of the verdict in its entirety, this court cannot reach the conclusion that the sum awarded by the jury is so grossly out of proportion to the compensation to which plaintiff is entitled as to shock us into the certainty that this verdict had its source in the passion or prejudice of the jury . . . .[185]

TENNESSEE.—In *Gibson City Elec. v. Hall*,[186] 1947, the Court of Appeals of Tennessee upheld a recovery of $10,000 for fifty-nine year old farm laborer Rufas Hall's loss of his right arm and serious burns on the left side of his body. He had been earning $2.50 per day. In affirming the jury award of $10,000 the court stated that: "no rule has been formulated by which to determine with certainty the damages to which a plaintiff in a case of this kind is entitled." The court also stated that: "the right to revise even the amount of the verdict by the process of suggesting a remittitur is a delicate one and one which the courts should be slow to adopt."[187] "[We do] not feel justified in substituting our judgment for that of the jury and the trial judge, especially since they had an opportunity, denied us, to observe on the plaintiff's body the nature and extent of the injuries as reflected thereby."[188]

TEXAS.—In *Alpine Tel. Corp. v. McCall*,[189] 1946, the Texas Court of Civil Appeals upheld a recovery of $42,500[190] for fourteen year old Earl McCall's loss of his left arm above the elbow and serious injury to his right leg. Plaintiff was eighty per cent permanently disabled. The Texas court affirmed the jury award of $42,500 because:

> The verdict is not so manifestly excessive as to show passion or prejudice, or to require this court to substitute its judgment for that of the jury.[191]

In *Tri-County Elec. Co-op. v. Clair*,[192] 1949, the Texas Court of Civil Appeals allowed a recovery of $20,950 for forty-eight year old tree trimmer William Clair's loss of one arm below the elbow and a fifteen per cent loss of use in the other arm.

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183. *Id.* at 767.
184. 68 N.E.2d 558 (Ohio App. 1945).
185. *Id.* at 562.
186. 32 Tenn. App. 394, 222 S.W.2d 689 (1947).
187. *Id.* at 407-08, 222 S.W.2d at 695-96.
188. *Id.* at 408, 222 S.W.2d at 696.
189. 195 S.W.2d 585 (Tex. Civ. App. 1946).
190. $10,000 to the father and $32,500 to the injured boy.
191. 195 S.W.2d at 593.
192. 217 S.W.2d 681 (Tex. Civ. App. 1949).

He had been earning $47 per week. The Texas court reduced the jury verdict of $25,950 by $5,000 after concluding:

> In the great majority of the reported cases the verdicts in cases involving injuries similar to those in the present case have been much less than $25,000, although in two or three cases, of which Sprickerhoff v. Baltimore & O. R. Co., 323 Ill. App. 340, 55 N.E. 2d 532, is an example, verdicts for even more than $25,000 for loss of an arm have been upheld. It will be seen from the authorities cited that verdicts as large as that in the present case have been held excessive in a number of instances.[193]

In *Tripp v. Watson*,[194] 1950, the Texas Court of Civil Appeals upheld a recovery of $15,000 for Eddie Watson's loss of one arm stating that the evidence sustained the award.

In *Pittman v. Baladez*,[195] 1957, the Texas Court of Civil Appeals upheld a recovery of $35,000 for twenty-four year old farm worker W. E. Pittman's loss of his left arm at the shoulder and fractured skull. He had a life expectancy of forty-three years, could not wear an artificial limb and had medical expenses of $1,949. The Texas court upheld the jury award of $35,000 stating:

> There is no fixed rule or standard to be accepted in determining whether a verdict in a particular case is in fact excessive except to determine what amount of money 'an honest and impartial jury, uninfluenced by passion, prejudice or other improper motive, may deem adequate' to reasonably and fairly compensate the injured person for injuries sustained.[196]

UTAH.—In *Bennett v. Denver & R.G.W. R.R.*,[197] 1950, the Supreme Court of Utah upheld a recovery of $50,000[198] for twenty-six year old brakeman Charles Bennett's loss of his right arm just below the shoulder. He had a life expectancy of 38.12 years and had been earning about $350 per month. In affirming the jury verdict of $50,000 the court stated:

> Present verdicts doubtless seem very high in view of past experience in this state, but it is just as valid a conclusion that injured men may have been awarded too little in the past as it is that they are awarded too much now. Perhaps both are the case.[199]

MISSOURI.—In *Gordon v. Muehling Packing Co.*,[200] 1931, the Supreme Court of Missouri allowed a recovery of $17,000 for forty-one year old packing house employee Sam Gordon's loss of his left hand at the wrist when caught in defendant's sausage grinder. He had been earning approximately $150 per month and under-

193. *Id.* at 687. The award in the *Sprickerhoff* case was $30,000.
194. 235 S.W.2d 677 (Tex. Civ. App. 1950).
195. 304 S.W.2d 601 (Tex. Civ. App. 1957), *reversed on other grounds*, 312 S.W.2d 210 (Tex. 1958).
196. 304 S.W.2d at 606-07.
197. 117 Utah 57, 213 P.2d 325 (1950).
198. $70,000 less $20,000 for contributory negligence.
199. 117 Utah at 73, 213 P.2d at 333.
200. 328 Mo. 123, 40 S.W.2d 693 (1931).

went three or four operations. The jury award of $25,000 was reduced by the trial court to $21,000. The Supreme Court of Missouri stated:

> [C]omparing the amount of damages in this case with the amount allowed in other cases . . . [citing cases] where the injuries were similar to those in the present case, we could well hold that $15,000 would be the limit to the damages in this case. However, on account of plaintiff's large expenditures for hospital fees and medical attention and his unusual suffering both in the manner of his injury and in attempts to cure the same, this amount should be increased to $17,000.[201]

In *Reeves v. Thompson*,[202] 1948, the Supreme Court of Missouri allowed a recovery of $15,000 for twenty-seven year old Ermal Reeves' loss of his right arm at the elbow, back injury and injury to the entire right side of his body. He had been earning $110 per month. In reducing the jury award of $22,500 to $15,000 the Supreme Court of Missouri stated that a claim that a verdict was the result of passion and prejudice is "vitally different" from one of excessiveness, in that "an excessive verdict does not necessarily reflect passion and prejudice on the part of the jury."[203] The court found no passion or prejudice. In discussing the *Gordon* case[204] the court stated:

> A verdict for $25,000 was reduced to $17,000. In the brief counsel for plaintiff, in the present case, in the defense of the verdict, stress the purchasing power of money. That of course is important in dealing with an assignment on an alleged excessive verdict, and we do not overlook such. *However, we think the rule of uniformity would be more nearly observed if the present verdict be reduced to $15,000.* (Emphasis added.)[205]

REASONS FOR REMITTITUR.—In the *Hallada* case,[206] 1955, the Supreme Court of Minnesota reduced the jury verdict of $170,154.81 to $105,000 upon the basis that the plaintiff could invest the $170,154.81, receive more per year in interest than his pre-injury wage and have the principal intact at his death. At first blush this seems reason enough to order a remittitur. However, when it is taken into consideration that the plaintiff will be without his arm for the rest of his life (estimated over 38 years), has undergone much pain and suffering, can no longer engage in his chosen vocation and will have to suffer the humiliation and embarrassment of his injury the rest of his life, the strength of the court's reasoning withers. It would seem that the court is interested only in making the plaintiff whole as to his pecuniary loss and not particularly interested in compensating him for the intangible elements of his loss.

In the *Clair* case,[207] 1949, the Texas Court of Civil Appeals reduced the jury verdict of $25,950 to $20,950. The reason given was that the majority of the reported cases involving similar injuries sustained awards of much less than $25,000.

201. *Id.* at 142-43, 40 S.W.2d at 702.
202. 357 Mo. 847, 211 S.W.2d 23 (1948).
203. *Id.* at 857, 211 S.W.2d at 29.
204. See note 200 *supra.*
205. 357 Mo. at 858, 211 S.W.2d at 30.
206. See note 177 *supra.*
207. See note 192 *supra.*

It would seem that the Texas approach in this case is very similar to that of the Missouri courts in striving for uniformity of awards. However, unlike the Texas courts, the Missouri courts have seemed unwilling to look at reported cases from other jurisdictions. It should be noted, also, that the view of the Texas court in the *Pittman* case,[208] 1957, is far removed from the view expressed in earlier Texas cases. This may be due to a new concept on their part, or a difference in the views of the various appellate courts. It is submitted that the Missouri courts would do well to adopt a concept similar to that expressed in the *Pittman* case.

In the *Gordon* case,[209] 1931, the Supreme Court of Missouri is again found reducing an award so that it will conform to the "rule of uniformity." There was, however, no indication of why, if the verdict could be raised to $17,000, the award could not be raised to $21,000, the sum entered by the trial court. It would seem that the Supreme Court of Missouri again put itself in the position of the jury and trial judge and awarded what it thought would reasonably compensate the plaintiff.

In the *Reeves* case,[210] 1948, the Supreme Court of Missouri again applied the "rule of uniformity" to a jury award of $22,500 and found it to be excessive in the sum which exceeded $15,000. The "rule of uniformity" seems to lead anywhere but to "fair and reasonable compensation." The court here granted the same award which seventeen years earlier it had said was not quite enough for a lesser injury to a plaintiff fourteen years older than Reeves. It appears that here the Supreme Court of Missouri abandoned the "rule of uniformity" in order to reduce an award.

MISSOURI'S COMPARATIVE POSITION.—It can hardly be disputed that the awards in both the *Gordon* and *Reeves* cases were far below that which other courts have thought to be "fair and reasonable compensation" for similar injuries. As the chart indicates there were two awards in this area lower than that granted in the *Reeves* case.[211] It should be noted, however, that in both of those cases the award affirmed was that granted by the jury. In both cases in which remittiturs were ordered, the final award was well above the award sustained in either Missouri case.[212] It would also seem apparent that if the Missouri court were faced with an award such as that granted in the *Fiskratti* case ($169,651.68) it would not be sustained. It is very doubtful that the Missouri court would sustain many of the awards granted by the other appellate courts in this area. Running down the final awards sustained by these other jurisdictions, with the language of the Missouri court and its desire for uniformity in mind, the reader can easily point to a dozen awards which the Missouri court would in all likelihood not have sustained. The reason can be stated in four words: "The rule of uniformity." So long as the "rule of uniformity" is applied as it has previously been applied, Missouri plaintiffs cannot hope to

208. See note 195 *supra.*
209. See note 200 *supra.*
210. See note 202 *supra.*
211. *Lucente* and *Hall* cases.
212. See "Final award" column of the chart.

have their awards reviewed upon the basis of what would be "fair and reasonable compensation" but will have to be content with having the award measured by the "rule."

In view of the *Moore* case[213] and the apparently new outlook of the Supreme Court of Missouri contained therein, it is to be hoped that the "rule" has been broken and in its place the court will use the guide of "fair and reasonable compensation" with due regard for the opinion of the jury and the trial judge, both being in a better position to determine the extent of the plaintiff's injuries and losses.

VII. Loss of Fingers

There were no reported Missouri cases in this area during the period under review which the writer could uncover. A detailed discussion of these cases would unreasonably lengthen this article. This is particularly true in view of the combinations of digits which may be lost. As can be seen from the enclosed chart, the injuries are so diverse that a comparison of the cases is very difficult, if possible at all. It is suggested that a study of the chart would be of more benefit to the reader than a discussion of the cases. The cases set out there will give an idea of what the appellate courts have done in reference to awards for the loss of certain digits. The attitudes of the courts are very similar to the views enumerated by the courts in the prior discussion concerning the loss of legs and arms.

VIII. Missouri's General Position

The juries in Missouri, the chart indicates, grant approximately the same amount of damages granted in other jurisdictions for similar injuries. The judgments entered by Missouri trial courts also conform to those of other jurisdictions. The rub comes at the appellate level. A look at the chart would convince any plaintiff that an appeal to the Supreme Court will almost always result in a reduction of his award. In the great majority of the cases shown on the chart the Supreme Court has substantially reduced the award given the plaintiff by the jury and the trial court.

If "fair and reasonable compensation" is the standard for reviewing a personal injury award, then it becomes evident that in many cases the jury and trial judge are unable to determine what amount constitutes "fair and reasonable compensation." Time after time the Supreme Court has found that the learned trial judge, though he ordered a remittitur, did not take away enough. The fact that the trial judge was in a better position "to observe on the plaintiff's body the nature and extent of the injuries as reflected thereby"[214] seems to have been disregarded. In view of the action of the Missouri Supreme Court it would seem that only the Supreme Court can really tell what constitutes "just and reasonable compensation."

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213. See note 55 *supra.*

214. Gibson City Elec. v. Hall, 32 Tenn. App. 394, 408, 222 S.W.2d 689, 696 (1947).

The Supreme Court, in many cases, appears to rely solely upon the "rule of uniformity" while paying lip service to the rule that each case must be determined on its own facts.

In some of the cases in which the Supreme Court of Missouri sustained the award, the reason for such action is quite clear. The *Young* case,[215] 1946, is a glowing example. The jury awarded Young $15,000 for the loss of a leg below the knee. In 1931 the court had sustained $17,000 in the *Gordon* case[216] as compensation of the loss of a hand. In 1945 the court had sustained $18,000 for the loss of a leg below the knee.[217] How could it then, one year later, have any doubt that the $15,000 award in the *Young* case should be sustained. Yet, the court had to examine earlier cases just to make sure that the awards were uniform.

This examination for uniformity takes place in almost every case. Prior to the *Moore* case previous awards were found to be most persuasive. In examining the chart it can be seen that for years the monetary amounts of Missouri's awards were almost static. The court relied upon prior cases as the true compensation which should be given. The cost of living rose, money became cheaper and the price of human life became more dear, but the amount of the precedents of uniformity did not increase nor did later awards. The "rule of uniformity" continued to be applied as strictly as before, perhaps even more strictly. Other jurisdictions not being tied as tightly to precedent, allowed larger awards. Could it be that these other jurisdictions were wrong and were awarding far more than was necessary to fairly and reasonably compensate the plaintiff for his injuries? Is it not "just as valid a conclusion that injured men may have been awarded too little in the past as it is that they are awarded too much now"?[218]

It is submitted that it would be better for the Missouri court to disregard past awards and to limit itself to an examination of the facts of each case, giving the same weight to the decision of the trial judge that it would give on any other point.

IX. Conclusion

The several appellate courts have laid down various rules to be used when examining personal injury awards for excessiveness. If passion or prejudice on the part of the jury is alleged and shown almost all courts will order a remittitur or remand the case. Different rules are applied if the court just thinks the award is too large. The court may decide that even though it thinks the award is too large it can do nothing about it. This was the early attitude of some federal courts. Then in the *Affolder* case[219] the Supreme Court stated that the award could be sustained because the award was not "monstrous." The federal courts then generally came

215. See note 117 *supra.*
216. See note 200 *supra.*
217. Petty v. Kansas City Pub. Serv. Co., *supra* note 110.
218. Bennett v. Denver & R.G.W. R.R., 117 Utah 57, 73, 213 P.2d 325, 333 (1950).
219. 339 U.S. 96 (1949).

to believe that the award could be reduced if it could be termed "monstrous" or "grossly excessive."[220]

Some courts will reduce a verdict if they find that it is so excessive as to indicate passion or prejudice on the part of the jury. Others will affirm the award if reasonable men could differ in opinion as to its excessiveness. Still another would not reduce the award unless it were found to be excessive on the record. The Missouri courts will reduce the award if it is not in uniformity with prior awards.

The application of these various rules result in various final awards. Yet the awards are not as varied as the rules would seem to indicate. Much of the difference in the awards is the result of different jury awards and not appellate action. Injuries are not exactly alike; there is no reason why awards should be alike. Each plaintiff is entitled to "just and reasonable compensation" for his injuries. If the jury was properly instructed and no error can be found in the record, there would appear to be no more reason for upsetting the judgment of the trial court in this area than any other area of the law. The triers of fact and the trial judge have to find the award to be proper. It would seem incumbent upon the appellate court to exercise the utmost caution in finding such an award to be excessive, particularly in view of the fact that

> the fixing of the amount of damages in an action for personal injuries is peculiarly within the province of the jury, there being no regular standard by which to measure.[221]

It is submitted that this course of action would result in more nearly awarding the plaintiff "fair and reasonable compensation" for his injuries.

JAMES W. RINER

220. *Id.* at 101.
221. Larsen v. Chicago & N.W. Ry., 171 F.2d 841, 845 (7th Cir. 1948).

PERSONAL INJURY AWARDS

CASE NO.	CITATION	AGE	LIFE EXPEC-TANCY	OCCUPATION & AVERAGE WAGE	INJURY	AWARD JURY	AWARD TRIAL COURT	AWARD APPEL-LATE COURT
1	Goertz v. Chicago & N.W. Ry., 19 Ill. App. 2d 261, 153 N.E. 2d 486 (1st Dist. 1958).	62	12	Dress cutter	Lost both legs 10" below hips; lost left arm 9" above elbow. Could use prosthesis.	$300,000		$200,000
2	Union Pac. R.R. v. Johnson, 249 F.2d 674 (9th Cir. 1957).	23	40	$3,600	Lost both legs below knees; lost right arm close to shoulder. Could use prosthesis.	225,000		225,000
3	Hubbard v. Long Island R.R., 152 F. Supp. 1 (E.D. N.Y. 1957).	23	45.61	Brakeman $5,500	Lost both legs below knees.	226,000		226,000
4	Atlantic C.L. R.R. v. Robertson, 214 F. 2d 746 (4th Cir. 1954).				Lost both legs below knees.	80,000		80,000
5	Conkey v. New York Cent. R.R. 206 Misc. 1077, 136 N.Y.S. 2d 189 (Sup. Ct. 1954).	40	29.25	Brakeman $4,830	Lost both legs close to hip. May not be able to use prosthesis. Lost future earnings were $101,000.	375,000		210,000
6	Smith v. Ill. Cent. R.R. 343 Ill. App. 593, 99 N.E.2d 717 (1st Dist. 1951).	21	45	Laborer $2,860	Lost both legs at midthigh.	185,000		185,000
7	McNulty v. Southern Pac. R.R., 96 Cal. App. 2d 841, 216 P.2d 534 (1st Dist. 1950).	42	26	Bank employee $4,380	Lost right leg 3" above knee; lost left leg 3" below knee. Could and did use prosthesis.	100,000		100,000
8	Texas & Pac. R.R. v. Crown, 220 S.W.2d 294 (Tex. Civ. App. 1949).	22	30	Carpenter	Lost one leg 4" below knee; lost other 7 1/2" below knee. Did use prosthesis.	50,000		12,500
9	Counts v. Thompson, 359 Mo. 485, 222 S.W.2d 487 (1949).	35		Brakeman	Lost both legs below upper 2/3 of thigh. Could not use prosthesis.	165,000	$140,000	80,000
10	Bartlebaugh v. Pennsylvania R.R., 78 N.E.2d 410 (Ohio App. 1948)	23			Lost one leg 4" below hip; lost other 8) below hip. Would require surgery before using prosthesis.	225,000		225,000
	Bartlebaugh v. Pennsylvania R.R., 150 Ohio St. 387, 82 N.E.2d 853 (1948).							150,000
11	Greenburg v. Garfield-Passaic Bus Co., 134 N.J.L. 371, 48 A.2d 389 (1946).	55	17.4 (F)		Lost both legs below knees.	50,000		50,000
12	Delaney v. New York Cent. R.R., 68 F. Supp. 70 (S.D. N.Y. 1946).	30	35		Lost both legs 4" below buttocks. Cannot use prosthesis.	165,000		165,000
13	Beam v. Baltimore & O.R.R., 77 Ohio App. 419, 68 N.E.2d 159 (1945).		25	Brakeman $3,360	Lost both legs below knees. Had used prosthesis.	75,000		75,000
14	Kurn v. Manley, 194 Okla. 574, 153 P.2d 623 (1944).	33	35	Laborer	Lost both legs "shortly below torso."	50,000		30,700
15	McKinney v. Pittsburgh & L. E. R.R., 57 F. Supp. 813 (S.D. N.Y. 1944).	43	26	$2,805	Lost both legs between ankle and knee.	130,000		100,000
16	Avance v. Thompson, 320 Ill. App. 406, 51 N.E.2d 334 (4th Dist. 1943).	22	40.17		Lost right leg 3" above knee, left leg 4" below knee.	125,000	100,000	100,000
17	Russell v. Monongahela Ry., 159 F. Supp. 650 (W.D. Pa. 1958).		37.6	Brakeman $6,000	Lost lower left leg. Could use prosthesis.	186,735		186,735
18	Heckathorne v. Pennsylvania R.R., 156 F. Supp. 824 (W.D. Pa. 1957).				Lost leg above knee.	105,000		105,000
19	Ringhiser v. Chesapeake & O.R.R., 148 F. Supp. 529 (S.D. Ohio 1956).			R.R. Engineer	Lost right leg.	40,000		40,000
	Ringhiser v. Chesapeake & O.R.R., 241 F.2d 416 (6th Cir. 1956).							40,000
	Ringhiser v. Chesapeake & O.R.R., 354 U.S. 901 (1957).							Reversed on other grounds
20	Braddock v. Seaboard Air Line R.R., 80 So. 2d 662 (Fla. 1955).	8	56		Lost left leg.	248,439	123,431	187,411
	Braddock v. Seaboard Air Line R.R., 96 So. 2d 127 (Fla. 1957) (en banc).							187,411
21	Leming v. Oilfields Trucking Co., 44 Cal. 2d 343, 282 P.2d 23 (1955).	47	23.08	Truck driver $4,924	Lost right leg; left leg shortened 1/2" to 3/4". Cannot wear prosthesis.	213,460		213,460
22	Horwitz Iron & Metal Co. v. Myler, 207 Okla. 691, 252 P.2d 475 (1952).				Lost left leg above knee.	26,000		26,000
23	Allen v. Simpson, 95 F. Supp. 535 (M.D. Pa. 1951).	23	(F)	Waitress	Lost left leg below knee. Could use prosthesis.	8,000		8,000
24	Texas & N.O. R.R. v. Darton, 241 S.W.2d 181 (Tex. Civ. App. 1951).	19		Whse. worker 60¢ per hour	Lost right leg above knee.	21,236		21,236
25	Magerko v. West Penn. Rys., 365 Pa. 609, 76 A.2d 618 (1950).	21 Mos.			Lost right foot.	24,000	20,000	16,000
26	Southern Pac. R.R. v. Guthrie, 180 F.2d 295 (9th Cir. 1949).	58		R.R. Engineer $6,000	Lost right leg above knee.	100,000		100,000
	Southern Pac. R.R. v. Guthrie, 186 F.2d 926 (9th Cir. 1951).							100,000
27	Reinmueller v. Chicago Motor Coach Co., 341 Ill. App. 178, 93 N.E.2d 120 (1st Dist. 1950).	68	(F)		Lost left leg below knee.	45,000		45,000
28	Pennsylvania R.R. v. Ackerson, 183 F.2d 662 (6th Cir. 1950).		(F)		Lost one leg.	25,000		25,000
29	Larsen v. Chicago & N.W. Ry., 171 F.2d 841 (7th Cir. 1949).			Conductor	Lost left leg 10" below knee.	50,000		50,000
30	Smiley v. St. Louis - S. F. Ry., 359 Mo. 474, 222 S.W.2d 481 (1949).	26			Lost left leg 6" below groin. Had spur condition which would have to be corrected.	50,000		27,500
31	Affolder v. New York, C. & St. L. R.R., 79 F. Supp. 365 (E.D. Mo. 1948).	35	37+	Switchman $4,800	Lost right leg 4" below hip. Would require more surgery.	95,000	80,000	
	New York, C. & St. L. R.R. v. Affolder, 174 F.2d 486 (8th Cir. 1949).							New trial on other grounds
	New York, C. & St. L. R.R. v. Affolder, 339 U.S. 96 (1950).							80,000
32	Brown v. Intercoastal Fisheries, 34 Wash. 2d 48, 207 P.2d 1205 (1949).	28	36	Seaman	Lost left leg above ankle.	25,000		25,000
33	Murphy v. Friel, 328 Ill. App. 586, 66 N.E.2d 450 (1st Dist. 1946).			Odd jobs	Lost left leg.	75,000		New trial
34	Jones v. Ambrose, 128 W. Va. 715, 38 S.E.2d 263 (1946).	14			Lost right leg, 1/3 of thigh remaining.	20,000		20,000
35	Petty v. Kansas City Pub. Serv. Co., 354 Mo. 823, 191 S.W.2d 653 (1945).	3	(F)		Lost left leg 3" below knee. Could use prosthesis.	30,000	18,000	18,000
36	Young v. Terminal R.R. Ass'n, 192 S.W.2d 402 (Mo. 1946).	59	14.10	R.R. yard worker $212 per month	Lost left leg 8" below knee. Could use prosthesis part of the time.	15,000		15,000
37	Wytupeck v. City of Camden, 25 N.J. 450, 136 A.2d 887 (1957).	9			Lost right leg, 1/3 of thigh remaining; 3d degree burns over most of body; left hand 90% disabled. Could use prosthesis.	150,000		150,000
38	Ceresto v. New York, N. H., & H. R.R., 231 F.2d 50 (2d Cir. 1956).				Lost one leg above knee.	125,000		125,000
39	Woodington v. Pennsylvania R.R., 236 F.2d 760 (2d Cir. 1956).	53	20-23	$5,000	Lost right leg between hip and knee; left leg stiff at knee, ankle and toes; lost use of right hand and arm; other injuries.	297,500		297,500
40	Wicham v. Allis-Chalmers Mfg. Co., 117 F. Supp. 857 (W.D. Mo. 1954).				Lost right leg just below knee; 35% impairment of right hand.		50,000	
	Allis-Chalmers Mfg. Co. v. Wicham, 220 F.2d 426 (8th Cir. 1955).							New trial on other grounds
41	Snyder v. General Elec. Co., 47 Wash. 2d 60, 287 P.2d 108 (1955) (en banc).	44		Mechanic	Lost left leg at knee; 10% impairment of right shoulder.	39,944	19,500	39,944
42	Crase v. City of Detroit, 341 Mich. 132, 67 N.W.2d 93 (1954).	66	9.48	Carpenter $3,300	Lost right leg; left leg badly injured.	56,350	41,000	41,000
43	Loftin v. Wilson, 67 So. 2d 185 (Fla. 1953).	46	24+	Trainman	Lost part of foot; both hands fractured; lost several teeth.	300,000		New trial
44	Fort Worth & D.C. Ry. v. Gifford, 252 S.W.2d 204 (Tex. Civ. App. 1952).			Agricultural worker	Lost left leg above knee; right foot completely reversed; left shoulder dislocated.	77,044	72,044	72,044
45	New York Cent. R.R. v. Milhiser, 231 Ind. 180, 106 N.E.2d 453 (1952).	39		Athlete and Referee	Lost leg; left eye will not focus; crushed arm; chest and head injuries.	50,000		50,000
46	St. Louis S.W. Ry. v. Ferguson, 182 F.2d 949 (8th Cir. 1950).			Switchman	Lost left leg 8" below hip; lost right arm above wrist; lost all but thumb and forefinger on left hand. Could not use prosthesis.	150,000		150,000
47	Huggins v. Southern Pac. R.R., 92 Cal. App. 2d 599, 207 P.2d 864 (1st Dist. 1949).	12	54		Lost left leg below knee and most of right foot.	91,000		91,000

48	Riester v. Philadelphia Transp. Co., 361 Pa. 175, 62 A.2d 845 (1949).	48	(F)		Lost right leg below knee; considerable loss of power of left leg.	65,000	25,000	25,000
49	Di Blase v. Nardolillo, 76 R.I. 143, 68 A.2d 89 (1949).	58	15.77	Laborer	Lost right leg 5" above knee.	14,500		14,500
50	Dickson v. Beemer, 217 S.W.2d 515 (Mo. 1949).	60		Hod carrier	Lost right leg between hip and knee; concussion.	5,000		5,000
51	Western & Atl. R.R. v. Burnett, 79 Ga. App. 530, 54 S.E.2d 357 (1949).	50	21.11	$10 per day	Lost right leg below knee; 8 broken ribs; punctured and collapsed lung; broken left shoulder; back injury.	65,000		65,000
52	Beasley v. United States, 81 F. Supp. 518 (E.D.S.C. 1948).	10	48.1		Lost right leg, 1/3 of thigh remaining; loss of vision in right eye-8.5%, left eye-4.3%.			35,000
53	Elliott v. Zellar, 192 Misc. 350, 80 N.Y.S.2d 859 (Sup. Ct. 1948).	36			Lost left leg; fractured hip.	18,000		18,000
54	Edwards v. Pennsylvania R.R., 72 F. Supp. 197 (W.D. Pa. 1947).	45	20	R.R. trackman $2,100	Lost left leg above knee; injured left arm.	30,000		30,000
55	Malone v. Suburban Transit Co., 64 F. Supp. 859 (E.D. S.C. 1946).		34 (F)	$1,200	Lost left leg; flesh torn off buttocks; multiple fractures.	33,125		33,125
	Surburban Transit Co. v. Malone, 156 F. 2d 422 (4th Cir. 1946).							33,125
56	Palmer v. Great N. Ry., 119 Mont. 68, 170 P.2d 768 (1946).				Lost one leg; other foot badly infected.	20,000		20,000
57	Henwood v. Chaney, 156 F.2d 392 (8th Cir. 1946).			Switchman	Right arm and leg "fell under cut of cars."	67,000		67,000
58	Sanders v. Leech, 64 F. Supp. 600 (N.D. Fla. 1946).	28		Mechanic	Lost leg and part of hand.		14,643	
	Sanders v. Leech, 158 F.2d 486 (5th Cir. 1946).							14,643
59	Joice v. Missouri, K. & T. R.R., 354 Mo. 439, 189 S.W.2d 568 (1945).	47		Section foreman $2,000	Lost right leg 6 1/2" from hip; broken arm; fractured ribs.	80,000	65,000	50,000
60	Kansas City So. Ry. v. Taylor, 209 Ark. 525, 190 S.W.2d 968 (1945).	33	38.53	R.R. fireman $300 per month	Lost right leg 6" above knee; broken collar bone; other injuries.	40,000		40,000
61	Pittman v. Baladez, 304 S.W.2d 601 (Tex. Civ. App. 1957).	24	43	Agricultural worker	Lost left arm at shoulder; fractured skull. Cannot use prosthesis.	35,000		35,000
	Pittman v. Baladez, 312 S.W.2d 210 (Tex. Sup. Ct. 1958).							Reversed on other grounds
62	Fiskratti v. Pennsylvania R.R., 147 F. Supp. 765 (S.D. N.Y. 1957).	24	47.49		Lost right forearm; 3d, 4th & 5th digits of left hand; broken nose; other injuries.	222,640		222,640
63	Elzerman v. Behn, 9 Ill. App. 2d 263, 132 N.E.2d 788 (1st Dist. 1956).	48			Lost right arm 3 1/2" from shoulder. Cannot use prosthesis.	70,000		70,000
64	Hallada v. Great N. Ry., 244 Minn. 81, 69 N.W.2d 673 (1955).	30	38.80	Switchman $450 per month	Lost right arm 2 1/2" from shoulder. Cannot use prosthesis.	170,155		105,000
65	Pierce v. United States, 142 F. Supp. 721 (E.D. Tenn. 1955).			Lineman	Lost both arms between wrist and elbow; concussion, possible brain damage.		53,985	
	United States v. Pierce, 235 F.2d 466 (6th Cir. 1956).							53,985
66	Davis v. Dep't of Highways, 68 So. 2d 263 (La. App. 1953).	45		Oilfield worker $200 per month	Lost left arm.	25,489		25,489
67	Tripp v. Watson, 235 S.W.2d 677 (Tex. Civ. App. 1950).				Lost arm above elbow.	15,000		15,000
68	Bennett v. Denver & R. G. W. R.R., 117 Utah 57, 213 P.2d 325 (1950).	26	38.12	Brakeman $265 per month	Lost right arm just below shoulder.	70,000		70,000
69	Texas Pac.-Mo. Pac. R.R. v. Welsh, 179 F.2d 880 (5th Cir. 1950).			Switchman	Lost arm.	48,000		48,000
70	Turrietta v. Wyche, 54 N.M. 5, 212 P.2d 1041 (1949).			Mechanic	Lost arm above elbow.	15,000		15,000
71	Norwalk Truck Line v. Kostka, 120 Ind. App. 383, 88 N.E.2d 799 (1949).	23	39+		Lost left arm at shoulder; concussion; other injuries.	30,000		30,000
72	Tri-County Elec. Co-op. v. Clair, 217 S.W.2d 681 (Tex. Civ. App. 1949).	48		Tree trimmer $47 per week	Lost arm below elbow; 15% impairment of other hand.	25,950		20,950
73	Reeves v. Thompson, 357 Mo. 847, 211 S.W. 2d 23 (1948).	27		$110 per month	Lost right arm at elbow; injured back.	22,500		15,000
74	Florida Power & Light Co. v. Hargrave, 160 Fla. 405, 35 So. 2d 1 (1948).	43	25	Lineman $6,500	Lost right arm just below elbow; burned right leg.	50,000		50,000
75	Southern Ry. v. Pullen, 248 Ala. 665, 29 So. 2d 228 (1947).				Lost arm.	55,000	40,000	40,000
76	Kircher v. Atchison, T. & S. F. R.R., 183 P.2d 105 (Cal. App. 1947).	23		Aviation cadet	Lost left hand.	60,000		Reversed on damages
	Kircher v. Atchison, T. & S. F. R.R., 32 Cal. 2d 176, 195 P.2d 427 (1948)							60,000
77	Gibson County Elec. v. Hall, 32 Tenn. App. 394, 222 S.W.2d 689 (1947).	59		Farm laborer $2.50 per day	Lost right arm; burned left hip, arm, and feet.	10,000		10,000
78	Alpine Tel. Corp. v. McCall, 195 S.W.2d 585 (Tex. Civ. App. 1946).	14			Lost left arm above elbow; bone out of right leg (replaced).	32,500		32,500
79	Lucente v. Philipedes, 68 N.E.2d 558 (Ohio App. 1945).	33		$60 per week	Lost left hand except thumb and forefinger.	10,000		10,000
80	Gordon v. Muehling Packing Co., 328 Mo. 123, 40 S.W. 2d 693 (1931).	41		Laborer $150 per month	Lost right hand at wrist	25,000	21,000	17,000
81	Maniatis v. The Archipelago, 159 F. Supp. 245 (E.D. Va. 1958).			Seaman	Lost part of right ring finger.		3,500	
82	Jones v. Izzo, 21 Conn. Supp. 28, 143 A.2d 460 (Super. Ct. 1958).	16			Lost ring finger at 1st joint.	2,000		2,000
83	J.C. Penny Co. v. Livingston, 271 S.W.2d 906 (Ky. App. 1954).	22			Lost index finger at 1st joint; fractured middle finger.	10,000		10,000
84	Jordan v. Marsee, 256 S.W.2d 25 (Ky. App. 1953).		(F)		Lost 2/3 of first bone of right forefinger.	2,500		1,500
85	G.I. Surplus v. Renfro, 246 S.W.2d 293 (Tex. Civ. App. 1952).				Lost left thumb.	20,000	15,313	15,313
86	Railway Express Co. v. Real, 253 Ala. 489, 45 So. 2d 306 (1950).			Ry. postal clerk	Lost right index finger at 2d joint.	4,500		3,000
87	Jaskolski v. Groves, 84 F. Supp. 493 (E.D. Pa. 1949).			Seaman	Lost 1/2 of distal phalanx of right index finger.		774	
88	Loughry v. Hodges, 215 S.W.2d 669 (Tex. Civ. App. 1948).				Lost end of left little finger.	4,000		4,000
89	W.E. Grace Mfg. Co. v. Arp, 311 S.W.2d 278 (Tex. Civ. App. 1958).	33			Lost end of left index finger.	5,035		5,035
90	Kimbrell v. American Indem. Co., 56 So. 2d 880 (La. App. 2d Cir. 1952).	52		Carpenter	Lost left little finger.	1,200		1,200
91	Hecht Co. v. Jacobsen, 180 F.2d 13 (D.D.C. 1950).	4	(F)		Lost right little finger.	17,000		17,000
92	Justillian v. Versaggi, 169 F. Supp. 71 (S.D. Tex. 1954).	17		Seaman	Lost lower 2/3 of index and middle fingers; first 1/3 of ring finger.		3,750	
93	Colley v. State, 2 Misc. 2d 545, 152 N.Y.S.2d 968 (Ct. Cl. 1956).	30		Prisoner-welder	Lost right third and fourth fingers; distal phalanx of first finger; middle phalanx of second finger.		6,000	
94	J.S. Gissel & Co. v. Smith, 246 S.W.2d 335 (Tex. Civ. App. 1952).			Seaman	Lost two fingers on right hand.	13,000		13,000
95	Cornett v. Hardy, 241 S.W.2d 186 (Tex.Civ. App. 1951).	52		Filling station operator	Lost 1st joint of thumb; all other fingers but one.	20,000		20,000
96	Primus v. Bellevue Apts., 241 Ia. 1055, 44 N.W.2d 347 (1950).	18			Lost right little and third finger at base; second finger at 1st joint.	12,500		12,500
97	Jackson v. Yellow Cab Co., 360 Pa. 635, 63 A.2d 54 (1949).				Lost 2/3 of phalanx of left middle finger; injured index and little fingers.	10,000		7,000
98	Hylak v. Marcal, 335 Ill. App. 48, 80 N.E.2d 411 (1st Dist. 1948).	15	(F)		Lost 1st two joints of right index and fourth fingers; 1st joint of third finger.	15,000		15,000
99	Schilly v. Baker, 184 Tenn. 654, 202 S.W.2d 348 (1947).				Lost middle, ring and index fingers.	2,500		2,500
100	Musgrave v. Kitchen, 157 N.Y.S.2d 237 (Sup. Ct. 1956).	27	(F)		Lost right first and middle fingers; lacerations of head and face.	150,000		New trial
101	Rivera v. Atchison, T. & S.F. Ry., 61 N.M. 314, 299 P.2d 1090 (1956).		15.77	$250 per month	Lost all but left ring and little finger; lost all of skin on left hand.	68,000		68,000
102	McCorstin v. Mayfield, 274 S.W.2d 874 (Tex. Civ. App. 1955).	53		Carpenter	Lost most of left little finger; burned face.	8,105		8,105
103	Boydston v. Twaddell, 57 N.M. 22, 253 P.2d 312 (1953).			$25 per week	Lost right little finger at middle joint; multiple other injuries.	8,201		8,201
104	Schwenger v. Gaither, 87 Cal. App. 2d 913, 198 P.2d 108 (1948).				Lost tip of left middle finger; shortened left ring finger 1/2"; injured left index finger.	5,000		5,000
105	Spiceland, Ind. v. Hand, 199 Okla. 516, 188 P.2d 692 (1947).	18		Student	Lost one finger from left hand; 80%-90% loss of function of right arm through fractures.	20,000		20,000