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WHIPLASH INJURIES *

BY ALBERT E. ZARLENGO

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In the days of the horse and buggy there were no four and six lane highways and grandpa traveled at a leisurely pace. Whips were known only as a device to wake up old Dobbin and whiplash injuries were unheard of. Then came an event which was an important milestone in history and which has materially changed our way of life — the invention of the automobile. The old buggy with its one horse power has given way to the car with 300 and more horse power. Automobile manufacturers recognize this as a fast age and each tries to out-do the other by creating a car with more power and greater speed. Five million to six million and more new cars are manufactured in the United States each year and multi-laned highways are constructed to accommodate them. As these cars speed over superhighways and crowded city streets they are frequently required to make sudden stops, resulting in numerous rear-end collisions. The National Safety Council has estimated that such collisions account for fifteen per cent of all automobile accidents resulting in death, injury or property damage.

There is no doubt that people have suffered neck injuries from the time man was created, but the term "whiplash injury" is of comparatively recent origin. The term was fathered by the medical profession and rapidly grew in popularity after an article which appeared in the *Journal of the American Medical Association* in 1953.¹ Today every lawyer who handles negligence cases, whether for plaintiffs or for the defense, encounters the term almost daily.

To understand better what is meant by whiplash injury, we must have a general knowledge of the construction of the neck. The neck consists of seven vertebrae and is known as the cervical spine. These vertebrae are quite free and moveable and are so constituted that the neck can tilt forward, backward or sideward and can rotate. Each vertebrae is separated from the next by an intervertebral

* Clear understanding of this article will be facilitated by reference to the illustrations on pp. 300 to 303 *infra*.

¹ Gay & Abbott, *Common Whiplash Injuries of the Neck*, 152 A.M.A.J. 1698 (1953).

disc, which is a cushion and elastic affair. These discs provide the mobility and flexibility necessary for the forward, backward and sideward movements of the spine. The size of the vertebrae increases as we descend down the spinal column, the smallest and most fragile bones being in the neck area.

The vertebrae have various protrusions on them and are maintained in position and in normal relationship to each other by ligaments. There are very strong ligaments in the neck, one lying in front of the cervical vertebrae and the other behind them. These ligaments require a severe force to injure them. The one in front is much thicker and is referred to as an anterior longitudinal ligament and the one in the rear as the posterior longitudinal ligament.

There are also numerous muscles in the neck and an intricate system of nerves and nerve roots. Compression of the nerve roots is one of the most common complications in whiplash. This causes a condition known as "radiculitis," or radiating pain. Compression of the spinal nerves in the area of the neck will usually cause pain which radiates down the upper arms and may involve one or more of the fingers. Nerve root compression may also evidence itself in changes of reflex reactions. The nerve roots, as they come from the spine and down the arm, form a very definite pattern in the hand, which fact helps the doctor separate the malingerer from the person with a real injury.

Although whiplash injuries may be suffered in many ways, they are usually suffered in automobile accidents, particularly rear-end collisions. Such an injury has been described as the:

"Damage sustained by the neck structures when the body, in propulsion, stops suddenly or is suddenly propelled forward and the head is thrust forceably forward or backward or to either side. . . . With the head and body both traveling at a set rate, no abnormal forces are transmitted to the neck. But if the forward motion of the body suddenly stops, momentum carries the head on and produces an abnormal thrust to the neck.

"Furthermore, if the speed of the body is suddenly accentuated in forward propulsion, as in a rear-end collision, the head is whipped backward in relation to the body, so as to produce an abnormal thrust to the neck. Also the head, in rebound, may then swing on the neck in the

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opposite direction like the lash component of the whiplash."²

Since the head and neck extend above the seat, unsupported, they are thrust backward by the violence of the blow into hyperextension. The rest of the body is supported by the seat and continues to move forward with the car.

Forces from cars which strike at excessive speeds may do less damage than those which strike at low speeds since the great impact caused by high speed may dislodge the occupant as well as the seat thus dissipating some of the force applied to the neck. We therefore encounter many cases where the occupants complain of injury even though we have only minor damage to the cars involved. However, the average car traveling at 10 m.p.h. may transmit a terrific force to a stopped vehicle. Dr. Emil Seletz in an article on whiplash injuries stated:

"[W]hen a 3,500-lb. car traveling at 10 m.p.h. strikes the rear of another car it may transmit to this car a force of 25 tons. The person's body (in the car that is struck) continues to move forward, while the head, being hinged at the neck, snaps backward. The average head weighs about 8 lb., and the cervical vertebrae are very delicate; the force that is pushing the head backward is even greater than believed, since the base of the neck acts as a fulcrum and the leverage is applied near the top of the head. Therefore, the head snaps back with the equivalent of several tons of force—without any support, since the muscular control of the neck is caught off guard."³

After the head is thrust acutely backward the neck muscles, which have an inherent quality of elasticity, attempt to right the position of the head. Instead, overcompensation may develop and the head is forced forward. Some doctors feel that it is the latter movement that produces the greatest damage while others are of the opinion that the greatest damage is caused when the head is thrust back. Some doctors also believe that in a severe impact the head is thrust backward and forward several times. This type of injury has been described:

"Concussion to the spinal cord and the base of the brain may develop during the acceleration extension movement and, more often, during the deceleration oscillation of the head. The capsular tissues and the accessory ligaments may stretch or tear. Swelling within these structures from hemorrhage may compress the nerve roots. Lateral or rotational forces, as when a vehicle is struck from the side, may alter the size of the intervertebral foramens and further irritate a cervical nerve root. Extensive tears of the ligaments and capsular structures may allow anterior or posterior dislocations of the vertebral bodies. Such injuries to the soft tissues are, of course, not visualized by X-rays."⁴

In recent years the term whiplash injury has been criticized as

² Gelber, *Medico-Legal Aspects of Whiplash Injuries*, 78 *Miss. Valley Med. J.* 215, 216 (1956).

³ Seletz, *Whiplash Injuries*, 168 *A.M.A.J.* 1750, 1752 (1958).

⁴ Frankel, *Medical-Legal Aspects of Injuries to the Neck*, 169 *A.M.A.J.* 216, 219 (1959).

being a misnomer and being misleading.⁵ It has been stated that whiplash injury refers to the manner in which an injury occurs rather than the type injury sustained. When the head snaps back the cervical spine is bent backwards. This may cause nothing more than a mild stretching of the ligaments with little or no disability and little discomfort. On the other hand, the snap forward may be of such severity that the body of the vertebra will fracture and crush and if sufficiently severe the spinal cord may be severed, resulting in death. In between these two extremes there may be injuries of all degrees of severity. Since the sudden flexing (bending forward) or extending (bending backward) of the head may cause so many varieties of disability, using the single term "whiplash injury" to cover all of them has been objected to. In spite of the criticism of the term, we still see it used in medical journals, hear it used by doctors while testifying in court and see the term in appellate court decisions. As mentioned above, there are many injuries that can occur when the head is jerked backward or forward and any one or more of the following may be suffered by the patient:

1. Stretching or straining of the ligaments between the vertebrae but no actual tearing.
2. Rupture of the ligaments with resulting hemorrhaging.
3. Injury to the nerves and nerve roots.
4. Herniation of an intervertebral disc.
5. Subluxation, which is a partial dislocation of the vertebrae.
6. Compression fracture of a vertebra.
7. Concussion.
8. Psychoneurosis.

In the case of a fracture we will have a positive X-ray but in the other cases there will be nothing abnormal on the X-ray since the injury is entirely to the soft tissue. The symptoms in these cases are many and varied. The patient may complain of pain in the neck and head and stiffness in the neck muscles. In many serious cases the patient may have lost consciousness for a period or may suffer some confusion, dizziness, headache, inability to concentrate and disorientation. A substantial number of patients have symptoms of pain along the course of specific nerve roots; pain may radiate into the head, shoulders, arms, chest, hands and jaws. In a number of cases there are unusual complaints such as blurring of vision and symptoms involving the patient's hearing.

In many cases of neck injury the patient does not have immediate symptoms and may tell the investigating officer that he was not injured, which sometimes causes him embarrassment when he is confronted with the statement in court. Often pain may not occur for several days after the injury and in some cases the person may not go to a doctor for weeks. Even in the cases of fracture of the vertebrae it is not uncommon for patients to have little or no pain for periods of from several days to several months. It is important for the injured person's doctor to fully explain this to a jury since a patient who doesn't complain of pain for days or weeks may be accused of malingering.

It is important that these so-called whiplash injuries be ana-

⁵ *Id.* at 218.

lyzed and evaluated by both the physician and the lawyer. The physician gets a history from the patient and takes X-rays and gives a physical examination so as to determine how serious the injury is. The X-ray helps little unless there is a fracture since it will be negative and most of the symptoms are subjective (experienced by the patient himself and not amenable to physical exploration). The doctor must carefully weigh these subjective symptoms with his objective findings (those conditions of the patient which can be perceived by the doctor) and decide whether he is confronted with a case of mild sprain, which will subside in a short time, or whether the case comes under a more serious category which will result in some permanent disability. All of these injuries are sources of potential litigation, and the physician should not only use the greatest care in making his examination and taking the history but should keep complete and accurate records. Even though X-rays are of little help in the case of soft tissue injuries, there are many tests and devices now available to the physician. In the case of suspicion of herniated intervertebral disc the electromyogram is available. In this procedure a radiopaque solution is injected into the spinal column. This casts a shadow on the X-ray and shows an abnormal protrusion into the spinal canal. Discography is an X-ray examination of the cervical discs after injection of a radiopaque substance into them. It also may be advisable to make an electromyographic study, which is an electronic method by which objective evidences of injury to motor nerve muscle units may be detected with a high degree of accuracy. This is a great help in distinguishing between functional (neurotic) and organic causes for neck pain.

In the case of a mere strain of the ligaments with no tearing, the strain or sprain may cause local pain and temporary limitation of motion but the results are not considered permanent. Where the ligaments are actually ruptured there is a momentary dislocation of the cervical joints and the injury may be considered permanent. There may be bleeding around the spinal cord, paralysis and even death, but the ordinary X-rays show no bone or joint injury because the dislocated vertebra has slipped back into position. The bleeding and swelling around the nerve roots may cause pain to be referred down the arm into the hand and up into the neck and head. Since we are dealing with soft tissue injury and the regular X-ray is negative, the doctor is confronted with the problem of distinguishing the latter injury, which is serious, from the former, which is a minor strain. It has been suggested⁶ that an X-ray be taken with the neck in a bent or flexed position. "In the latter position the injured joint will show a slipping of the vertebra at this point so that the upper vertebra displaces forward on the lower vertebra. With this, there are objective clinical findings such as muscle spasm, limitation of motion and a protective way of holding the head." Spasm is a contraction of a muscle and since it is difficult to simulate, it is con-

⁶ Van Demark, *Injuries of the Neck and Arm; Their Medicolegal Aspects*, 24 *Ins. Counsel J.* 287 (1957).

sidered an objective finding. Changes in reflex reactions and changes in the normal curvature (lordotic curve) of the neck are also objective findings.

A large number of the so-called whiplash injuries of the neck do not respond to treatment and get poor results. There is a wide divergence among doctors when called upon to give opinions in actions involving such injuries. Psychoneurotic symptoms are frequently present and this helps complicate the picture. In view of this, Dr. Nicholas Gotten, of the University of Tennessee, decided that there was need for a study of such whiplash injuries.⁷ One hundred cases were studied and the survey was limited to those cases in which the problem of compensation and litigation had been ended. Dr. Gotten and his associates concluded that the emotional factor plays an important part in the ability of the physician to obtain a satisfactory result from treatment. The patient's personal reaction to his injury complicated the evaluation of his symptoms, treatment and recovery. The nervous tension and anxiety that the patient developed after the injury tended to create psychoneurotic symptoms which continued for months, being finally resolved to a great extent by settlement of the litigation. Of the hundred patients with whiplash type of injuries who were interviewed subsequent to settlement of legal claims for damage, eighty-eight per cent had recovered, fifty-four with no residual disability and thirty-four with minor symptoms requiring treatment; twelve per cent continued to have severe symptoms but only six per cent of these were under medical treatment. Surgery was necessary in only two cases and was beneficial in both. Psychosomatic symptoms were manifested in some way in eighty-five per cent of the cases. Loss of time for as long as three months occurred in forty-one per cent of the cases before settlement of claims but only in seven per cent subsequent to settlement of claims. The doctor concluded, "the evidence indicates the great difficulty in evaluating whiplash type of injuries due to the complicating factor of monetary compensation."

Prior to Dr. Gotten's survey, Drs. Gay and Abbott had made a study of fifty persons who had suffered whiplash injury to the neck.⁸

"Each patient had symptoms and findings characteristic of

⁷ Gotten, *Survey of One Hundred Cases of Whiplash' Injury after Settlement of Litigation*, 162 A.M.A.J. 865 (1956).

⁸ Gay & Abbott, *supra* note 1.

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a sprain of the neck. In case of a simple sprain, the symptoms consisted of pain in the lower cervical spine, limitation of motion in the neck, and spasm and tenderness of the cervical spine musculature. Movement or jarring of the neck made the symptoms worse, and, in an acute case, it was characteristic for the patient to support the neck and head with his hands. When the injury was remote, some experienced a sensation of difficulty in supporting the head. In rare instances in which a second whiplash injury occurred, all symptoms were immediately intensified. Tenderness and spasm were often present in adjacent musculature, including muscles of the upper thoracic spine and shoulder girdle."

The patients showed general nervous symptoms.

In seventy per cent of the cases there was cervical radiculitis, the persons having intense pain in the posterior cervical region, with radiation of pain into the head, lower jaw, shoulder girdle, upper chest and arms. This was usually accompanied by marked spasm of the cervical muscles.

In sixty-two per cent of the cases there was evidence of a cerebral concussion. The patients suffered a momentary lapse of consciousness (from seconds to one half hour) and described a blinding or explosive sensation in the head at the time of the crash. They immediately had a sensation of being bewildered and dazed and headache developed in a few minutes or hours. Nervous symptoms were especially intense in this group.

In twenty-six per cent of the cases a protruded intervertebral disc in the cervical region was diagnosed clinically. These patients were treated by conservative measures but eventually two patients required surgery.

The complication that was most distressing for patient and physician was a persistent psychoneurotic reaction which was present in fifty-two per cent of the cases.

In their report, the doctors made this observation somewhat in conflict with Dr. Gotten's findings. "In some patients, the aggravation of legal action was considered important, but, even after settlement, these patients were often partially disabled by recurrent nervous symptoms." The doctors concluded that the patients were more disabled and remained handicapped for longer periods than was anticipated considering the mild character of the accident and that the study of patients who suffered from persistent pain many months after their accident suggests that the injury is more severe and more complicated than was generally supposed among laity, legal authorities, and physicians.

In commenting on the above study, Dr. John H. Schaeffer⁹ states that it is improbable that a psychoneurotic reaction is responsible for prolonged disability in these cases. He feels that it is an organic cause even though it cannot be demonstrated. The doctor states:

"Even in the less serious whiplash injuries, who can say how much intervertebral ligamentous tearing exists? Who can say how much hemorrhage occurs at the site of the injury and how much subsequent fibrosis and adhesions

⁹ Schaeffer, *Whiplash Injuries of the Neck*, 153 A.M.A.J. 974 (1953).

develop around nerve roots or into or between cervical muscles? Certainly such things may be expected to result in some degree of prolonged or permanent impairment. Even worse, who can say how much or how little trauma of the cervical cord is incurred?

"Certainly the X-rays cannot give the answers to these questions Many symptoms are due to real factors that cannot be objectively demonstrated. Not a few persons die of causes that cannot be demonstrated by the most thorough autopsy. Such persons do not die of psychoneuroses."

Dr. Gotten's conclusion that money is the best cure for a whip-lash injury has been challenged by many doctors. One authority states:¹⁰

"Gotten's data are somewhat untenable. Most patients do show some or marked improvement after two years. (Two years represents the average time before litigation was completed in Gotten's cases). It is impossible for me to believe that 84% of any group would be conscious or unconscious malingerers. Gotten's data were evaluated by medical students who certainly cannot be expected to understand the complexities of the whole already confused picture of neck injuries. Generalizations are dangerous and inaccurate. Every case must be judged on its own merits."

¹⁰ T Lawyers' Medical Cyclopedia 462.



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Just as the doctor is faced with the problem of determining the seriousness of these injuries, the lawyer is faced with the problem of placing a fair money value on them. In most of these cases the medical and hospital bill is not large and in many cases the patient loses little time from work, suffering but small wage loss. The main item of damage is pain and suffering and possible permanent involvement. Assuming there is liability what should the injured person receive as damages? How much will a jury award in the case of a simple whiplash injury? If a substantial verdict is rendered will it be sustained by an appellate court? It is impossible to answer these questions with any degree of accuracy but it is helpful to see what has been awarded in cases of this type.

There are, no doubt, hundreds of actions brought each year throughout the country seeking damages for these so-called whiplash injuries, many of them reaching appellate courts. A check of the authorities shows that the number of cases decided by appellate courts gets larger each year. Many of the cases involve not only a whiplash injury but also a serious injury involving other parts of the body. The following summary covers cases decided by various appellate courts in the past three or four years. An attempt was made to select cases where the whiplash was the main injury although in some of the cases there were other minor injuries involved. In all of the cases the court, in its opinion, used the term "whiplash injury." In many of the opinions the amount of medical expense incurred, or wage loss suffered, is not given, the court considering the injury in general terms.

AWARDS OF LESS THAN \$1000

Simmons v. Pierce:¹¹ Liability was admitted in a rear-end collision in which plaintiff suffered a whiplash injury requiring him to be put in traction and suffered other minor injuries. The medical cost was not shown but the wage loss was \$240. The lower court awarded plaintiff \$500 but this was increased to \$3,000 by the appellate court.

Grayson v. Pellmounter:¹² Plaintiff sued for whiplash injury and was awarded \$500 by a jury. The defendant's doctor had examined plaintiff and found no injury. The appellate court refused to hold that the verdict was inadequate.

Baker v. Hill:¹³ Plaintiff was a passenger in a car that was struck in the rear by defendant's car. Plaintiff suffered a whiplash injury of the neck and spinal column. He had no objective symptoms of whiplash injury. The doctors were in disagreement on the extent of disability. The jury returned a verdict for plaintiff for \$500. The appellate court stated that this was not so inadequate as to show passion or prejudice and affirmed the judgment.

Meeks v. Yancy:¹⁴ There was a rear-end collision and the three passengers in the car which was struck received whiplash injuries.

¹¹ 104 So. 2d 258 (La. App. 1958).

¹² 308 S.W.2d 311 (Mo. Ct. App. 1957).

¹³ 8 CCH Auto Cas. 2d 1248 (Tenn. Ct. App. Dec. 7, 1955).

¹⁴ 311 S.W.2d 328 (Tenn. Ct. App. 1957).

The case went to the jury on the issue of damages only. The first plaintiff, age sixty-seven, claimed a whiplash injury which aggravated an old arthritic condition. Her disability at the time of the trial was between five and ten per cent and the doctor stated that she would have a residual disability. The second plaintiff, forty-two, was hospitalized nineteen days, spent ten days in traction and the doctor stated that the whiplash aggravated a pre-existing spinal condition that resulted in a five per cent disability in the low back and a ten to fifteen per cent disability in the neck. The medical cost was \$629. The jury awarded \$750. The third plaintiff contended that the whiplash aggravated a prior arthritis and she was corroborated by her doctor. Her medical costs were \$130 and the jury awarded \$300. The appellate court affirmed the judgments, refusing to hold that the sums awarded were so inadequate as to show passion or prejudice.

Whyatt v. Kukura:¹⁵ There was the typical rear-end collision in which plaintiff claimed a whiplash injury. It appeared that she had a pre-existing arthritis of the neck and that her medical expense was \$276. A jury verdict in the sum of \$750 was affirmed by the appellate court.

Seydel v. Reuber:¹⁶ The doctors stated that plaintiff was suffering from a whiplash involving the head and neck. Medical and hospital expense amounted to \$1812. There was also some wage loss. The jury awarded \$800. This was increased to \$2000 by the trial court. The appellate court held the increased amount to be inadequate and a new trial was granted on the issue of damages only.

AWARDS OVER \$1000 AND LESS THAN \$3500

Hollander v. Earwood:¹⁷ Plaintiff suffered a whiplash injury. It appeared that her "cervical spine showed reversal of the normal curvature and there is slight narrowing of the 5th and 6th cervical disc spaces and hypertrophic changes in these two levels." It further appeared that pain and limitation of motion would be recurrent for at least a year. A jury verdict for \$1500 was affirmed by the Appellate Court.

Moses v. Southern Production Company:¹⁸ Liability was ad-

¹⁵ 157 Cal. App. 2d 803, 321 P.2d 860 (1958).

¹⁶ 94 N.W.2d 265 (Minn. 1959).

¹⁷ 12 CCH Auto. Cas. 2d 816 (Tenn. Ct. App. Nov. 1, 1957).

¹⁸ 101 So. 2d 485 (La Ct. App. 1958).

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mitted by the defendant. The doctor found that plaintiff was suffering from a whiplash injury which required him to be hospitalized for thirteen days. Medical expenses amounted to \$651. There was an award of \$1500 which was increased to \$2423 by the Appellate Court.

Benoit v. Commercial Casualty Ins. Co.:¹⁹ Plaintiff suffered an injury to the neck and spine "in the nature of a whiplike injury." There was no mention in the opinion of the medical expense or whether there was any permanent disability. An award of \$2000 was affirmed.

Hodge v. Britton:²⁰ Here again we have a rear-end collision after which plaintiff claimed a whiplash injury of the neck. The opinion gives no detail as to the extent of disability. The trial court awarded plaintiff \$2000 and awarded her husband \$1500 for loss of services, medical expense and car damage. This was held as not excessive.

Mitchell v. Pierce:²¹ Plaintiff's doctor stated that plaintiff had suffered a brain concussion, nervous shock and a whiplash injury of the neck. The physician appointed by the court stated that plaintiff's complaints were largely subjective. There was no lost time from work. Special damages for medical expense and car damage amounted to \$317. The jury awarded \$2,217, which was affirmed.

AWARDS OVER \$3500 AND LESS THAN \$5000

Watts v. Delta Fire and Casualty Co.:²² Plaintiff suffered the mildest form of whiplash injury, was not hospitalized and lost no time from work. The doctor stated that recovery in these cases may require eighteen months and in some cases, several years. A verdict for \$3500 was sustained.

Lawrence v. Great American Indemnity Co.:²³ Plaintiff suffered a whiplash injury confining her to the hospital for twelve days. She was totally incapacitated an additional six or seven weeks and the doctor stated that pain would last a year. A \$3500 verdict was sustained.

Green v. United States:²⁴ This was an action under the Federal Tort Claims Act wherein plaintiff suffered a whiplash injury resulting in trauma to the ligaments along the vertebral column and possible hemorrhage. She was unable to perform her household duties for one month and was partially impaired from returning to full household duties up to the time of the trial. She suffered headaches and limitation of motion in the neck. A year and a half after the accident there was a twenty per cent limitation of bending to the side and back. The court awarded plaintiff \$3562.

Harvey v. Great American Indemnity Co.:²⁵ An award of \$4,000 for whiplash injury of the neck with some permanent disability was held proper.

19 79 So. 2d 647 (La. Ct. App. 1955).

20 12 CCH Auto. Cas. 2d 1352 (Tenn. Ct. App. Dec. 12, 1957).

21 106 So. 2d 536 (La. Ct. App. 1958).

22 106 So. 2d 753 (La. Ct. App. 1958).

23 107 So. 2d 338 (La. Ct. App. 1958).

24 136 F. Supp. 369 (W.D. Pa. 1955).

25 110 So. 2d 595 (La. Ct. App. 1959).

Phillips v. Travelers' Indemnity Co.:²⁶ A \$4000 award for intermittently painful whiplash injury to plaintiff's spine was held proper.

AWARDS OVER \$5000 AND LESS THAN \$7500

Veterans Cab Co. v. Hill:²⁷ Plaintiff had a five to ten per cent disability with a wage loss of \$1800 and medical expense in the sum of \$1032. An award of \$5680 was held not excessive.

AWARDS OVER \$7500 AND LESS THAN \$10,000

Attaya v. Zimmerle:²⁸ This was a typical rear-end collision wherein plaintiff claimed a whiplash injury to the neck. Plaintiff's doctors stated that there was no permanent disability. The medical cost amounted to \$105. There was a jury verdict for \$7500 which was reduced to \$2500 by the appellate court.

Town & Country Securities Co. v. Place:²⁹ Plaintiff suffered a whiplash injury to the neck which resulted in \$1100 loss of earnings and medical expense in excess of \$600. The doctor stated that there would probably be some permanent disability. A jury verdict for \$7500 was held not excessive.

Fisch v. Manger & Braum:³⁰ Plaintiff suffered a severe injury which was diagnosed as a "whiplash injury, the head had been snapped back by an impact." It was later determined that plaintiff had a ruptured disc and he underwent surgery. There was a \$620 wage loss and the hospital expense exceeded \$2200. Defendant offered no medical testimony to contradict plaintiff's doctors. Plaintiff had a prior accident but it appeared that he had made a good recovery. The jury returned a verdict for \$3000 but this was increased to \$7500 by the District Court. The appellate court held that this was inadequate and granted a new trial on the issue of damages only.

Southern Farm Bureau Casualty Ins. Co. v. Palmer:³¹ This was a rear-end collision wherein plaintiff thought he was not injured. Upon examination the next morning the doctor stated he was suffering from a moderately severe whiplash injury of the neck. A jury award in the sum of \$7830 was sustained by the appellate court.

AWARDS OVER \$10,000 AND LESS THAN \$20,000

Seymour v. House:³² Defendant admitted liability in a rear-end collision wherein plaintiff claimed a whiplash injury to the neck. A jury verdict in the sum of \$10,000 was reversed by the appellate court since there was not sufficient evidence on the issue of loss of earnings to justify submission of this issue to the jury.

²⁶ 108 So. 2d 657 (La. Ct. App. 1959).

²⁷ 16 CCH Auto. Cas. 2d 10 (Tenn. Ct. App. Dec. 31, 1958).

²⁸ 83 So. 2d 676 (La. Ct. App. 1955).

²⁹ 79 Ariz. 122, 285 P.2d 165 (1955).

³⁰ 24 N.J. 66, 130 A.2d 815 (1957).

³¹ 263 F.2d 206 (5th Cir. 1959).

³² 305 S.W.2d 1 (Mo. 1957).

Milnor Fast Service Laundry and Cleaning v. Kraft:⁸³ Plaintiff was a sixteen-year-old girl and suffered a ten per cent permanent disability in the neck. An award of \$10,000 was held not excessive.

Oberhaus v. Eichwald:⁸⁴ Plaintiff's doctor stated that he had sustained a whiplash injury and that there was a soft tissue involvement and scarring which was permanent. Medical expenses totalled \$170 and wage loss was \$121. A jury verdict in the sum of \$15,000 plus \$1072 for car damage was sustained.

AWARDS OVER \$20,000 AND LESS THAN \$35,000

Kroger Co. v. Rawlings:⁸⁵ Plaintiff suffered a whiplash injury to her neck with the result that the ligaments or soft structure that held the cervical vertebrae were torn or bruised. She wore a Thomas Collar constantly for six months and thereafter at various times. She complained of headaches and pain in the back of the neck. The doctor thought that plaintiff would eventually recover with no permanent disability. Plaintiff had incurred no medical expense since this was awarded to the husband in a separate verdict. A \$20,000 verdict for plaintiff was reduced to \$15,000 by the trial court and was held not excessive by the appellate court.

Riggs v. Metcalf:⁸⁶ Plaintiff suffered whiplash injury to her neck and generalized body bruises resulting in permanent disability of fifty to sixty per cent of the body as a whole. An award of \$20,000 was sustained.

AWARDS OF \$35,000 OR MORE

Dallas Transit Co., v. Collier:⁸⁷ Plaintiff's doctor stated that plaintiff was suffering from a whiplash injury of his cervical spine with nerve root irritation, sprain and instability of the lumbar spine and probable ruptured disc. Plaintiff was a laborer fifty-three years of age. He was hospitalized for a time but the opinion gives no information on the amount of medical or wage loss. The doctor stated that the plaintiff could not hold a job that required his presence seven or eight hours a day. A jury verdict in the sum of \$35,838 was sustained by the appellate court.

The Colorado Supreme Court case of *Pueblo v. Ratliff*,⁸⁸ though not a true whiplash case, is of great interest. In this case plaintiff suffered a neck injury and plaintiff's doctor stated that there was "some arthritic changes and slight narrowing of the 5th interspace disc." Another of plaintiff's doctors stated that plaintiff had some permanent disability. Defendant's doctor testified that the X-rays showed no evidence of fracture, dislocation or other injury. He diagnosed the injury as a sprain and was of the opinion that there was no permanent disability. The jury returned a verdict for the plaintiff in the sum of \$35,000. On appeal the Supreme Court held that the extent of permanent disability was left to conjecture and that

83 108 So. 2d 564 (Miss. 1959).

84 303 S.W.2d 29 (Mo. 1957).

85 251 F.2d 943 (6th Cir. 1958).

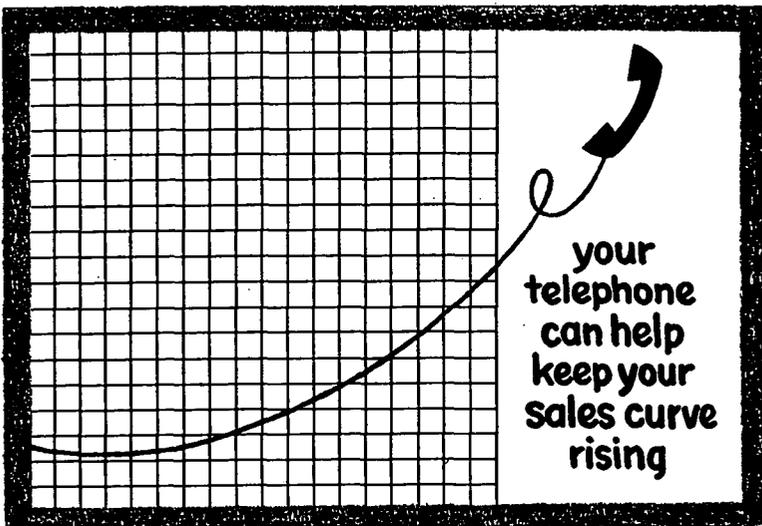
86 315 S.W.2d 791 (Mo. 1958).

87 317 S.W.2d 557 (Tex. Civ. App. 1958).

88 131 Colo. 381, 281 P.2d 1021 (1955).

the award was excessive and the case was sent back for a new trial. A second trial resulted in a hung jury. In the third trial the evidence showed that plaintiff had a life expectancy of 25.27 years, that he had earnings as a watch maker of seventy-five dollars a week and that he was one hundred per cent disabled to do watch making due to the injury. The evidence showed that he was suffering from a cervical disc injury that might not be alleviated by surgery, also that if the surgery was unsuccessful it might cause partial paralysis. The jury returned a verdict in the sum of \$37,500 which was affirmed by the Supreme Court.

The medical authorities are not in agreement on the question of the seriousness of such injuries and the legal authorities likewise are hard to reconcile. In many cases small verdicts were rendered where the injury seemed to warrant more and in other cases large verdicts were rendered where the injuries appeared to be minor. The term "whiplash injury" covers injuries of various degrees of severity and each case should be decided on its own facts. Justice will best be done when doctors will carefully analyze the injury using all of the devices and tests available to them and when lawyers will present the case to the court and jury with a specific description of the injury rather than in the general term "whiplash injury."



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