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Recent Hearing Damage Awards

*Denis M. Burgoon**

THE OUTER EAR, the part we see, is not of great significance in hearing, as its absence will not materially affect hearing.¹ As the chief effect of loss of the outer ear is cosmetic, and has little effect upon hearing, its loss will not be discussed.

Acoustic trauma and direct injury to the mechanism of hearing are the compensable personal injuries delineated here. Acoustic trauma is the deterioration of hearing caused by high noise level, usually affecting the hearing nerve. Apparently this injury usually is covered by workmen's compensation and no reported cases were found on this type of hearing loss.

Direct injury to the hearing apparatus is the result usually of a blow to the head or a puncture of the cranium. The most frequently reported cases involve various types of skull fractures, which can disturb the delicate system of bones and passages making up the hearing apparatus. However, these injuries have usually been found to be accompanied by brain damage and resulting injuries to other organs, which cause damage awards to be very difficult to evaluate in terms of the value of the loss of hearing. Most cases fail to report the extent of the loss of hearing or even whether the loss is permanent or temporary. From a study of the reported pleadings, it would appear that wherever there is substantial injury to some other part of the body, that injury will be given more consideration, and the loss of hearing, unless it be total, will not play a very great part.

Since innovation of the use of the audiometer, a relatively accurate measurement may be made to determine the loss of hearing.² Perhaps if audiometer tests were used in more skull fracture injuries we would find an increased number of cases involving loss of hearing. The delicate structure of the ear lends itself to damage either to the parts which vibrate or conduct the sound waves, or to destruction of the cavities which transmit the sound to the nerves.

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¹ *The Head; A Law-Medicine Problem; An Institute of The Law-Medicine Center, Wes. Res. Univ.*, p. 285 (1957).

² *4 Cyclopedia of Medicine, Surgery, Specialties 838 (curr. ed.); Fox; Medicolegal Aspects of Industrial Noise, 7 Clev.-Mar. L. R. 252 (1958).*

Only a few of the cases reported involved loss of hearing alone, or loss of hearing and tinnitus—a buzzing or ringing in the head. In many cases tinnitus appears to be considered temporary. However, in one case involving total deafness and tinnitus, the plaintiff recovered \$56,000.³ Ear drum rupture does not appear to be the subject of more than one case in the period studied. That case resulted in a \$24,500 award to the plaintiff, who alleged that pressure differences in an airplane caused the rupture of his ear drum.⁴

As hearing loss has, in all but a few cases, been a minor part of the injury sustained, it is not possible to determine the value of loss of hearing alone. It would appear that partial loss of hearing, either permanent or temporary, is not considered very disabling. \$56,000 seems to be the highest award for total loss of hearing with no other injury reported,⁵ while \$3,500 is the lowest award found for partial loss of hearing.⁶ As the cases generally involve various degrees of injuries other than loss of hearing, no clear trend may be noted from the cases reported. Cases reported below are only those in which the hearing loss constituted a major part of the total award in the particular case.

1960

\$75,000. Fifty-six year old man sustained 85% loss of hearing resulting from negligent explosion of air compressor. 11 TAPA Bull. 7 (July 1960).

\$75,000, reduced to \$7,500. Plaintiff railroad employee claimed that excessive noise at place of work, due to machinery and work processes, caused impairment of hearing. Jury found plaintiff 90% negligent and therefore reduced award. *Mansfield v. N. Y. C. Railroad*, Fed. Dist. Ct., Western Dist., Rochester, N. Y.

\$45,000. Twenty-six year old man sustained 85% loss of hearing resulting from negligent explosion of air compressor. 11 TAPA Bull. 7 (July 1960).

\$16,801. Plaintiff, injured in tavern assault, resulting in 3 skull fractures; brain injuries affecting speech, personality, and

³ *Marchese v. Monaco*, 145 A. 2d 809 (N. J. Super. 1958).

⁴ *Marchant v. American Airlines*, 146 F. Supp. 612, 249 F. 2d 612 (Cir. 1, 1957).

⁵ *Marchese v. Monaco*, 145 A. 2d 809 (N. J. Super., 1958).

⁶ *Brown v. State of New York*, 24 Misc. (N. Y.) 2d 358 (1960).

permanent loss of hearing in one ear and loss of smell and taste. *Corcoran v. McNeal*, 400 Pa. 14, 161 A. 2d 367.

\$3,500. Fourteen year old boy in state correction school was struck excessively hard by supervisor disciplining him resulting in chronic perforation of ear drum. *Brown v. State of New York*, 24 Misc. (N. Y.) 2d 358.

1959

\$70,000 remitted to \$40,000. Sixty-eight year old railroad engineer suffered fracture of cervical vertebra; loss of neck motion—restriction of 70% due to aggravation of pre-existing arthritis—a comminuted fracture of fibula; and 40-50% loss of hearing from cerebral concussion. Remitted due to 9.43 year life expectancy of plaintiff. *Lyons v. Boston & Maine Railroad*, 180 N. Y. S. 2d 985.

\$50,000, reduced to \$20,000 on appeal. Twenty-one year old opera singer, unemployed but ready for debut, sustained a permanent ankle injury and hearing loss of 50% affecting her pitch, when she fell at a sidewalk shed erected by defendant. *Grayson v. Irvmar Realty Corp.*, 184 N. Y. S. 2d 33, 7 A. D. 2d 436.

\$15,000. Fifteen year old girl suffered permanent partial loss of hearing following head and cranial nerve injuries. *Young v. St. Louis Public Service Co.*, 326 S. W. 2d 107 (Mo.).

\$6,500. Fifty-nine year old woman sustained some hearing loss resulting from whiplash aggravating pre-existing condition. Plaintiff refused hospitalization. *Collova v. Mutual Service Casualty Insurance Co.*, 8 Wis. 2d 535.

1958

\$82,500. Woman suffered 16 to 20% impairment of hearing resulting from fractured skull; other serious spinal injuries. *Jess Edwards, Inc. v. Gerogen*, 256 F. 2d 542 (Cir. 10).

\$70,000, reduced to \$40,000 on appeal. Sixty-eight year old railroad worker suffered 70 to 75% restriction of head motion in all directions; fractured cervical vertebra; comminuted fracture of fibula; facial scars; cerebral concussion; and 40-50% loss of hearing. *Lyons v. Boston & Maine Railroad Co.*, 7 A. D. 2d 825, 180 N. Y. S. 2d 985.

\$62,500. Nine month old girl struck by truck, leaving her permanently unable to walk, and deaf. *Skidmore v. Connel*, Dist. Ct., Boston, Mass.

\$56,000. Forty-eight year old suffered total deafness and torment for life by tinnitus. *Marchese v. Monaco*, 52 N. J. Super. 474, 145 A. 2d 809.

\$50,000. Nine year old Chinese boy suffered serious injuries including loss of sight of left eye, fractured skull, and slight loss of hearing in one ear when he was struck by a car in a crosswalk. *Mar v. Frates*, Super. Ct., San Francisco County, Calif.

\$20,300. Twenty-seven year old motorcycle policeman injured in collision with police cruiser. Plaintiff sustained brain injuries and partial loss of hearing resulting in permanent disability causing retirement. *Melton v. Soaper*, Circ. Ct., Arlington, Va.

\$15,000, reduced to \$6,000. Plaintiff was typewriter serviceman claiming back and head pains, pain in shoulders and center of neck, and soreness of muscles of neck and back of ears, and loss of hearing. *Cermak v. Hertz Corp.*, 53 N. J. Super. 455, 145 A. 2d 800.

1957

\$129,000. Fifty-one year old woman injured in auto crash to avoid collision with truck. Injuries included fractured ribs; punctured lung; ruptured diaphragm; 50% impairment of hearing; and traumatic neurosis. Special damages of \$4,000. *Keller v. Keller & Glover*, Super. Ct., Creek County, Okla.

\$45,000. Fifty-six year old longshoreman disabled 3 years and permanently disabled from doing former work. Vertigo and deafness from damages to 8th cranial nerve. *Vastano v. Part-ownership Brovigtank*, 158 F. Supp. 477 (D. C., N. Y.).

\$42,036.57. Seven year old girl suffered fractured left leg resulting in $\frac{3}{4}$ inch shortening; fractured skull resulting in major loss of hearing; and a possibility of epilepsy. *Hendrickson v. Gonsalves*, Super. Ct., Alameda County, Calif.

1956

\$24,500. College professor suffered some permanent loss of hearing from ruptured eardrum as a result of alleged pressure difference in airplane. Permanent tinnitus. *Marchant v. American Airlines, Inc.*, 146 F. Supp. 612, 249 F. 2d 612 (Cir. 1).

\$16,649.02. Permanent partial loss of hearing in both ears resulting from asphyxiation from live sewage and pneumonia.

Male construction worker earning \$85 per week. *Steeley v. City of New York*, 157 N. Y. S. 2d 734.

\$12,000, remittitur to \$4,000. Housewife disabled from housework for 1½ years as a result of auto collision. Brain injury; headaches; and permanent loss of hearing in one ear. *Young v. Cantz*, 125 A. 2d 181 (R. S.).

1955

\$47,369. Seventeen year old boy injured while riding motorcycle, struck by a truck. Basal skull fracture so deep as to cause spinal fluid to leave brain through ear canal; lacerated ear drum; brain damage; chip fracture of foot; and severe sprained shoulder. \$4,000 special damage for loss of wages, medical, and property damages. Tinnitus continued during trial. *Harris v. Lampert*, 131 Cal. App. 2d 751, 281 P. 2d 292.

\$35,000 reduced to \$22,500 by oral agreement. Fifty-eight year old pensioner on 100% disability payments from VA injured in auto crash. Cerebral concussion; fractures of nose, jaws, and 2 ribs; permanent scars; distinct neurological and pathological personality symptoms; teeth and gum damage; eye symptoms of double vision; and considerable degree of deafness. *Koltz v. Lee*, 36 N. J. Super. 6, 114 A. 2d 746.

\$15,000. Twenty-one year old married woman suffered loss of vision in one eye; fractured jaw bone and damaged teeth; and eardrum puncture resulting in partial deafness. \$2,000 medicals. *Satterwhite v. Bocelato*, 130 F. Supp. 825 (D. C., N. C.).