

Munkman
on
Damages for Personal Injuries
and Death

Eleventh edition

Gordon
Exall



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Munkman on Damages for Personal Injuries and Death

Foreword to the eleventh edition by The Rt Hon Lord Justice Kennedy

Everyone of my generation who undertook personal injury litigation, must feel indebted to John Munkman, not only for his excellent book on Employers Liability but also for this slimmer book which in every edition has clearly set out the principles of the law relating to damages for personal injuries and death. Even if it did not give a detailed answer to a particular problem, it never failed to point the reader in the right direction. Such a book does, however, need to be kept up to date, and if the present editor had not accepted John's invitation not only personal injury lawyers but also others who for one reason or another come into contact with this area of the law would all have suffered. Some of the chapter headings indicate all too clearly why a new edition is now needed – for example the growing importance of care claims (chapter 11); instructing experts: a massive change in culture (part of chapter 18) and provisional damages (chapter 19). The new editor has wisely retained John's aim to be both concise and comprehensible, as well as comprehensive, and it seems to me that he has more than justified John's choice of his successor.

Preface to the eleventh edition

Whilst cases are regularly returned inside chambers it must be rare for authorship of a book to be selected on a similar basis. It is with some trepidation that I have accepted John's invitation (expressed in a codicil to his will) to take over the writing of his text on damages. It is a book that has commanded my respect for many years. It was recommended as compulsory on my first day at work as an articled clerk; it was equally useful when I took up practice at the Bar.

In taking up the challenge I have had to consider what makes this book important and unique. When John wrote the first edition in 1956 it was one of the first attempts to set out the law of personal injury damages in a coherent format. It must have come as a ray of light to practitioners struggling to come to grips with what was a new and developing subject.

In some ways the modern practitioner is in need of the same ray of light. The problem for the personal injury lawyer today is not that they are faced with a dearth of material on the subject, but with a glut. Each of the major works on personal injury is in four volumes and there is a daily barrage of new material on damages which arrives on the desktop, or on the computer screen.

This mass of information can have profound practical effects. For those involved in the modern world of personal injury damages there are serious problems in telling the wood from trees.

The aim of this book is to set out the major principles of damages relating to personal injury and death in a succinct and comprehensible manner. Whenever possible I have followed John's practice of citing the crucial parts of judgments in full. There are, however, major changes. I have carried out extensive revision to the text, many new chapters are added and the format of the book has changed extensively. I hope to have kept the central Munkman principle of being concise and comprehensible.

When completing a new edition John always paid tribute to the Butterworths (now LexisNexis UK) staff and I have come to understand why. As ever, I must thank my family for their patience in the preparation of this text. However, the greatest tribute must go to John Munkman himself.

John was a legal scholar of the highest order. However, he was not just an expert lawyer. In addition to his practice at the bar he had a wide range of experience. He had qualified as a solicitor in 1939 and took his Bar exams in the Far East whilst serving in the Air Force. Even at the end of his life he was regularly travelling, climbing, reading and writing. He was an accomplished athlete and mathematician. He was interested in politics, international affairs and was, perhaps, the last practising member of the bar to have seen active service in the Second World War. His ambition in life had been to be a Spitfire pilot; ironically his health (eyesight) let him down.

It is, however, as a legal writer that John will be remembered. In addition to writing texts on personal injury and damages John also wrote books on quasi contract, tax law and a brilliant book on principles of advocacy. The breadth of his legal knowledge was a boon to his colleagues. I was privileged to be in chambers with John for eight years and it is clear his intellect, sharp judgment and patience with the numerous members of the bar who sought his advice are still sorely missed.

Needless to say, any errors in this text are my own. Like my predecessor I welcome correspondence on any issues relating to the text.

Gordon Exall
Zenith Chambers
10 Park Square
Leeds
March 2004

Preface to the first edition

I was first invited to write a book on damages for personal injuries (with special reference to quantum) as long ago as May 1953. The invitation arose out of an article in the *Law Journal*, which attracted some interest at the time. In that article I drew attention to the difference in approach which follows from the fact that damages are now usually assessed by a judge sitting alone, and not by a jury. Juries do not give reasons for their decisions, and it does not greatly matter if the verdict of one jury is widely different from the verdict of another in a similar case. Juries are allowed to be capricious, but judges are not: they have to act on reasoned principles, even if they do not state them, and marked disparities between awards for the same type of injury would give rise to criticism. Therefore, by degrees, the principles of the law have been restated, and at the same time there has been a growing tendency to treat awards in comparable cases as useful guides and illustrations.

But at that stage, three years ago, I declined the invitation to write at length on the subject, partly because I did not want to write any more legal books, and partly because it would have been premature to do so: there were not enough decided cases to illuminate the principles of law, and very few useful illustrations of quantum were available.

Law year, however, when the invitation was renewed, I felt that, if I could throw some new light on the subject, I was no longer justified in refusing merely for reasons of personal inconvenience. The material available had greatly increased in the meantime, largely because the *All England Law Reports* had made it their policy to report occasional cases on damages, though much of the material is still contained in newspaper cuttings and is often (but not always) less reliable and complete than law reports.

The aim of this book, as finally planned, is twofold. First, to give a complete statement of the principles of law on the assessment of damages for

personal injuries (including damages on death); secondly, to frame a broad classification of the type of cases which arise, and to offer typical illustrations of awards which can be used as general guidelines in comparable cases. By a fortunate coincidence, the case of *Waldon v War Office* was heard in the Court of Appeal as I was finishing the text, and the views expressed in that case were exactly in accordance with the opinions I had previously formed. It cannot be said too often that awards on quantum are never more than illustrations and guides. They are not leading cases or authorities: yet they may be of great value, especially in the settlement of claims.

In conclusion, I am sorry that I cannot reply to enquiries about the details of any of the illustrations cited. I have done my best to extract what is relevant out of data which are often imperfect, and the extracts contain everything which is known to me and is relevant.

John Munkman
Leeds
August 1956

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