

The plaintiff is sixty-two years old, and before the casualty had been an unusually strong, healthy man. The learned Judge finds that at the trial he appeared to be as well as ever, although the plaintiff himself claimed that he had not regained his normal strength.

The plaintiff's actual expenditures directly attributable to the casualty would be about \$100. He was unable to work or devote himself to the superintendence of work on his farm at a time of year when both such work and supervision were greatly needed for the profitable operation of his farm; and while the consequent actual loss is difficult to determine, I am satisfied, after a careful perusal and consideration of the evidence, that \$200 would not be an excessive sum at which to fix that loss.

For several weeks after the accident the plaintiff admittedly suffered much pain and even after he was able to be about he must have suffered much physical discomfort from his nervous condition and the displacement of his heart, as described by the physician. For this pain and discomfort he is clearly entitled to compensation, and in my opinion the amount should not be less than \$400.

The plaintiff was guilty of no wrong, but suffered a wrong at the hands of the defendant, and he is not only entitled to be fairly compensated for his pecuniary loss but he is also entitled to a reasonable allowance for the months of pain, inconvenience and loss of enjoyment sustained by him.

With great deference to the learned trial Judge, I am driven to the conclusion that he did not give due effect to the undisputed evidence as to plaintiff's physical injuries and suffering. As the sum awarded will not more than compensate plaintiff for his pecuniary losses, I think it unreasonably inadequate and that in accordance with the principles laid down in *Rowley v. London & North-Western Rv. Co.* (1873), L. R. 8 Ex. 221, and *Phillips v. South-Western Rv. Co.* (1879), 4 Q. B. D. 406, and 5 Q. B. D. 78, the judgment should be varied by fixing the damages at \$700, with costs including the costs of the appeal to be paid by the defendant.

HON. SIR WM. MEREDITH, C.J.C.P., and HON. MR. JUSTICE KELLY agreed.