

not so direct the jury. He only said to them that it was a fact, or one of the circumstances (to my mind in estimating the money loss it is the main circumstance), which ought to be taken into account. Therefore that objection is founded upon an incorrect supposition as to what the direction to the jury really was. It is said that there is an anomaly because a small practitioner, who had paid the same fare as another person who was making a large professional income, might receive 500*l.* while the other received 15,000*l.* for similar injuries caused by the same accident. But although the personal injury is the same in both cases, the pecuniary loss is not; for the small practitioner might lose perhaps 300*l.*, while the other lost 13,000*l.*; that is no anomaly. I think it is right to say that to a working man and to a person of great wealth the same amount of compensation should be given for personal injuries, if the pain and suffering is the same. You should give to each of them the amount of the expenses actually sustained, but with regard to the pecuniary loss incurred, you should give each as reasonably and nearly as you can something to repay the loss actually sustained. I can see no anomaly or injustice in this mode of leaving the case to the jury. The fundamental reason for this mode of summing up I have always understood to be that no more accurate definition can be given, and the law does not require an impossibility. I think, therefore, that the only way in which the question can be left to juries in the future is the way in which it has been left to them for so many years in the past.

COTTON, L. J. I agree that there should be no rule. The plaintiff having established his right to recover judgment against the defendants is entitled by way of damages to a fair and reasonable compensation for his suffering and for his money loss. The defendants complain of misdirection as to the latter head of compensation and their contention amounts to this, that in estimating the compensation the income which the plaintiff was earning ought to be entirely disregarded. That amounts to saying that in estimating the money loss it is necessary to leave out of sight that which really constitutes the money loss, viz., the loss of that income which if it had not been for the accident the

plaintiff would have earned, and which he was prevented by the accident from earning. I am of opinion that it is impossible to disregard the income in estimating the money loss. Then there remains the question as to whether the income was properly taken into account in the present case. I propose to state my views as to how it ought to be taken into account. It is impossible by any mathematical calculation or rule of three sum to arrive at a fair and reasonable compensation for money loss, but the nature of the income must be taken into account, and the probability of its continuance, and how far it depends on favor, and how far on exertion which may or may not be carried on for long, and having taken into consideration all the circumstances affecting the income, the jury ought to say what is a reasonable sum to award as compensation. Of course they ought not to give the amount of the income as an annuity for the rest of the injured person's life, nor ought they to assume that the income would always continue as it was at a particular time, but taking into consideration all the circumstances affecting it, I think that the income must be taken as a basis of compensation. Lord Coleridge told the jury to give a fair compensation for the money loss. He laid before them all the evidence as to the plaintiff's income and as to the special fees, and told them to consider whether the plaintiff's evidence was a fair representation of what the income was and what it would have been likely to be. I am of opinion that it would have been wrong to exclude the special fees entirely from consideration, for when a man has arrived at such a position in his profession as to receive many large special fees, it certainly is for the jury to consider whether he would not have received similar fees in the future. I think the question was properly left to the jury. It was contended on behalf of the defendant that in estimating the damages the fact that the plaintiff had an income of his own independently of his professional earnings ought to be taken into account. I do not think this is so, for it does not make the money loss any less that the plaintiff has an independent income. I think the question ought to be considered with regard to his suffering, for he is likely to suffer more from the bodily injury if deprived of his means of support, and so is unable to provide himself with that which may alleviate his sufferings. I am of opinion that the Division Court were right in refusing a rule.

Rule refused.