

should be applied. Such "collateral source" doctrine, however, has been severely limited in recent years in its application. *Klein v. United States*, 339 F.2d 512 (2d Cir. 1964); *Feeley v. United States*, 337 F.2d 924 (3rd Cir. 1964); *Cunningham v. Rederiet Vindeggen A/S*, 333 F.2d 308 (2d Cir. 1964). Moreover, it is inapplicable in the present case since liability for such expenses may be asserted herein against plaintiff father and plaintiff infant. The present cost of maintaining the infant at Suffolk State School is \$6,000, which the State may recover from the father. New York Mental Hygiene Law, McKinney's Consol.Laws, c. 27, § 24. Even though it has accepted lesser payments in past years, it may recover the full reimbursement rates less the payments already made, § 24(9) (b), which potential recovery for the past period of institutionalization is fixed at \$33,000. Such sum is subject to the lien of the State under § 24(5) (b). Defendant may, for his own protection and if so advised, move to have such lien determined.

[37, 38] I have not included any amount to cover the nursing services rendered by the infant's mother during the period from December 1, 1959 to January 30, 1962, for lack of proof that such services were other than would normally have been rendered by a mother to her child. I do award the plaintiff father \$2,500 for the loss of the child's services during minority.

[39, 40] The damages properly awarded to the infant are to cover future medical expenses, to reimburse him for future loss of wages, and to cover past, present and future pain and suffering. With respect to future medical expenses, it seems clear that Eric will require institutionalization for the rest of his life. However, in view of the injury, I believe from the evidence that a present life expectancy of 50 years is a reasonable approximation. Also, recognizing the continuing rise in medical costs and the fact that Eric may well be entitled to private nursing and therapy additional to what may be received under State care, I believe that \$160,000 would be a fair amount to ensure him adequate future medical care. Loss of wages may also properly be awarded. *Grayson v. Irvmar Realty Corp.*, 7 A.D.2d 436, 184 N.Y.S.2d 33 (1st Dep't 1959).

[41] The defendant contends that since the infant will be permanently confined to an institution he will have little need for damages attributed to loss of earnings. The only authority cited for this proposition is *Scolavino v. State*, 187 Misc. 253, 263, 62 N.Y.S.2d 17 (Ct.Cl.) modified, 271 App. Div. 618, 67 N.Y.S.2d 202 (3rd Dep't 1946), aff'd. 297 N.Y. 460, 74 N.E.2d 174 (1947), and is clearly inapposite since the condition of the infant in that case prior to the accident made his future employment impossible, i.e., loss of future earnings was not attributable to the accident. Accordingly, taking into account a 5-percent discount factor and making the valid assumption that Eric would not have commenced to work until age 21, I award him \$50,000 for loss of future earnings.

[42] To the out-of-pocket losses suffered by this infant must be added the general damages for pain and suffering. Little purpose would be served in further dwelling on the various aspects of his past, present and permanent condition. He has undergone two spinal taps and a craniotomy, is partially paralyzed and subject to seizures. He is not comatose, however; he is not a vegetable. Accordingly, after careful consideration of this case and of others in which somewhat similar injuries were involved,¹⁷ I consider an award of \$400,000 for pain and suffering reasonable and just.

In summary, I find as follows:

I. For plaintiff Carl F. Tinnerholm—	
(a) Reimbursement for medical expenses paid.....	\$ 6,283.52
(b) For Past medical expenses for which liable.....	33,000.00
(c) Loss of Services.....	2,500.00
II. For the infant plaintiff Eric Tinnerholm—	
(a) Future medical expenses.....	160,000.00
(b) Loss of future earnings.....	50,000.00
(c) Pain and suffering.....	400,000.00

The foregoing represents the Court's findings of fact and conclusions of law. A judgment shall be entered for plaintiffs in conformity herewith.

(Whereupon, at 1:40 p.m., the subcommittee recessed, to reconvene at 10 a.m., on Tuesday, March 18, 1969.)

¹⁷ See, e.g., *Christopher v. United States*, 237 F. Supp. 787 (E.D. Pa. 1965) (29-year old man—paraplegic—\$350,000); *Schwartz v. United States*, 230 F. Supp. 536 (E.D. Pa. 1964) (43-year-old man—facial cancer—over \$600,000); *Wolfe v. General Mills Inc.*, 35 Misc. 2d 996, 231 N.Y. S.2d 918 (Sup. Ct. 1962) (30-year-old man—brain injury—\$240,000).