

CITATION: *John Matos v Northern Territory of Australia and Shane Hanna*
[2003] NTMC 018

PARTIES: JOHN MATOS
Applicant
v
NORTHERN TERRITORY OF
AUSTRALIA
First Respondent

AND

SHANE HANNA
Second Respondent

TITLE OF COURT: Local Court

JURISDICTION: *Crimes (Victims Assistance) Act*

FILE NO(s): 20207190

DELIVERED ON: 15 April 2003

DELIVERED AT: Darwin

HEARING DATE(s): 11 April 2003

DECISION OF: JENNY BLOKLAND

CATCHWORDS:

CRIMES (VICTIMS ASSISTANCE) CERTIFICATE - ASSESSMENT OF
COMPENSATION

Alan W Searle, *Orthopaedics for Lawyers*, (2002) Law Book Company

REPRESENTATION:

Counsel:

Applicant: Mr Priestley

First Respondent: Ms Farmer

Solicitors:

Applicant: Priestley Walsh

First Respondent: Withnall Maley

Judgment category classification: B

Judgment ID number: [2003] NTMC 018

Number of paragraphs: 19

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20207190

[2003] NTMC 018

BETWEEN:

JOHN MATOS
Applicant

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**
First Respondent

SHANE HANNA
Second Respondent

REASONS FOR DECISION

(Delivered 15 APRIL 2003)

JENNY BLOKLAND SM

Introduction

1. This is an application for an assistance certificate brought by Mr John Matos under the *Crimes (Victims Assistance) Act*. There are no disqualifying circumstances under *s 12 Crimes (Victim's Assistance) Act*. The second respondent did not appear at the hearing but has appeared previously and service has been effective. I ruled the hearing should proceed in the absence of the second respondent. The only dispute is to quantum and there is a marked difference between the parties.

Circumstances of the Offence Giving Rise to these Proceedings

2. On 4 May 2001, the applicant, Mr Matos had a long night at the Casino with a friend, followed by a visit into the early hours of 5 May 2001 to Kitty O'Sheas. At around 3.30 am he walked to the Knuckey Street taxi rank. An

argument broke out between a man and woman that appeared to Mr Matos to be serious. Mr Matos spoke to them, telling them amongst other things, that they should *leave it and walk away*. The man tried to throw some punches at Mr Matos but missed. After brief words were exchanged Mr Matos walked away. He then heard a scream and saw the woman on the ground and saw two men fighting. The fight broke up and the applicant walked further away. The next thing he remembers is being dragged up from the ground with a lot of people around asking him if he was all right. He had blood coming from his nose and felt pressure on the right side of his face. His wife picked him up and took him to hospital. (*Affidavit of John Matos, sworn 18 February 2003 Annexure JM 1*)

Description and Effects of the Assault on the Applicant

Physical Injuries

3. At the Royal Darwin Hospital he had treatment and x-rays confirmed facial fractures. His vision was blurred. The notes reveal concussion was investigated. Analgesics and rest were recommended. Tenderness and swelling was noted. Scratches to his neck and shoulder were also noted. The headache later subsided. He was discharged. Affidavit of John Matos (*Annexure JM 3*). Due to the ongoing symptoms he attended the Private Hospital and was admitted for two days. He was advised he would need surgery to his cheek. He fasted in preparation but the medical advice subsequently changed. He was told there would be no operation as the bone was too thin to be rectified by the insertion of a steel plate. (*Affidavit of John Matos, paras 5-7*).
4. I regard the physical injuries as serious. The CT Report of Dr Hockley, dated the 8th May 2001 states:

The right maxillary antrum displays a comminuted compressed fracture involving the antero-lateral wall of the sinus. Fragments of bone are displaced into the antrum noting a prominent amount of blood. The largest fragment measures at least 10 mms.

5. I note the definition of *comminuted fracture* in Alan W Searle *Orthopaedics For Lawyers* Law Book Co 2002 handed up to the Court by the applicant's

counsel Mr Priestley. Comminuted fracture is defined as a fracture that *breaks into several pieces*.

6. Counsel for the Northern Territory, Ms Farmer queries whether loss of consciousness and concussion have been proven. All of the evidence points to the conclusion that Mr Matos did in fact lose consciousness and I find accordingly. I cannot and do not make the same conclusion with concussion, however I note that Mr Matos' symptoms appear to be similar to those noted by persons who have suffered concussion. I cannot make the positive finding on that point.
7. Ms Farmer also disputes that headaches endured for two days. I find in favour of the applicant on that point. It is consistent with the type of blow suffered by the applicant. The headache may have subsided after treatment. I do not think the applicant exaggerates his case.
8. There is no dispute that the applicant experienced blurred vision, bruising and tenderness to his face, swelling to his face, bruising, loss of sensation in three teeth and blood noses when he sneezes. The applicant didn't work for one week. He still has tenderness in his cheek.
9. A number of these injuries are serious, particularly when it is considered that the effects of the result of the fracture will be with the applicant, as he states, *for the rest of [his] life*.
10. Pain and suffering will represent a significant component of this award.

Other Impacts of the offence capable of compensation

11. The applicant has sworn to the fact that due to the tenderness in his cheek, he is restricted from doing physical things such as playing with his son, because of an apprehension he will hurt his cheek if he bumps it.
12. He also experiences nose bleeds more regularly and of particular note is the fact he has a nose bleed when he sneezes. Ms Farmer submits there is no material before the Court on how often he sneezes. She reminds me it is an involuntary action.

13. I have no reason to think the applicant sneezes any more or any less than any of us. The fact it is involuntary means he, like all of us have no control over sneezing. This must make his nose bleeds all the more unpredictable.
14. This is a significant matter in terms of loss of amenities. It is evident from applicants in the *Crimes (Victims Assistance)* jurisdiction that the community has little tolerance of any bleeding in public. The fear apparently held by one person coming into contact with another person's blood or saliva must make the applicant's condition difficult to manage socially. The applicant does not apparently play sport, but to underline how in my view the community treat bleeding, we only need note the emergence of "blood rules" in contact sports. There does not appear to be any relief in sight for the applicant in relation to this condition.
15. Dr McLaren's report tends to confirm the other detrimental impacts on the applicant's enjoyment of life. Under *Opinion*, Dr McLaren states:

At present, your client shows a moderately severe state of social apprehension which is sufficiently intense to control his life. Since the assault, there has been a substantial change in his life but he is left with no formal mental disorder. However, he made it quite clear that he feels in sufficient danger to curtail his social activities dramatically to the extent of arguing with his wife. In addition he has now decided that he has to leave Darwin as he no longer feels safe.
.....

In my view, the relationship between the assault and his present altered life circumstances is causative, not coincidental.....

He is managing his social anxiety by avoidance which, in view of the circumstances, is a perfectly rational solution. However, it comes at a considerable cost.

16. In my view there must be a significant component of the award representing compensation for loss of amenities. I note and accept, in that regard, *paras 8-10* of the applicant's affidavit.

Conclusion

17. Taking all matters into account I will order an Assistance Certificate in the sum of \$22,000.

18. An issue was raised faintly by the First Respondent concerning *novus actus*. I reject that argument. There is no evidence I could find of an intervening act or condition capable of affecting causation, injury or compensation.
19. I will hear the parties on costs.

Dated this 15th day of April 2003.

J BLOKLAND
STIPENDIARY MAGISTRATE