

CITATION: *Anastatious Pikos v Northern Territory of Australia* [2003] NTMC 019

PARTIES: ANASTASTIOS PIKOS
v
NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: LOCAL COURT AT DARWIN

JURISDICTION: CRIMES (VICTIM'S ASSISTANCE)

FILE NO(s): 20213440

DELIVERED ON: 15 APRIL 2003

DELIVERED AT: DARWIN

HEARING DATE(s): 9 APRIL 2003

JUDGMENT OF: JENNY BLOKLAND SM

CATCHWORDS:

CRIMES VICTIMS ASSISTANCE CERTIFICATE – PRINCIPLES OF ASSESSMENT – PRE-EXISTING INJURY – DISALLOWANCE OF COUNSELLING COSTS

Crimes (Victims) Assistance Act s 5; *Pyne v Wikenfield* (1981) 26 SASR 441; *Caltex Tanker Co v Kerr* [1999] NSWCA 115. *Woodroffe v Northern Territory of Australia* [2000] NTCA8

REPRESENTATION:

Counsel:

Applicant: Mr Liveri
First Respondent: Ms Spurr

Solicitors:

Applicant: Withnall Maley
First Respondent: Halfpenny's

Judgment category classification: B
Judgment ID number: [2003] NTMC 019
Number of paragraphs: 15

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

No. 20213440

[2003] NTMC 019

BETWEEN:

ANASTASIOS PIKOS

(Applicant)

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**

(First Respondent)

REASONS FOR DECISION

(Delivered 15 April 2003)

JENNY BLOKLAND SM:

Introduction

1. This is an application by Anastasios Pikos for an *Assistance Certificate* under *s 5 Crimes (Victims Assistance) Act*. The perpetrator is unknown and has never been apprehended or prosecuted. The First Respondent accepts that the offence was committed and that there are no disqualifying factors under *s 12 Crimes (Victims Assistance) Act*. The dispute goes to quantum and the method of assessment.

The Offence

2. On or about 1 July 2002 the applicant was with two friends at Wagaman. He left to go to one of his friends (Carla's) home on his bicycle. He followed Carla along Wagaman and Malay Roads. He heard someone running behind

him. That person punched him and he fell off of his bike. He was kicked and punched to the head and rib area numerous times. He was aware of a second person being present. He was taken to the Royal Darwin Hospitals Accident and Emergency Department and reported the matter to police on 2 July 2003.

The Effects of the Assault Raised in the Applicant's Case

3. The applicant has sworn (*Affidavit of Anastasios George Pikos, 7 July 2003*) that as a result of the offence he suffered head aches for a few weeks along with bruising and swelling to his upper torso, head and legs. He was particularly apprehensive at the time of the assault because he had previously been involved in a serious motor vehicle accident on 20 August 2001. As a result of that accident he had many operations performed, was still under post-operative recovery at that time and his very ability to walk was threatened. He is in receipt of benefits under the *Motor Accidents (Compensation) Act*. He lives in fear of a further assault and that he may be injured again in a more serious way.
4. In support of his claim, Mr Pikos tendered a report from a psychiatrist, Dr Markou: (*Affidavit of Dr Markou, 30 January 2003*). The history taken by Dr Markou confirms the car accident as a major trauma in the applicant's life. He spent some six months in hospital as a result of that accident. Dr Markou observes at pages two and three of his report that the applicant:

"...has suffered numerous psychological sequelae as a result of this accident and these play a part in the recent assault which has precipitated his referral to see me. Further, at page four of his report Dr Markou reports the applicant related that he had not experienced psychological problems prior to his accident and the assault but that since the assault has occurred he has intermittently thought about suicide. He feels that psychologically it would be too much of a strain for him to sustain a further attack. He is vigilant about such an attack and is generally wary and fearful. He did not describe any post traumatic stress symptoms such as flashbacks or re-experiencing and in recent months has shown as increased level of determination, wanting to improve both his physical strength and his educational capability, in order to prove not only to the people who hurt him but

to himself that he is able to withstand the difficulties. His motivation and drive have therefore recently improved”.

5. Dr Markou’s diagnosis was *adjustment disorder with anxious mood*: (Dr Markou’s report at page six).
6. Dr Markou considers that the applicant’s symptoms are an inter-play of factors related to the motor vehicle accident in 2001 and the assault the subject of these proceedings. He reports that the current symptoms have evolved from the motor vehicle accident. It is evident from the report (and I accept) that the applicant is vulnerable to a deterioration in his mental health should he be exposed to any further relevant trauma. If there is no further trauma Dr Markou regards the applicant will eventually make a good recovery.
7. Dr Markou has also recommended counselling for the applicant’s anxiety. Dr Markou says the counselling will cost three to four thousand dollars.

The areas of the application disputed by the First Respondent

8. In a general sense, Ms Spurr who appeared for the First Respondent argues that the symptoms suffered by the applicant are grounded in the motor vehicle accident, not in the assault that forms the basis of these proceedings. She bases this submission in large part on the observations of Dr Markou. More particularly, she submits that the fear of being unable to walk has not been made out because the applicant has stated (*para 9 of the applicant’s affidavit*) that he was anxious to protect his legs. She also argued that the physical injuries were of a minor nature given the medical report from Royal Darwin Hospital of July 1st 2002 and that the suicidal ideation reported by Dr Markou was not based in the assault. She also submits the applicant is disentitled from claiming the costs of counselling as these are already covered by the *MACA* benefits.

9. In support of some of these submissions Ms Spurr relies on an affidavit annexing reports from Mark Reid, a neuropsychology specialist and a report from psychologist Dr Jan Isherwood-Hicks dated 25 February 2003. Over objection I allowed Ms Spurr to tender those reports. Mr Liveris who appeared for the applicant objected on the basis of relevance in that he said I needed to keep the two incidents, (the motor vehicle accident and the assault) quite separate. In view of the material tendered in the applicant's own case, in particular the report of Dr Markou, I do not accept Mr Liveris' argument. It is necessary when considering the merits of a claim such as this to consider whether the applicant's injury is attributable to the assault, in part or in whole or whether the injuries are sourced elsewhere. It may also be important to analyse whether the offence aggravated a pre-existing condition. These matters are at the very heart of the dispute. I do bear in mind Mr Liveris' point that neither Mr Reid nor Dr Isherwood-Hicks are psychiatrists.

Resolution of the Primary Issues in Dispute

The source of the injuries

10. As mentioned above, it is clear from Dr Markou's report that the applicant's current condition is sourced in part in the earlier motor vehicle accident, however, in my view, a fair reading of Dr Markou's report indicates that the psychological sequelae as a result of the accident *play a part* in the applicant's current condition. I have read Mr Reids' reports and noted those parts referred to me by Ms Spurr. Those reports indicate that during the period after the motor vehicle accident, the applicant was noted variously to be easily angered, impatient and exhibiting inappropriate behaviours. He is also noted at various stages to exhibit frustration and signs of depression. In my view the injury described by Dr Markou is not completely subsumed in the personality indicators that Mr Reid refers to. In my view this is a case where the offence has produced a further injury, related in some respects to

the initial problems after the car accident. The applicable principles are analogous to those in the general law of damages allowing a remedy for the extra consequences that flow from a second event that increases the injury caused by the first event but does not arise out of it: (*eg Pyne v Wilkenfeld (1981) 26 SASR 441; Caltex Tanker Co v Kerr [1999] NSWCA 115*).

Although in a different factual context, this principle is revealed in *Crime (Victims Assistance)* setting in *Woodruff v Northern Territory of Australia [2000] NTCA 8*. In any event, what is important is that the injury result from the *offence* and not from anything else.

11. There is no doubt from Dr Markou's report that there has been an increase in the level of anxiety and associated mood adjustments following the assault. The applicant's vulnerable state at the time of the assault heightened his sense of fear generally and fear of further injury. Ms Spurr may be correct that the applicant may have experienced suicidal ideation after the motor vehicle accident, but I think it is a fair to infer from Dr Markou's report that it is nevertheless a matter that is attributable to the assault. There may have been a return to suicidal ideation or additional incidence of it. It was significant enough for the applicant to report it as a post assault issue.

Pain and suffering, loss of amenities

12. I accept the applicant's case that he was in fear at the time of the assault and that his fear was heightened by his knowledge of his poor physical condition. I accept he had some fear that if he did not protect his legs his mobility may be threatened. I consider the pain and suffering attributable to the actual physical injuries to be moderate. I consider that given his heightened sensitivity after an assault of this kind also gives rise to a component of loss of amenities. Objectively this must be so. The loss of enjoyment is self evident.

Counselling

13. In relation to the cost of counselling, the applicant has been recommended counselling that is covered by *MACA*. Although he suffers increased anxiety from the assault, the treatment for the mental symptoms of the two incidents are the same. It is not possible to maintain that he needs an additional series of counselling sessions arising from the assault only. Further, even if I am wrong on this, there is no evidence that the applicant has been utilising counselling to date and I do not regard that a sufficient commitment to counselling has been demonstrated.
14. Taking all of these matters into account I order an Assistance Certificate issue in the sum of \$5,500.
15. I will hear the parties on costs.

Dated this 15th day of April 2003.

J BLOKLAND
STIPENDIARY MAGISTRATE