

CITATION: *Vogt v Northern Territory of Australia & Langford* [2003]
NTMC 067

PARTIES: Mark Adam Vogt

v
Northern Territory of Australia

&
Wayne Maxwell Langford

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victim's Assistance)

FILE NO(s): 20216512

DELIVERED ON: 30 December 2003

DELIVERED AT: Darwin

HEARING DATE(s): 10 October 2003

DECISION OF: Jenny Blokland SM

CATCHWORDS:

Crimes (Victims Assistance) Act - relationship with *Work Health* claim;

Hollington v Northern Territory of Australia [2001] NTSC 10

REPRESENTATION:

Counsel:

Applicant: Ms Farmer

1st Respondent: Ms Spurr

Solicitors:

Applicant: Withnall Maley

1st Respondent: Halfpenny's

Judgment category classification: B

Judgment ID number: [2003] NTMC 067

Number of paragraphs: 11

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

No. 20216512

[2003] NTMC 067

BETWEEN:

MARK ADAM VOGT
Applicant

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**
First Respondent
&
WAYNE MAXWELL LANGFORD
Second Respondent

REASONS FOR DECISION

(Delivered 30 December 2003)

Jenny Blokland SM:

Introduction

1. The applicant has worked as a crowd controller for some ten years without any significant incident affecting him adversely. . On 11 May 2002, his fortunate work safety record changed. He was assaulted by the second respondent while carrying out his duties as a crowd controller outside the *Lost Ark* in Mitchell Street, Darwin. The second respondent, who was highly intoxicated was refused entry by applicant. The second respondent walked away, then returned and punched the applicant in the face with a clenched fist. The incident is described in the applicant's affidavit sworn 28 February 2003. The second respondent was convicted of the assault on 24 February 2003. I readily accept the applicant is a victim of crime who is entitled to relief under the *Crimes (Victims Assistance) Act*.

2. The second respondent was served with the current application but did not participate in the process further. On his *Notice For Address For Service* filed 13 June 2003 he advises that he does *not want to be involved in the determination of this application by the Court*; he agrees that *I committed an offence which injured the applicant*; he does *not agree that the ...injuries stated in the application resulted from the offence I committed*; ..he adds (*agree only to knocked two teeth out*); he does *not believe that the applicant's conduct contributed to the injuries suffered by the applicant* and does *not believe that there is other relevant material which should be brought to the Court's attention*. It should be noted the second respondent was not present for the hearing of the matter. In the circumstances of the above advice given by him on the *Notice Of Address For Service*, I allowed the hearing to proceed in his absence. Further, I note that he was ordered to pay \$2020 in compensation to the victim at the time of being sentenced. That amount will be deducted from the final award.

The injuries and areas of Dispute Between the Parties

3. I readily find the applicant lost one tooth immediately and is likely to, or has already, lost a second tooth that was partially dislodged with another tooth being damaged. There is ample medical material filed to support this conclusion. The day after the assault he attended Royal Darwin Hospital but because of the waiting time, left the hospital and instead went to Dr Welsh. Dr Welsh's notes indicate *tender frontal upper mouth; cannot sleep because cannot rest his jaw – lower teeth chipped & cutting into tongue.....Left top incisor avulsed. Right is chipped, left canine is hanging down. Tongue inflamed from the teeth*. Dr Welsh prescribed *Panadeine Forte*. The applicant was also treated by a dentist, Dr Ong. In my view the pain and suffering that was substantially contemporaneous with the assault is significant.

4. There are two aspects however that are of greater significance. First, the applicant swears to having a speech impediment since the loss of his tooth. Paragraph (10) of his affidavit states:

“I confirm as a result of the loss of teeth and false teeth I now suffer a speech impediment which severely impact upon my ability to socialise and meet with new people primarily females. I am subconscious of the speech impediment and do not talk as much as I did prior to the assault.”

Further, he attests to feeling anxious and depressed, drinking heavily and having heightened anxiety and being cautious and fearful around intoxicated males. The psychiatrist, Dr Markou notes in his report of 8 December 2002 that the applicant *has also developed a speech impediment and this has left him feeling anxious and uncomfortable when answering the telephone.* Dr Markou’s diagnosis is that he suffers *alcohol abuse disorder and posttraumatic stress disorder with significant depressive symptoms.* In Dr Markou’s opinion these conditions are clearly referable to the assault and in my view there is no reason to consider any other cause. Dr Markou notes that his missing teeth cause him significant embarrassment. The applicant has no psychiatric history or other traumatic experience that could influence his current mental state. A component of any award should include some award for mental distress.

5. The applicant also attests to loss of wages being two days pay equating to \$304 gross. He also states that pursuant to the *Work Health Act* he has received all medical expenses. The respondent queries this aspect of the claim, as well as that part of the claim for future medicals, including psychiatric treatment estimated at between \$5,000 - \$8,000. It does seem odd to me that as a result of his claim pursuant to the *Work Health Act* he has received medical expenses but not the lost wages and no indication of any further payments.

6. Sections 13(2) and 13A of the *Crimes (Victims Assistance) Act* were discussed by His Honour Mildren J in *Hollington v Northern Territory of Australia [2001] NTSC 109*. There His Honour took into account the beneficial nature of the *Crimes (Victim's Assistance) Act* and the need to take a narrow view of the term *payment received or payable* in s 13 so as not to undermine the operation of the scheme. In *Hollington*, the applicant had not submitted a claim whereas here the applicant has submitted a claim, and it appears the claim has been accepted. There is no other material before the court explaining the intention of the insurer or the employer. Even though this is par excellence a work place injury, in my view it is more in keeping with His Honour's philosophy if I permit this aspect of the claim to proceed to be compensated under the *Crimes (Victim's Assistance) Act*. The safeguard against *double dipping* is contained in s 13A *Crimes (Victim's Assistance) Act*, effectively allowing the court to order repayment if payment under an alternative scheme is received. With the various uncertainties and exigencies evident in the progress of *Work Health Act* claims and the fact that the intentions of employers are not known to the court when considering *Crimes (Victim's Assistance) Act*, I am persuaded I should still proceed expeditiously to issue a certificate under the scheme.
7. The first respondent has submitted there is not adequate material to justify the payment of the proposed psychiatric treatment, however in my view the applicant's affidavit covers this in detail at paragraphs 11-12. In terms of the argument of failure to mitigate, I note there is no material put forward by the applicant as to what steps he has taken thus far to seek counselling or other treatment. I accept that the cost of treatment would be a hindrance to his access to psychiatric treatment until an award is made in his favour, however, he does not appear to have considered let alone attempted to access any alternatives to help alleviate his mental distress, for example any work based counselling or counselling or treatment from a voluntary or community based organisation. I will take that into account both in

assessing the likelihood of him proceeding to undertake the treatment proposed and failure to mitigate. As the applicant has never needed to access this form of treatment previously, I accept also that he may lack the knowledge of what services are available. On balance, in my view there are still some steps an injured person may take to mitigate this type of loss. There will be some small reduction from the amount claimed.

8. The respondent argues that the seriousness or otherwise of the speech impediment has not been established. In my view, a noticeable speech impediment, even if not considered objectively serious will inevitably impact on amenities of life and this must be reflected to some degree in the assessment.

Conclusions

9. In terms of pecuniary loss, the Certificate will be inclusive of lost wages. I was advised at the hearing this amounted to a net loss of \$182.00. In terms of pain and suffering, mental distress and loss of amenities of life I would award \$10,000. In terms of the expense of future treatment I would award \$3,500. This total of \$13682 must be reduced by \$2020 already paid by the second respondent. The Certificate will also reflect an order under s 13A *Crimes (Victims Assistance) Act*.

Orders

10. I order a Crimes (Victim's Assistance) certificate issue in the sum of \$11,662. Pursuant to s 13A *Crimes (Victims Assistance) Act*, the applicant is to repay any amount up to a maximum of \$3682 if he receives any compensation through his claim under the *Work Health Act (NT)* relating to loss of wages already compensated for in this certificate and future psychiatric treatment.
11. I will hear the parties on costs.

Dated this 30th day of December 2003.

Jenny Blokland
STIPENDIARY MAGISTRATE