

CITATION: *Jeffrey Thomas Minto v Northern Territory of Australia* [2005]
NTMC 020

PARTIES: JEFFREY THOMAS MINTO
v
NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: LOCAL COURT

JURISDICTION: Crimes (Victims Assistance) Act

FILE NO(s): 20408587

DELIVERED ON: 6 April 2005

DELIVERED AT: Darwin

HEARING DATE(s): 29 March 2005

JUDGMENT OF: A/Judicial Registrar Day

CATCHWORDS:

Knife wound – quantum; mental injury; subsequent injury - causation

REPRESENTATION:

Counsel:

Applicant Mr. McGorey
1st Defendant: Ms. Tregear

Solicitors:

Applicant: Priestleys
Respondent: Hunt & Hunt

Judgment category classification:

Judgment ID number: [2005] NTMC 020

Number of paragraphs: 24

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

No. 20408587

BETWEEN:

JEFFREY THOMAS MINTO
Applicant

AND:

NORTHERN TERRITORY OF
AUSTRALIA
Respondent

REASONS FOR DECISION

(Delivered 6th April 2005)

A/Judicial Registrar Day:

1. By application filed 7 April 2004 pursuant to s.5(1) of the Crimes (Victims Assistance) Act (NT) (“the Act”) the applicant seeks the issue of an assistance certificate. The relevant offence occurred on 7 February 2004. On 6 August 2004 in the Supreme Court the offender, Justine Dick, was convicted of a criminal offence in relation to the offence.
2. Therefore it is common ground between the parties that the applicant is a victim in that he has suffered injury as a result of an offence within the meaning of the Act.
3. The issues to be determined in this application are:
 - a. An assessment of the amount for which an assistance certificate should issue, and;

- b. Whether the mental injury suffered by the applicant is a result of the first (7 February 2004) offence as opposed to the second (25 February 2004) offence.
4. The injuries for which the applicant claims compensation are both physical and mental.
5. On 24 February 2004 the same offender committed a further offence against the applicant in relation to which she was also convicted in the Supreme Court on 6 August 2004. The applicant brought an application for assistance relating to the injury suffered by him as a result of the second offence, which application was filed 7 September 2004 and given file number 20420584. That application was resolved. Orders were made by consent on 15 February 2005.

Evidence

6. The applicant has suffered serious and permanent physical injury as a result of the offence of 7 February 2004. The offender stabbed the applicant with a knife. The applicant and the offender had for some time been living in a defacto relationship prior to the attack. The relationship was characterised by violence on the part of the offender. The evidence of the applicant as to what happened when he was stabbed is set out at paragraph 8 of his affidavit sworn 10 November 2004 and is as follows:

“She rushed at me really quickly and started slashing the knife at my throat. I managed to dodge some of those slashes, but she managed to get me in my left shoulder/arm. The knife first slashed me around my left shoulder. She then pulled the knife back and stabbed me right through my lower left arm. As she ripped it out, the knife cut right down my left arm.”

The extracts from the hospital file annexed to the applicant’s affidavit establish that as a result of this attack the applicant was taken to Royal

Darwin Hospital where he had surgery to repair tendons damaged in the attack. A note on the hospital file estimates that the applicant lost 1000ml of blood. The hospital records show that the applicant was an inpatient from 7 to 10 February 2004.

7. Counsel for the respondent argued at the hearing that there were significant inconsistencies in the applicant's account of the offence given in his affidavit when compared with the statutory declaration made by him on 26 February 2004 and the victim impact statement signed by him on 4 August 2004. The latter two documents form part of annexure JTM 2 to the applicant's affidavit. I have compared paragraphs 8 and 9 of the statutory declaration with paragraph 8 of the applicant's affidavit and I do not find that there are significant inconsistencies between the two accounts. To the extent that the accounts differ I consider that the differences are a matter of emphasis rather than substance. In all three documents the applicant states that he put his left arm up to protect himself from the offender who was wielding a knife and that the offender stabbed him in that arm. I consider the three accounts to be reasonably consistent.
8. Counsel for the respondent also points out that both Dr. Rea and Dr. McLaren state, in their respective reports, that the applicant was hospitalised for two weeks after the attack. In fact the hospital records reveal that the applicant was an inpatient for three days and I find that this was the length of the applicant's hospital stay after the offence. In his affidavit the applicant says that he was hospitalised for three to four days. The statements as to hospitalisation for two weeks are obviously wrong. Without the benefit of cross-examination of the witnesses it is impossible to finally determine who was the author of the error. Even if the applicant gave the two doctors the erroneous information on that score however I do not consider that I could draw any inference adverse to the applicant based upon that fact alone in these circumstances.

9. The hospital outpatient records show that after being discharged from hospital the applicant attended follow-up treatment between 19 February 2004 and 28 April 2004. It was submitted for the respondent that what appear to be two failures to attend appointments at RDH on 28 March 2004 and 27 May 2004 amount to a failure by the Applicant to mitigate his loss. On this issue the respondent bears the onus of proof and I find that that onus is not discharged. Taken on their own, these failures do not to me appear sufficiently serious to suggest a failure by the applicant to properly rehabilitate. Even if I am wrong about that, there is no evidence that the failure to attend on these two occasions has in any way contributed to the ongoing disability now suffered by the applicant.
10. The degree of the applicant's ongoing disability is described in the report of Dr. Desmond Rea, Surgeon, dated 15 July 2004. Dr. Rea describes restriction of movement of the little finger, thumb and wrist of the applicant's left hand. He says that the applicant has a restricted ability to straighten the little finger of the left hand compared to the right. The applicant's ability to extend the distal joint of the left thumb backwards was reduced when compared to his right. Further the Applicant had a limitation in abduction in that he could abduct the right thumb to 90 degrees but the left only to 60 degrees.
11. Dr. Rea also found some disability in the applicant's left wrist in that whilst he "had good movement downwards in palmar flexion and backwards in dorsi flexion ...there was some limitation to only three quarters of the range possible in the right." Dr. Rea noted reduced muscle bulk in the left forearm when compared to the right. The differential being measured at 2cm. It was his opinion that the normal differential between left and right should be 0.5 to 1cm. Dr. Rea stated "This would reflect the reduced muscle bulk and persistent weakness in the use of his left hand." He had noted earlier that the applicant had "a reasonable grip in the left hand." One may infer from the whole of the report that this grip was

somewhat less than in the right but Dr. Rea does not give specific evidence about this. It is to be inferred from the evidence of Dr. Rea that the applicant is right-handed and I note that this is confirmed in the hospital notes in an entry dated 26 March 2004.

12. Dr. Rea considered that the applicant might make some further improvement namely from having 70% function of the left little finger and thumb to 80%, but reading the doctor's report this appears by no means certain. Dr. Rea's evidence is that the applicant's residual disability of the left hand, wrist and arm is permanent. He wrote that "it is doubtful that he would make a full recovery and 100 per cent function of the affected fingers and tendons." Dr. Rea states that the applicant has a 20% permanent loss of use of the left arm (based upon the AMA Guides to the Assessment of Permanent Impairment – 5th edition) which he says equates to a 20% whole person impairment, on the same scale.
13. The evidence of the applicant, Dr. McLaren and Dr. Rea is that the applicant has scarring which is permanent. There are two scars running down the lower left arm and extending for 20cm on the back or dorsum of the left forearm and 18cm on the front. In his report (referred to below) Dr. McLaren describes the scars as "livid". The applicant deposes to the scarring and its effects at paragraph 14 of his affidavit.
14. The evidence of the nature and extent of the mental injury suffered by the applicant as a result of the offence is contained in the applicant's affidavit and its annexures in particular the victim impact statement of the applicant dated 4 August 2004 and the report of Dr. N. McLaren, consultant psychiatrist, dated 6 September 2004.
15. At paragraphs 19 to 23 of his affidavit the applicant describes varying effects of the offence upon his mental health. These can be summarised as mood swings, anxiety attacks, feelings of sadness (including crying at times), feeling scared (particularly of the offender and

her relatives) and vulnerable (especially in public), social withdrawal, sleep disturbance, poor appetite, low energy levels and feelings of insecurity in his own home. The applicant says that some of these effects have reduced since the attack.

16. Dr. McLaren describes the applicant as suffering “an acquired anxiety state with a minor, secondary or reactive type of depression.” He regards “the assault” as causative of the applicant’s symptoms but does not differentiate between the assaults of 7 and 24 February 2004. Dr. McLaren recommends further treatment at a cost of \$1,000. The applicant deposes at paragraph 24 of his affidavit that he does intend to undergo this treatment.

17. At paragraphs 31 to 33 of his affidavit the Applicant describes the exacerbation of the effects on his mental health suffered after the offence of 25 February 2004. His evidence is that his sleeping problems, nightmares and stress related to the welfare of his young child were increased. Unfortunately Dr. McLaren was unable to apportion responsibility for the applicant’s mental injury between the offences of 7 and 24 February 2004.

18. The evidence as to the applicant’s mental injury is not entirely satisfactory. Whilst there is, as described above, a diagnosis of psychological impairment Dr. McLaren gives no clear separate assessment as to the impact of the mental injury on the applicant’s ongoing incapacity except to say that it plays a role. In relation to the anxiety experienced by the applicant Dr. McLaren states that the applicant “will always remain edgy and apprehensive near groups of aggressive people but he will still be within normal limits for the population of (sic.) large.”

19. Taking the evidence as a whole I find that the offence of 7 February 2005 resulted in the applicant suffering a mental injury which he had not suffered before and from which he continues to suffer. It is plain that the

offence of 24 February 2004 resulted in a further mental injury which may have been an aggravation of the first. It is not possible to make a percentage apportionment on the evidence presented however I find that there is a real and substantial mental injury suffered by the applicant as a result of the offence of 7 February 2004 and that the effects of that injury on the applicant are ongoing.

20. The applicant deposes in paragraphs 16 to 23 as to the effect that his physical and mental injuries have had on his lifestyle. The applicant has custody of his son Koori Minto born in 2002. The applicant's injuries have had an effect upon his ability to perform household tasks, including cooking and cleaning. In addition the applicant states that he is no longer able to drive a manual car. In addition the applicant claims that he has been compromised in his ability to find work.

21. I make no finding about the applicant's loss of earning capacity as such because no evidence was presented as to the degree of the applicant's capacity for paid employment. Nor was there evidence as to the quantification of such a claim. Such evidence might include the activities and occupations for which the plaintiff is now not fit, the previous earnings of the plaintiff, and details of any occupation(s) which he may currently be fit for and likely earnings in such employment. In the absence of such evidence no findings can be made as to the applicant's loss of earning capacity or the pecuniary loss which would probably flow.

Assessment

22. The evidence establishes that the applicant has suffered a serious and permanent physical injury and a significant mental injury, the effects of which are also ongoing. The circumstances of the offence were frightening if not horrific. The applicant is entitled to an award for pain and suffering, loss of amenity and mental distress as a result. I assess the amount payable in respect of this part of the claim at \$23,000.

23. In addition the applicant claims an amount for future medical treatment in respect of the psychiatric injury in the sum of \$1,000. I find that this is an expense which is reasonably incurred by the applicant in accordance with s.9(d) of the Act. Further the applicant seeks reimbursement of a debt incurred to St Johns' Ambulance in the sum of \$595.50 an amount which I find was actually incurred in accordance with s.9(a) of the Act.

24. Accordingly I make the following orders:

- a. That an assistance certificate issue in favour of the applicant in the sum of \$24,595.50; and
- b. That the respondent pay the applicant's costs (including disbursements) of this proceedings, to be taxed in default of agreement.

Dated this 6th day of April 2005

MEREDITH DAY
A/JUDICIAL REGISTRAR