

# SUPREME COURT OF QUEENSLAND

CITATION: *White v. Reeves* [2002] QSC 020

PARTIES: **James Robert White**  
(Applicant)  
v  
**Logan Bruce Reeves**  
(Respondent)

FILE NO/S: S 757/01

DIVISION: Trial

PROCEEDING: Application for Criminal Compensation

ORIGINATING COURT: SUPREME COURT

DELIVERED ON: 11 February 2002

DELIVERED AT: TOWNSVILLE

HEARING DATE: 1 February 2002

JUDGES: CULLINANE J.

ORDER: **Applicant awarded the sum of \$48,750 by way of compensation against the Respondent pursuant to the Criminal Offence Victims Act 1995 as amended.**

CATCHWORDS: CRIMINAL LAW-ORDER FOR COMPENSATION-Grievous bodily harm with intent to cause grievous bodily harm-Determination of entitlement to compensation under *Criminal Offence Victims Act 1995*-Assessment of Compensation according to statutory compensation scheme.

COUNSEL: C. McLennan for the Applicant

SOLICITORS: Dempseys, Solicitors for the Applicant

[1] The Applicant seeks compensation under the *Criminal Offence Victims Act 1995* as amended for injuries and the consequence of those injuries sustained by him as a result of an attack by the Respondent on him on the 27<sup>th</sup> November 1999. The Applicant and the Respondent were both at the time, inmates of the Townsville Correctional Centre. The Applicant was born on 27<sup>th</sup> June 1958.

- [2] The Respondent was sentenced on 26<sup>th</sup> March 2001 on a count of inflicting grievous bodily harm to the Applicant with intent to cause grievous bodily harm.
- [3] There was some history of dealings between the Applicant and the Respondent whilst in prison prior to the attack by the Respondent on the Applicant. These were referred to in the sentencing remarks which are in evidence. At the time of sentencing I said that the history of the matter was a somewhat curious one.
- [4] However, there is nothing before me that would justify any reduction of the Applicant's compensation under s.26(7) of the Act. The Respondent did not appear on the hearing.
- [5] The Applicant was in prison for an assault of which he had been convicted.
- [6] On the morning of 27<sup>th</sup> November 1999 whilst the Applicant was sitting in the dining hall reading a newspaper, he heard the voice of the Respondent close behind him. Shortly after the Applicant became aware that he had been cut across the throat and as he commenced to stand up he felt a pain across his shoulders from behind. He heard the sound of his jumper tearing and as he turned around he felt the blade of the knife which the Respondent was using, turn in his shoulder blade, "and almost filleted the muscle off my shoulder".
- [7] There is some material before the court which was placed before the sentencing court in the form of a victim impact statement.
- [8] There are a substantial number of exhibits from various medical specialists and others involved in the treatment or the assessment of the Applicant's injuries and their consequences.
- [9] There is an extensive written outline which summarises the effect of the medical evidence and sets out the claim which the Applicant makes identifying the item in the table relied upon and the sum contended for.
- [10] The scheme maximum is \$75,000.
- [11] Section 22(4) makes provision for the manner in which compensation is to be assessed by reference to the various items in the table in Schedule 1. The Court of Appeal in considering this provision in *R v Ward; ex parte Dooley* 2001 2Qd.R.436 held that the amounts of compensation in cases falling within the ranges set out in the table contained in the Schedule were to be assessed on the basis that the maximum amount for compensation allowed in respect of each type of injury listed in the table was reserved for the most serious cases.
- [12] In approaching the question of compensation in a case like this, it is important to bear in mind the provisions of s.26(1) of the Act which provides:

*“(1) The purpose of this section is to ensure that, for applications, harm that substantially should be treated as a single state of injury is treated as a single injury, even though it may consist of more than 1 injury or be caused by more than 1 incident.*

- [13] The Applicant undoubtedly suffered what must have been a terrifying attack and I accept that he feared that he was going to die.
- [14] When he was admitted to the Townsville General Hospital, he was bleeding profusely from a wound to the right side of his neck and a further wound over his left scapula. His treatment is outlined in a statement of Dr Williams who treated him. The wound to the right side of the neck is a deep one which had divided the external jugular vein as well as several smaller vessels. The carotid artery and accessory nerves were intact. The wound to the left scapula region extended down to the bony spine of the scapula.
- [15] The Applicant made an uneventful recovery from his operation being discharged on 29<sup>th</sup> November.
- [16] He has been left with significant consequences of his injuries. There are reports from Dr Boyce who is a neurologist, Professor James, a psychiatrist, Dr Watson, specialist in rehabilitative medicine, as well as reports from Mr Walkley, a psychologist and a report from an occupational therapist.
- [17] The Applicant suffers serious psychiatric consequences as a result of the attack upon him.
- [18] Dr James has diagnosed him as suffering from post traumatic stress disorder which he says in a recent report is chronic and unlikely to ameliorate significantly in the foreseeable future. He recommends psychological support in the form of cognitive behaviour therapy.
- [19] The symptoms of the condition are set out in Dr James' earlier report and summarised in the submissions of counsel for the Applicant which has been placed on the file. According to Dr James the Applicant complains of:
- “intrusive recollections of the attack, and his injury, both during the waking and sleeping states; intense psychological distress at exposure to cues symbolising or resembling an aspect of the attack; efforts to avoid thoughts and feelings associated with the trauma; avoidance of activities (such as the use of sharp knives) which arouse recollections of the trauma; markedly diminished interest and participation in ordinary day to day and social activities; difficulty staying asleep; irritability; concentration difficulties; hyper-vigilance; and an exaggerated startle response”.*
- [20] Undoubtedly these are serious and permanent consequences of the assault upon him. I have no difficulty in accepting that it falls within the severe category of mental or nervous shock which is item 33 and I think that the claim of \$20,250 representing some 27 per cent of the scheme maximum is reasonable and I allow this.
- [21] It is I think, important in considering other claims advanced to bear in mind the provisions of s.26 to which I have already referred. Whilst plainly mental or nervous shock stands as a separate head of compensation, I think that in relation to a claim made under, for example, item 26 which relates to severe stab wounds, the wounds and their physical consequences should be treated as a single injury and

that allowance should not be made under separate items in the schedule for the wounds and such consequences.

- [22] This approach it seems to me is both consistent with s.26 and the judgment of Thomas JA in *Ferguson v Kazakoff* (2000) QSC 156. His Honour said at paragraph 25 of the judgment:

*“So far as physical injuries are concerned, the Applicant suffered six wounds to his back and two to the neck area. The wounds did not require suturing. The appropriate schedule item seems to be ‘24 ... stab wounds (minor) ...6%-10%’. However, there are also items that deal with bodily scarring, and in particular “27 ... bodily scarring (minor/moderate) ... 2%-10%. However, s.26 of the Act is designed to ensure that ‘harm that substantially should be treated as a single state of injury is treated as a single injury even though it may consist of more than one injury’ [19]. Now whilst the nervous shock should in this case be treated as a separate state of injury, I do not think that the same conclusion should be reached in relation to the stab wounds and such scarring as has resulted from them. In my view the appropriate assessment should be under item 24 taking into account the fact that the wounds produced some scarring”.*

- [23] In the present case claims are advanced in respect of not only the stab wounds (which plainly meet the description of severe) but also for bruising and lacerations, an impairment of function of the shoulder and of the arm and wrist and of the neck and upper back as well as scarring.
- [24] For the reasons just mentioned I think that all of these matters should be subsumed under the claim in respect of item 26 (stab wound [severe]) as they are all consequences of the stab wounds.
- [25] I accept that the Applicant has significant impairments of function of the right shoulder with wasting of the right trapezius and right sided scalenes. He also has some impairment of function of the right arm as a result of the stab wounds to the right shoulder and consequent nerve damage. He suffers from pain in the neck and some cervical pain and there is impairment of the nerves in his neck and the upper back. He has extensive scarring.
- [26] He has not returned to work and largely lives the life of a hermit although he cares for one of his young children on each alternative week and he sees his youngest child almost every day.
- [27] I think that given the serious life threatening injuries and their consequences an amount of \$28,500 (38%) is justified under this item.
- [28] The total compensation therefore will be \$48,750.
- [29] I award the Applicant the sum of \$48,750 by way of compensation against the Respondent pursuant to the *Criminal Offence Victims Act 1995* as amended.