

SUPREME COURT OF QUEENSLAND

CITATION: *Cummins v Cummins* [2002] QSC 097

PARTIES: **ANNE VERONICA CUMMINS**
(applicant)
V
PAUL GERARD CUMMINS
(respondent)

FILE NO/S: S135 of 2002

DIVISION: Trial

PROCEEDING: Application for Criminal Compensation

ORIGINATING COURT: Supreme Court at Townsville

DELIVERED ON: 11 April 2002

DELIVERED AT: Townsville

HEARING DATE: 5 April 2002

JUDGES: Cullinane J

ORDER: **Applicant awarded the sum of \$28,875.00 by way of compensation against the respondent pursuant to the Criminal Offence Victims Act 1995.**

CATCHWORDS: CRIMINAL LAW – ORDER FOR COMPENSATION – Attempted murder – Determination of entitlement to compensation under the Criminal Offence Victims Act 1995 – Assessment of compensation according to statutory compensation scheme

COUNSEL: J Stevenson for the applicant
No appearance for the respondent

SOLICITORS: Queensland Legal Aid for the applicant
No appearance for the respondent

[1] The Applicant who is an elderly Aboriginal woman born on 23 May 1932 suffered serious injuries as a result of an attack upon her by the Respondent, her son, on the evening of 1 September 1999.

- [2] The Respondent was convicted of attempted murder and sentenced to fourteen years imprisonment. He did not appear on the hearing of this application.
- [3] The Applicant was seriously physically disabled at the time of the attack. She suffered from diabetes, her hands were crippled as a result of leprosy as a child and her vision was impaired. As a result of the diabetes she had a partial amputation of her right leg and used a wheel chair.
- [4] On the evening of the offence, the Respondent who had been drinking had been asked by the Applicant to leave the home. However he persuaded her to allow him to remain whilst he had something to eat upon the basis that he would then leave.
- [5] It appears that the Respondent obtained a piece of wood which he took with him into the Applicant's bedroom and with which he attacked her striking her on the head a number of times. The Applicant put her hands up to defend herself and was struck on one of her hands.
- [6] The attack ceased as result of the intervention by another of the Applicant's sons.
- [7] The Applicant sustained lacerations of the scalp and the hand. She developed septicemia due to infected scalp wounds. She sustained severe bruising around the eyes and was not able to see for some time.
- [8] She was hospitalised for some weeks.
- [9] In a victim impact statement which the Applicant has made she speaks of symptoms of giddiness even when seated. She also says that she gets muscular pain which "goes around her head". She also experiences some lack of balance. Previously she was able to at least from time to time walk with an artificial leg even though she used a wheel chair. She says that she cannot now walk at all. She says also that she cannot see from the corner of her left eye.
- [10] These complaints do not at this time appear to have any established organic basis.
- [11] The most serious consequences of the attack by the Respondent are psychological.
- [12] I have a report of Dr. James a Psychiatrist. He sets out the symptoms of which the Applicant complains.
- [13] The Applicant has suffered a great sense of shock at the attack upon her by her son. Her inability to come to terms with this is plain from what she has told Professor James and what she says in her statement. He speaks of her "broken spirit" and of the difficulty she has when trying to make some connection between her memories of her son as a child and what he did to her on this evening.
- [14] According to Professor James the Applicant suffers from Post Traumatic Stress Disorder of moderate intensity. It is characterised in the main by recurrent and intrusive distressing recollections of the events and a lack of interest and a feeling of detachment or estrangement. She has according to Professor James in addition to the Post Traumatic Stress Disorder sustained an injury of her sense of self because of the attack upon her by her son.

- [15] She takes anti-depressant medication and, according to Professor James, but for that would have had a recurrence of a major depressive disorder which she had suffered in 1969 and for which she received psychiatric treatment. At present her symptoms and signs do not justify a diagnosis of major depressive disorder but the features to which Professor James refers constitute painful and distressing remnants of her experience.
- [16] The physical symptoms of which she complains are according to Professor James and in the absence of any evidence to the contrary part of a somataform disorder indicative of underlying emotional distress manifesting itself in this way. She may require active rehabilitation to attempt to give her some mobility out of her wheel chair.
- [17] Claims are made under three items in the schedule of the Criminal Offence Victims Act of 1995. Two of these items (items 2 and 9) are concerned with bruising/laceration (severe), and a fractured skull/head injury (no brain damage) respectively. I think that having regard to the provisions of section 26 of the Criminal Offence Victims Act 1995 and the judgment of Thomas JA in *Ferguson v Kazakoff* (2000) QSC 156 it would not be appropriate to allow compensation in respect of injuries sustained to the Applicant's head under both of those heads. I think the appropriate way to assess the compensation is to allow under item 9 compensation for a head injury which would include the lacerations to the scalp and the subsequent infections as well as the bruising around the eyes, and to allow separately some compensation for the minor lacerations of the hand.
- [18] I allow in respect of the claim under item 9 the sum of \$5,625 representing 7.5 per cent of the scheme maximum.
- [19] I do not think that the lacerations to the hand fall to be assessed under item 2 but rather under item 1 and I allow \$750 for these.
- [20] The most serious claim is that for mental or nervous shock and this claim is made under item 33. I have no difficulty in accepting that the psychiatric and psychological consequences of the attack upon the Applicant fall within the severe category. The range of compensation for severe mental or nervous shock is 20 per cent to 34 per cent of the scheme maximum. The amount contended for is some \$22,500-00 which represents 30 per cent of that maximum.
- [21] Accepting Professor James' opinion about the Applicant's psychiatric and psychological sequelae and bearing in mind the circumstances of the attack and the sad effect it has had upon the Applicant I think that the sum contended for is a reasonable one.
- [22] The total compensation payable to the Applicant then is some \$28,875-00 and I make an award of compensation in this sum.

