

SUPREME COURT OF QUEENSLAND

CITATION: *Snyder v Noble* [2002] QSC 273

PARTIES: **ESMAY ROSE SNYDER**
(applicant)
v
WILLIAM ALEXANDER NOBLE
(respondent)

FILE NO/S: S683 of 2002

DIVISION: Supreme Court

PROCEEDING: Application for Criminal Compensation

ORIGINATING COURT: Supreme Court at Townsville

DELIVERED ON: 12 September 2002

DELIVERED AT: Townsville

HEARING DATE: 6 September 2002

JUDGES: Cullinane J

ORDER: **I make an award of compensation in the sum of \$29,750.**

CATCHWORDS: CRIMINAL LAW – ORDER FOR COMPENSATION – Grievous bodily harm with intent to cause grievous bodily harm – where offence committed prior to the enactment of *The Criminal Offence Victims Act 1995* - determination of entitlement to compensation under Chapter LXVA of the *Criminal Code* – assessment of compensation in accordance with ordinary principles of assessment of damages in personal injury cases subject to limits

COUNSEL: AJ Kimmins for the applicant
No appearance for the respondent

SOLICITORS: Tony Bailey Solicitor for the applicant
No appearance for the respondent

[1] This is an application for criminal compensation for injuries sustained by the Applicant as the result of the Respondent's attack upon her. The offence was

committed prior to the enactment of *The Criminal Offence Victims Act 1995* and thus the application falls to be considered under Chapter LXVA of the Criminal Code.

- [2] The Respondent was convicted of inflicting grievous bodily harm upon the Applicant with intent to do grievous bodily harm. The offence was committed on the 9th January 1992 and he was convicted on the 22nd October 1992 and sentenced to imprisonment for a period of 3 years. He pleaded guilty.
- [3] The Respondent did not appear on the application.
- [4] At the time the Applicant and the Respondent resided in a de facto relationship at Palm Island. On the evening in question the Applicant had been drinking at the hotel and walked home to the house that she lived in with the Respondent.
- [5] According to an Affidavit of the Applicant she was asked by the Respondent to cook him a meal and when she said that she was too drunk he stabbed her on the right side of the chest, the right hand and the left upper arm and also in the back. She says that she was extremely frightened and thought that the Respondent was going to kill her and she screamed for help. She lost consciousness.
- [6] The statement which she made to the police suggested that she had no recollection of what occurred.
- [7] In submissions placed before the court on behalf of the Respondent at the time of sentence, the court was informed that after the Applicant refused to cook food for the Respondent he went and lay down on a mattress in the lounge and that the Applicant threw a full can of beer at him and that it struck him above the eye. This incident and the pain he suffered in consequence apparently enraged him leading him to go and grab the knife with which he then inflicted the wounds upon her. Counsel for the Applicant concedes that I should deal with the matter upon the basis that this is in fact what happened. In her affidavit the Applicant did not deny that this occurred and indeed did not address the issue.
- [8] She has scarring on the left arm and right hand and on the chest and the back.
- [9] According to a report of a psychologist she suffers from a post traumatic stress disorder some of its features include a damaged sense of self, some depression, and difficulty in expressing her feelings. Her symptoms, it would seem, were present prior to the assault but have been worsened by it. According to the psychologist some aspects of her condition might also fit the description of dysthymic disorder and panic disorder as well as chronic post traumatic stress disorder or even, in the view of some psychiatrists, an entirely different disorder.
- [10] The Applicant, according to the psychologist presents with a number of the psychological consequences often found in women who have been the subject of emotional and physical abuse.
- [11] The Applicant deposes to the truth and correctness of the various features of the psychological condition which are set out in pages 4 and 5 of the psychologist's report. Apart from those already mentioned, self injuries and suicidal behaviour are responses to such a personality disorder and the Applicant, according to the

psychologist reported the latter of these although I do not have any details of this. Again, this is something which would seem to have been worsened rather than initiated by the accident.

- [12] The Applicant was born on 10th August 1968. In addition to the above injuries she also suffered a punctured lung.
- [13] She has made a good recovery so far as the material indicates from the physical injuries she sustained but has some complaints of occasional breathlessness and a feeling of weakness in her right hand.
- [14] There is a prescribed amount for mental shock or nervous shock of \$20,000.
- [15] The maximum amount which may be awarded is the present prescribed amount under the *WorkCover Queensland Act 1996*. This it would seem is the effect of *R v Chong ex parte Chong (2001) 2 Qd R 301*.
- [16] It is clear compensation has to be assessed in accordance with ordinary principles of assessment of damages in personal injury cases subject to the limits I have referred to.
- [17] The maximum entitlement is for present purposes \$150,000.
- [18] In assessing compensation I do not overlook the fact that the psychologist recommends some psycho-therapeutic treatment as being of assistance to the Applicant.
- [19] It is also plain that the Applicant was already exhibiting many, if not all of the symptoms which the psychologist describes and that what is to be compensated is the increase in the symptoms suffered by her. This however constitutes a serious condition on the evidence before me.
- [20] The compensation substantially falls to be assessed in relation to the head for which section 663AA provides a limit of \$20,000. I allow this amount for mental and nervous shock.
- [21] The Applicant suffers scarring to a number of areas of her body and these are a permanent legacy of the assault of the Respondent upon her. In other respects it seems to me the Applicant's physical consequences are relatively minor although I accept she has some ongoing sequelae in this regard such as breathlessness and some sense of weakness of the hand.
- [22] The cause of action is well out of time. However the Respondent did not appear and, as the point was not taken, the expiry of the time can only bar the claim if relied upon. See *R v. Chong ex parte Chong (supra)*.
- [23] I assess the Applicant's compensation at \$35,000. The Applicant's compensation should be reduced under s. 663(B)2 for conduct on her part contributing to the attack. I propose to apply a figure of some 15%. 85% of \$35,000 is \$29,750.
- [24] I make an award of compensation in the sum of \$29,750.