

SUPREME COURT OF QUEENSLAND

CITATION: *Thompson v Newberry* [2003] QSC 144

PARTIES: **Elizabeth Rose THOMPSON**
(applicant)
v
Francis NEWBERRY
(respondent)

FILE NO/S: S.255/03

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Townsville

DELIVERED ON: 14 May 2003

DELIVERED AT: Townsville

HEARING DATE: 9 May 2003

JUDGE: Cullinane J

ORDER: **Order awarding compensation to the applicant against the respondent in the sum of \$66,750.**

CATCHWORDS: CRIMINAL LAW – CRIMINAL COMPENSATION –
where applicant has suffered physical and psychological injuries

Criminal Offence Victims Act 1995

COUNSEL: A J Kimmins for the applicant
There was no appearance for the respondent

SOLICITORS: Tony Bailey Solicitor for the applicant
The respondent acted on his own behalf

[1] The applicant seeks an order for criminal compensation in this matter.

[2] The respondent did not appear on the application.

- [3] The respondent was sentenced to ten years' imprisonment when he appeared before the court on 4.9.02 pleading guilty to a count of grievous bodily harm with intent to do grievous bodily harm.
- [4] The applicant and the respondent lived in a de facto relationship.
- [5] The applicant was born on 30.8.71.
- [6] The offence was committed on 23.11.01. The applicant and the respondent were at a bus shelter in a suburb of Townsville. The respondent had a bottle of methylated spirits that he was drinking from and when the argument broke out he tipped the contents of it over her and took a cigarette lighter and set fire to her.
- [7] The applicant ran across the road while still alight falling on a footpath on the other side of the road.
- [8] Attempts by other people to intervene were met by the respondent threatening those persons with methylated spirits and the cigarette lighter.
- [9] The respondent pulled the applicant to her feet and attempted to take her away. The police arrived and the respondent was taken into custody.
- [10] The circumstances of the commission of the offence must have been terrifying to the applicant.
- [11] She was admitted to hospital with very extensive burns to both legs and to the torso. She also suffered what was described as compartment syndromes of both lower legs. The hospital report suggests that the burns extended to some 50% of her body surface area.
- [12] She required a tracheotomy and ventilatory care for some significant period.
- [13] There is a report of Dr Lip who saw the applicant late in 2002.
- [14] At this time, according to Dr Lip, the plaintiff suffered from constant pain in the abdomen and pelvic areas and in her legs. She has difficulty sleeping.
- [15] The scars from her burns are extensive. Dr Lip describes the areas and there are photos showing these.
- [16] Her skin is itchy and she frequently uses calamine lotion.
- [17] There is a limitation of movement in her left arm at the elbow as a result of the burns.
- [18] A report of a psychologist suggests that the applicant suffers from chronic post traumatic stress disorder. She would it is said, have been likely to have suffered from this prior to the incident but given the traumatic potency of it, it is likely that this disorder would have constituted a severe nervous

shock to her and could have caused the development of the disorder on its own. It is undoubtedly a major factor in the condition that she suffers from.

- [19] She is embarrassed by the appearance of her scars. She suffers chronic depression, anxiety, feelings of hopelessness and is recorded as having said that she has had a “desire to die”.
- [20] I accept that the applicant has suffered the various problems that she complains of and continues to suffer the complaints she swears to and which Dr Lip recorded.
- [21] Claims are advanced under some five heads although I do not think the evidence supports the claim based upon the chest injury. There was, it is true, a tracheostomy performed but the evidence does not suggest that this was necessitated by any damaged condition of her lungs nor that there have been any ongoing problems if there were some initial problems in this area. I decline to make an order under that head.
- [22] The first claim is advanced under item no 16 (fractures/loss of use of arm/wrist (severe)). I think an appropriate allowance under this head is the sum of \$13,125 reflecting some 17.5% of the prescribed sum.
- [23] There is evidence of an ongoing complaint in the left knee which according to Dr Lip, is in the nature of an open wound in that area which causes her to limp. I accept that the evidence establishes that this is a consequence of the accident although it is not clear whether this would be an ongoing problem or what might happen in the future with it.
- [24] It is to be noted that in the hospital report the view was expressed that it was likely there would be some functional deficits of the lower limbs which could not at that time be quantified. The only evidence is of an ongoing problem with the left leg.
- [25] I allow 12.5% of the prescribed sum in respect of this head which results in a sum of \$9,375.
- [26] I accept that the scarring is very extensive although it does not, fortunately include any facial scarring. Nonetheless I think that she is entitled to an amount which represents towards the upper limit of the range under item 28. I allow 25% of the prescribed figure producing the sum of \$18,750.
- [27] The most serious consequence of the claimant’s injuries is psychological.
- [28] What happened to the complainant must have been horrifying to her. She has severe permanent psychological sequelae. It is a case in which the top of the range under item number 33 in the schedule should be allowed and I award compensation in the sum of \$25,500 for this.
- [29] The total compensation then is \$66,750.
- [30] I make an order awarding compensation to the complainant against the respondent in the sum of \$66,750.