

SUPREME COURT OF QUEENSLAND

CITATION: *Spittal v Baggio* [2003] QSC 145

PARTIES: **Evelyn Jean SPITTAL**
(applicant)
v
Danny Max John BAGGIO
(respondent)

FILE NO/S: S.204/03

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 the respondent to pay by way of compensation to the applicant the sum of \$7,875.**

CATCHWORDS: CRIMINAL LAW – CRIMINAL COMPENSATION – where there is more than one offender and claims for compensation are dealt with in separate courts – where the respondent’s contribution to the offence was less than that of his co-offender

Criminal Offence Victims Act 1995, ss 13(3), 26(6), 26(8)

COUNSEL: A W Collins for the applicant
There was no appearance for the respondent

SOLICITORS: Giudes & Elliott for the applicant
The respondent acted on his own behalf

[1] The applicant seeks an order for the payment of criminal compensation by the respondent in respect of injuries sustained by her on 16.10.00 and the sequelae to those injuries.

- [2] The respondent was not represented on the application and did not appear.
- [3] The respondent was charged with and pleaded guilty to an offence of robbery in company with another person with a circumstance of aggravation, namely that he used actual violence. Thus he has been convicted of a relevant personal offence for the purposes of S. 24 of the *Criminal Offence Victims Act 1995*.
- [4] The other person was one Dominic Roger Xavier Boucher. He was charged with the same offence but in addition was charged with and found guilty of doing grievous bodily harm with intent to cause grievous bodily harm.
- [5] An application for criminal compensation was made in the District Court which dealt with Boucher and on 13.4.03, Pack DCJ ordered that Boucher pay the applicant \$52,500.
- [6] It is clear that Boucher was the primary offender and indeed the person who inflicted the physical injuries upon the applicant. It was accepted by counsel for the applicant that the court should limit its task on this application to a consideration to what proportion if any of the \$52,500 the respondent here should pay by way of compensation.
- [7] I should say I, with respect, adopt Pack DCJ's assessment of compensation which seems to me to be an appropriate one in the light of the evidence before him. This is the same evidence which was placed before this court.
- [8] It is clear that His Honour in assessing compensation in the sum of \$52,500 was assessing the applicant's total entitlement to compensation in respect of her injuries with Boucher's ultimate liability under S. 26(6) dependent upon whether and to what extent the Respondent is ordered to pay compensation.
- [9] This also seems clear from what His Honour said when making the formal order.
- "I order the Respondent pay to the Applicant the sum of \$52,500 with liberty to apply, should the Supreme Court conclude some proportion of that amount ought to be ascribed to the co-offender."*
- [10] Section 26 does not in its terms provide for the type of situation which exists here, namely where there is more than one convicted person and the claims for compensation are dealt with in separate courts. However it seems to me consistent with the intent of the section (including S. 26(8)) to approach the matter in the way suggested here.
- [11] I adopt the statement of the relevant facts set out in the judgment of Pack DCJ at paragraphs 4 and 5;

"The Applicant was at material times employed as a taxi driver in Townsville. Shortly after 11 p.m. on 16.10.00 she was driving along Ross River Road outbound and she observed the

Respondent and Baggio at a taxi rank. She was hailed by one of them and after negotiating a U-turn, returned to pick up the Respondent and Baggio as passengers. Baggio was the front seat passenger and the Respondent was seated in the rear of the taxi behind the Applicant.

The Respondent asked that they be driven to Kelso which is an outer suburb involving a journey of quite some kilometres which I estimate not to be less than 10. She was not given any particular address on the pretext that each passenger was a new arrival, that they did not know the street name, but they knew where it was that they were residing. The Applicant became uneasy as she continued to drive and particularly when asked to drive down a dirt track off Kelso Drive. She refused to do so stating that it was too rough and stopped her vehicle. Having done so the Respondent held a knife at the Applicant's throat, the knife was held hard against her throat and she was forced back in her seat. The Respondent demanded the Applicant provide him with money. She had difficulty getting money from her top pocket on her shirt which was buttoned up. She was pleading for her life, advising the Respondent that she had children. She repeated this. She believed she was going to be killed. The Respondent demanded a wallet from her. She repeated on a couple of occasions that she did not have a wallet. The Respondent appeared not to accept her statement in this regard. She could at that time feel the knife cutting her throat. The Applicant decided to do something by driving off in the taxi intending to hit something in the hope that might restrict the Respondent's capacity to attack her. She struck a small tree but the knife remained at her throat. She kept accelerating. The taxi van she was driving was in first gear. She aimed at another tree and the offender, Baggio, on advice from the Respondent, endeavoured to take control of the steering wheel. The vehicle came to a stop on a further impact. The Respondent was angry and the Applicant says she could feel the knife then going further into her throat. She pushed the emergency button on the taxi and got out of the cab. She could feel blood oozing from her neck and tried to stem that flow of blood with her hand. She believed she was going to die and had great anxiety for her children who were dependent upon her for their wellbeing. The Applicant was attended by the ambulance and taken to the Townsville General Hospital where she underwent operative treatment."

[12] Although it was not placed before me I have also had a regard to the sentencing remarks which I made when the respondent here was sentenced. This it seems to me, is permissible under s.13(3) of the *Criminal Offence Victims Act 1995*.

[13] The following passage appears in the sentencing remarks:

“It is not suggested that you personally used personal violence. Rather, you have been charged upon the basis that you went with the other man, who has been mentioned, knowing that the driver was to be robbed and intending to provide assistance.

It is accepted that I should proceed to sentence you upon the basis that you were not aware that the other man was armed with a knife or that he intended to use a knife. Rather you are to be sentenced upon the basis that you were there knowing that some personal violence in the form of a hitting or a grabbing of the taxi driver, to enable the money to be taken from her, was going to occur.”

- [14] It is, however, clear from the account set out above, which is based upon the statements taken from the applicant by the police, that after Boucher had placed the knife at her throat and the applicant had said that she had no monies and Boucher commenced to cut her throat the applicant attempted to drive the vehicle away in an attempt to make it more difficult for Boucher to continue his attack and the respondent, at Boucher’s suggestion, endeavoured to take control of the steering wheel at that time to prevent her escape. He succeeded and the vehicle stopped. The applicant said that she then felt the knife going further into her throat.
- [15] It would thus seem that Baggio, who was in the front seat, attempted to take control of the steering wheel at a time when he knew that Boucher was committing the assault upon her with the knife. His intent must have been to enable the assault and the intended robbery to be effected and it would seem he was successful in causing the vehicle to come to a halt.
- [16] The report of the psychologist in which he made a diagnosis of post traumatic stress disorder, not surprisingly does not seek to make any distinction between the consequences of the robbery and the consequences of the attack upon her with the knife. They are simply part of the one terrifying episode. Nonetheless it would seem clear that the attack upon the applicant involving the cutting of her throat with the knife and her belief that she was going to die after she had been left there alone following the departure of the respondent and Boucher are plainly the salient features of her ordeal.
- [17] I think that it is clear that the respondent’s role in events was a far lesser one than that of Boucher. He was not charged with grievous bodily harm with intent to do grievous bodily harm. His role in contributing in a direct and material way to the applicant’s injuries was considerably below that of Boucher.
- [18] It would seem he was not aware that Boucher had the knife at the time he entered the venture to rob the applicant but was aware of it at the time that he attempted to prevent the applicant driving the vehicle away. Indeed the attack was then taking place.

- [19] I assess his liability for compensation as being some 15% of the assessed compensation, namely an amount of \$7,875.
- [20] I order the respondent to pay by way of compensation to the applicant the sum of \$7,875.