

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MACKENZIE J

No BS1154 of 2004

BLAZENKA FORSTER

Applicant

and

WARREN LESLIE FORSTER

Respondent

BRISBANE

..DATE 29/03/2004

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: The applicant for compensation under the Criminal
Offence Victims Act 1995 was working in her florist shop when
her estranged husband came in with what appeared to be an
elongated cardboard box. He placed it on the counter pointing
in her direction. Unbeknown to her, in the box there was a
rifle which the respondent discharged by manipulating the
trigger while the weapon was still hidden from her. The
projectile struck her in the right breast and she fell to the
floor. He stood astride her, got the rifle from the box and
attempted to point it at her. She resisted by trying to push
it away. He made threats to kill her during this part of the
incident. Mr Elcham, a man who was having coffee nearby, came
to her aid and managed to wrest the rifle from him.

Her physical injuries were investigated when she was taken to
hospital. The projectile which had entered her body in the
region of her right breast had then struck her ribs,
penetrated the diaphragm and caused a laceration to her liver
without penetrating it. Her injuries were surgically repaired
by means of an upper midline laparotomy. Her recovery was
uncomplicated and no further medical attention to her wounds
was necessary after about a fortnight.

She also had discomfort in her left shoulder, possibly caused
when she fell to the ground. This was diagnosed as soft
tissue injury by Dr Moran, an orthopaedic surgeon. Dr Moran
believed that she had 5 per cent loss of use of the left arm
but that the prognosis for regaining movement was good with
physiotherapy and an exercise regime.

With regard to the scarring, according to Dr Dixon, a plastic surgeon, the wound to her right breast has healed well without the loss of sensation or adverse changes to her breast.

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The abdominal scar from the operation is more obvious being about 16 centimetres long and curving from her upper abdomen to the left of her umbilicus. According to the applicant it occasionally aches and itches but there is no loss of sensation. Dr Dixon observed that the scar puckered slightly at the upper end but had healed moderately well with a small amount of thickening. He also refers to a small scar on her hand but it is cosmetically and functionally insignificant.

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Dr McGuire, a psychiatrist, reports that the applicant suffers from post-traumatic stress disorder with a severe degree of symptoms which may lessen in intensity in the future but which are likely to remain to a degree for the rest of her life.

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She said that the applicant suffers flashbacks, nightmares, avoidance of cues, reminding her of the incident, a considerably restricted and limited lifestyle and chronic problems with insecurity, hypervigilance and an exaggerated startle reflex.

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She did not believe that the applicant was more vulnerable than usual to the condition except that violence observed during her childhood may have intensified her present symptoms. Having said that, Dr McGuire believed that an incident of the seriousness of the one that occurred was

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capable of producing the applicant's present intensity of symptoms without predisposing factors.

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Dr McGuire said that the applicant believed that her symptoms would lessen in future but believed also that her life aspirations have undergone a significant insult. She felt more threatened because of her general lack of trust and the scar had lowered her pride in her appearance and self-esteem.

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In light of Dr McGuire's evidence I assess mental and nervous shock in the lower range of severe. The submission on her behalf places that at 20 per cent, and I have no disagreement with that.

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The gunshot wound is assessed as being in the high moderate range. That was suggested at 16 per cent in the submissions on behalf of the applicant. Once again I have no quarrel with that figure.

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The bruising to the shoulder is assessed within the minor to moderate range and once again I am content to adopt the suggestion of 8 per cent for that.

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The total amount, adopting the figures that I have adopted and placing the scarring at 10 per cent rather than the 20 per cent suggested is, as I calculate it, \$40,500 and I make an award in that sum.

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It is noted that the applicant claimed in a victim impact statement at sentence that she had suffered economic loss of about \$45,000 up to that time. I am, of course, precluded from making any order for economic loss since the Act expressly says that principles applicable to common law damages are not applicable to the assessment of compensation under the Act.

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