

# SUPREME COURT OF QUEENSLAND

CITATION: *Knight v McDougall* [2010] QSC 83

PARTIES: **DUNCAN JOHN KNIGHT**  
(applicant)

v

**SCOTT ALEXANDER McDOUGALL**  
(defendant)

FILE NO/S: 860 of 2010

DIVISION: Trial Division

PROCEEDING: Application for criminal compensation

ORIGINATING COURT: Supreme Court

DELIVERED ON: 24 March 2010

DELIVERED AT: Brisbane

HEARING DATE: 12 March 2010

JUDGE: A Lyons J

ORDER: **Order the respondent pay the applicant by way of compensation pursuant to the *Criminal Offence Victims Act 1995 (Qld)* as amended the sum of \$44, 250**

CATCHWORDS: CRIMINAL LAW – PROCEDURE – CRIMINAL INJURIES COMPENSATION – QUEENSLAND - where the respondent was convicted of one count of doing grievous bodily harm with intent to commit grievous bodily harm to the applicant - where the applicant suffered physical and psychological injuries - whether compensation should be awarded.

*Criminal Offence Victims Act 1995 \*Qld)*  
*Dooley v Ward* [2001] 2 Qd R 436

COUNSEL: C Reid for the applicant  
No appearance for the defendant

SOLICITORS: Gabriel Ruddy and Garrett for the applicant

**A LYONS J:**

## **Introduction**

[1] This is an application for criminal compensation pursuant to the *Criminal Offence Victims Act 1995 (Qld)*.

- [2] The respondent did not appear at the hearing.
- [3] The respondent pleaded guilty on 4 September 2007 to one count of doing grievous bodily harm with intent to commit grievous bodily harm to the applicant on 20 November 2005. On 7 September 2007 he was sentenced to five years imprisonment. That term was suspended after two and a-half years, with a period of 656 days declared as time spent in pre-sentence custody.

### **Background**

- [4] The applicant and the respondent were friends and the respondent came to stay at the applicant's home which he shared with his partner and their infant child. After a week an argument took place between the applicant and respondent on the afternoon of 20 November 2005. When the applicant told the respondent he had to leave, the respondent attacked the applicant with a kitchen knife. He sustained injuries to his head, neck and arm.

### **Injuries – physical**

- [5] The injuries to the applicant included:
- (a) A six centimetre curvilinear stab wound to the right side of his neck;
  - (b) A two centimetre oblique stab to the right side of his face, level with his lip;
  - (c) A two centimetre vertical stab on the right side of his chin; and
  - (d) A 2.5 centimetre laceration to the right forearm on the ulnar border.
- [6] The main stab wound caused a phrenic nerve injury which could not be repaired. As a result, the applicant has diaphragmatic hemiparesis. Dr Stevenson, in his report, indicates that the effect would be a reduction of 10 per cent to 20 per cent in lung function, which reduces the applicant's ability to run or to exercise.
- [7] The main wound entered the carotid sheath which contains the carotid artery jugular veins and vagus nerve. The wound transected the internal jugular vein, sheared the third and fourth cervical vertebra and extended into the paraspinal muscle. It is clear that the medical opinion indicates that the injury to the right side of the neck was very serious as the jugular vein was completely transected, which is a life-threatening injury if left untreated. Mr Knight was hospitalised for eight days and required extensive follow up.
- [8] There is also some scarring with a visible laceration in the mandibular region, just below the lateral to the corner of the mouth. There is also a long scar some 8 centimetres in length on the lower right side of the neck which is about two centimetres above the clavicle. There are also two or three small scars on the right forearm.

### **Injuries – psychological**

- [9] Dr Robert Tym, psychiatrist, saw the applicant on 24 August 2009 and considered that he suffered from post-traumatic stress disorder (PTSD). Dr Tym believes that this was compounded because the applicant also suffered from attention deficit disorder (ADD). Dr Tym believes that the applicant's PTSD is severe.

### **The assessment of compensation**

[10] There is no doubt that the applicant is entitled to compensation under the now repealed *Criminal Offence Victims Act 1995* (Qld), s 24. The scheme maximum is \$75,000. The application was filed on 29 January 2010 and the applicant's claim continues pursuant to the transitional provisions..

[11] Compensation is assessed by reference to a maximum amount and s 25 of the Act outlines the method of assessing compensation as follows:

**“What amount may be required to be paid under a compensation order**

- (1) In making a compensation order, a court is limited to ordering the payment of an amount decided under this section.
- (2) A compensation order may only order the payment to the applicant of a total amount of not more than the prescribed amount (the *scheme maximum*).
- (3) If more than 1 amount is payable under subsections (4) to (6), the amounts must be added together, and, if the total is more than the scheme maximum, only the scheme maximum may be ordered to be paid.
- (4) In deciding the amount that should be ordered to be paid for an injury specified in the compensation table, the court is limited to making an order for—
  - (a) if there is only 1 percentage listed opposite the injury—an amount up to the amount that is the listed percentage of the scheme maximum; or
  - (b) if there is a range of percentages listed opposite the injury—an amount that is within the listed range of percentages of the scheme maximum.
- (5) In deciding the amount that should be ordered to be paid for an injury specified under a regulation, the court is limited to making an order for the prescribed amount.
- (6) In deciding the amount that should be ordered to be paid for an injury to which subsections (4) and (5) do not apply, the court must decide the amount by—
  - (a) comparing the injury with injuries to which subsections (4) and (5) apply; and
  - (b) having regard to the amounts that may be ordered to be paid for those injuries.
- (7) In deciding whether an amount, or what amount, should be ordered to be paid for an injury, the court must have regard to everything relevant, including, for example, any behaviour of the applicant that directly or indirectly contributed to the injury.

- (8) A decision on the amount that should be ordered to be paid under a compensation order—
- (a) does not involve applying principles used to decide common law damages for personal injuries; and
  - (b) is to be decided by applying the principles mentioned in section 22(3) and (4).<sup>1</sup>
- [12] The decision of *Dooley v Ward*<sup>1</sup> set out the method for assessing criminal compensation as follows:
- “In our opinion the proper method is to fix the compensation for say severe mental or nervous shock at the appropriate place in the range 20 per cent to 34 per cent of the scheme maximum, which is done by considering how serious the shock is in comparison with the most serious case, which must be compensated by an award of a maximum 34 per cent. This illustrates the point that the compensation table has no relationship to what would be awarded as damages in tort; a crime victim permanently institutionalised by the psychological results of an assault could, on that account get no more than \$25,000.”
- [13] It is clear that for each injury claimed the court characterises the injury according to the categories listed in the compensation table and then the court has regard to the relative seriousness of the injury, to arrive at a percentage which is within the specified range. The amount of compensation is then calculated by applying the appropriate percentage to the scheme maximum, which is \$75,000.

### **Schedule Items**

- [14] The following schedule items are relevant:
- (a) Item 26 – Gun shot/stab wound (severe) 15 per cent to 40 per cent
  - (b) Item 27 – Facial disfigurement (minor/moderate) two per cent to 10 per cent
  - (c) Item 33 – Mental/nervous shock (severe) 20 per cent to 34 per cent.
- [15] Based on Dr Stevenson’s opinion, the applicant seeks an award in relation to Item 26 which relates to the stab wounds of \$22,500 which relates to an award at 30 per cent of the scheme maximum. I consider that that is an appropriate percentage given the serious stab wounds to the neck of the applicant.
- [16] In relation to Item 27, which relates to the facial disfigurement, it was submitted that an award at 4 per cent of the scheme maximum would be appropriate for this injury, which is an amount of \$3,000. I agree with that submission.
- [17] In relation to mental shock based on the psychiatrist’s opinion, the applicant seeks an award in relation to Item 33 of 30 per cent. This is an amount of \$22,500. I have found the calculation of this aspect of the applicant’s injuries difficult to quantify in percentage terms given that he was suffering from pre-existing psychological injuries at the time of the attack on 20 November 2005.
- [18] The Report of Dr Tym indicates that the applicant had a pre-existing disorder at the time of the incident and, in particular, on 16 May 2004 he had been distraught and

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<sup>1</sup> [2001] 2 Qd R 436 at [5].

threatened to harm his wife and himself as a result of emotional problems. In his report Dr Tym states:

“There is some evidence that he had been having some emotional problems related to his ADD prior to the assault on 20.11.05, eg, the emotional disturbance on 16.05.04 when he had been so distraught that he was briefly and impulsively shouting that he wanted to harm his wife and kill himself.

There seems undoubted evidence that since the time of the assault his demeanour has been significantly deteriorated as per the diagnostic criteria of PTSD as listed in DSM-IV TR. He has certainly been suspicious, irritable, suffering from tension-type headaches, had extra difficulties in focusing and concentrating, had difficulties with sleeping, and, of course, had constantly recurring flashbacks which give him constantly recurring physical sensations of fear and slight increases in heart rate and probable increases in blood pressure.

...

He is not so incapacitated that he cannot continue working as a general manager in a Car Yard, but in terms of his mental and emotional discomfort and the emotional comfort of those he has to live with – his wife and his two children – it is highly likely that there will be continuing problems. As judged by a diagnostic trial of treatment performed at the time of this examination it is likely that he will not respond to treatment.

...

In summary, there is no doubt that the experience was of the most severe of psychological traumas and his PTSD is of the most severe type and degree.”

- [19] I am satisfied that the applicant suffers from post-traumatic stress disorder, which is at a severe level of intensity but consider that an award of 25 per cent of the scheme maximum is a more appropriate given the uncertainty in relation to his prognosis and his pre-existing condition which was already causing him significant difficulty at the time of the attack.

### **Conclusion**

- [20] In the circumstances, I assess the applicant’s entitlement to compensation as follows:

Item 26 – stab wound (severe), 30 per cent	\$22,500
Item 26 – four per cent	\$3,000
Item 33 – mental shock (severe), 25 per cent	\$18,750
<b>Total</b>	<b>\$44,250</b>

### **ORDER**

I therefore order that the respondent pay the applicant by way of compensation pursuant to the *Criminal Offence Victims Act 1995*, the sum of \$44,250.