

SUPREME COURT OF QUEENSLAND

CITATION: *LMM v BMB* [2012] QSC 230

PARTIES: **LMM** (applicant)

v

BMB (first respondent)

BXG (second respondent)

KAS (third respondent)

The Estate of LCW (fourth respondent)

FILE NO/S: 6003 of 2012

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 30 July 2012

DELIVERED AT: Brisbane

HEARING DATES: 1 August 2012

JUDGE: Atkinson J

ORDERS:

1. **The First Respondent pay the Applicant the sum of \$20,625 pursuant to Chapter 65A of the Criminal Code for injuries sustained as a result of the offence which led to the conviction of the Respondent upon indictment under the Criminal Code of Queensland.**
2. **The Second Respondent pay the Applicant the sum of \$20,625 pursuant to Chapter 65A of the Criminal Code for injuries sustained as a result of the offence which led to the conviction of the Respondent upon indictment under the Criminal Code of Queensland.**
3. **The Third Respondent pay the Applicant the sum of \$20,625 pursuant to Chapter 65A of the Criminal Code for injuries sustained as a result of the offence which led to the conviction of the Respondent upon indictment under the Criminal Code of Queensland.**
4. **The Fourth Respondent pay the Applicant the sum of \$20,625 pursuant to Chapter 65A of the Criminal Code for injuries sustained as a result of the offence which led to the conviction of the Respondent upon indictment under the Criminal Code of Queensland.**

5. The respondents pay the applicant's costs of and incidental to the application to be assessed. 1

CATCHWORDS: CRIMINAL LAW — JURISDICTION, PRACTICE AND PROCEDURE — JUDGMENT AND PUNISHMENT — ORDERS FOR COMPENSATION, REPARATION, RESTITUTION, FORFEITURE AND OTHER MATTERS RELATING TO DISPOAL OF PROPERTY — COMPENSATION — QUEENSLAND — where respondents were convicted of rape of applicant — where applicant suffered physical injuries and post-traumatic stress disorder — where applicant required ongoing treatment and suffered loss of income as a result of psychological harm — whether maximum figure for psychological harm could be recovered from each respondent — whether maximum figure would exceed amount that would be awarded in a civil claim 10

Criminal Code 1899 (Qld), s 663B
Limitation of Actions Act 1974 (Qld), ss 5, 10 20

COUNSEL: Eoin Mac Giolla Ri for the applicant
No appearance for the respondents

SOLICITORS: Burchill & Horsey Lawyers for the applicant
No appearance for the respondents

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HER HONOUR: This is an application for compensation for injury suffered as a result of a crime. The application is made under Chapter 65A of the *Criminal Code* as it was at the time of the crime being committed.

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The crime that was committed was committed on 31 March 1986. At that time the maximum that could be allowed in respect of mental shock or nervous shock was \$20,000. However, in this case there were four offenders and, as is clear from decisions of this Court, the maximum amount can be awarded against each of the offenders, so long as those amounts together do not exceed the amount that would be allowed in a civil action for damages for personal injury for the injuries suffered as a result of this crime.

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The applicant was aged 16 when she was raped by the four respondents. The vicious nature of the pack rape against her can be gleaned by the judgments of the Court of Criminal Appeal in the applications for leave to appeal against sentence made by first, second and fourth respondents,¹ the judgment of the Court of Criminal Appeal in the successful appeal by the second respondent² which led to a retrial (on retrial he was convicted of five counts of rape), and the victim statement given by the applicant to the police immediately after the rapes occurred.

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¹ *R v Belezio, Garrett & Wilson*, unreported, Court of Criminal Appeal, Qld, CA No 76 of 1987, 22 May 1987.

² *R v Starkey* [1988] 2 Qd R 294.

The particular circumstances that make these rapes particularly vicious include the fact that there were four men involved; that they knew that the applicant did not want the sexual intercourse that occurred to occur; that they bound her so that she was unable to physically resist what occurred; that they gagged her and otherwise treated her in such a way that she feared that she might die; and that they treated her with particular derision and disrespect in addition to the physical acts against her.

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Unsurprisingly, these vicious crimes have had a long-term impact upon her. I am assisted by a report from the psychologist who details the impact upon her personal life, her working life and her relationships. His comments on her self-esteem in particular refer to the fact that these crimes have made her suicidal: she has had a number of suicide attempts and otherwise been involved in many episodes of self-harm, all attributable to these vicious attacks.

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It is appropriate that I assess damages as if there were an application for compensation in the civil jurisdiction of this Court. First, there is the question of general damages for pain, suffering and loss of amenities. The report of Dr White, the psychologist, sets out the extreme suffering of the applicant since the pack rape against her. His report was dated 10 March 2010 - some 24 years after the rapes occurred - and it is clear that her suffering has been significant and has continued throughout that period, given the lack of

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counselling and psychological services offered to victims of such crimes at that time.

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It is likely that that trauma will continue and that even with treatment is likely to be extreme throughout the rest of her life. She suffers from chronic serious depression and post-traumatic stress disorder. Dr White concludes his opinion by saying, "In my opinion, [the applicant] represents one of the most damaged individuals this psychologist has seen in 25 years of practice." His opinion is that her condition is as severe as can be imagined. She continues to live with the trauma of her past and sees little hope for the future.

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In his opinion she will continue to require ongoing psychological help, although she is unlikely ever to overcome completely the effects that the trauma has had on her psychological wellbeing. The cost of future psychiatric care has been assessed by him, but at the moment I am dealing with general damages.

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I am unaware of any case in which \$80,000 has been allowed for general damages for the pain and suffering suffered as a result of a crime such as this, but in my opinion the pain and suffering that the applicant has undergone justifies itself an award of that amount for general damages for pain and suffering in the past and the future.

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In addition, in this case there are special damages. The predicted cost of psychological services for her, assuming that she requires an appointment on a fortnightly basis for the rest of her life, has been assessed by Dr White at

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\$185,640. Even discounting that amount for future contingencies, it can be seen that an amount in the order of \$150,000 should be awarded.

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In addition, the applicant has suffered and will continue to suffer a loss of income and a loss of income earning capacity since these crimes occurred to her at the age of 16. Even if that were assessed on the extremely conservative basis of only \$5,000 per year for her working life of some 49 years, that is an amount of just under \$250,000. One can discount that for contingencies to \$200,000.

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It can be seen that any damages that would be awarded would be well in excess of the \$80,000 which is the maximum that can be awarded for the psychological harm to her. I should also mention that the application is subject to the *Limitation of Actions Act* 1974 (Qld), but that does not bar recovery. It merely provides that limitation may be relied upon by the respondents. None of the respondents seek to take any such point. The three respondents are alive and have been served. The fourth respondent is deceased and it does not appear that he has a personal representative.

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In addition to the psychological injuries, the applicant received physical injuries consistent with being restrained in the way in which she was and injuries to her genital area. The limits for the psychical injuries are found under the workers' compensation legislative regime, although unsurprisingly, it does not cover injuries of quite this kind.

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However, they were relatively minor and she recovered from them quickly, and so an award of \$2,500 would reflect the physical injuries suffered.

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Accordingly, I make the orders that each of the respondents pay compensation pursuant to the Criminal Code to the applicant in the sum of \$20,625. I further order that the respondents pay the applicant's costs of and incidental to the application to be assessed.

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