

DISTRICT COURT OF QUEENSLAND

CITATION: *Pamtoonda v Comprabar* [2008] QDC 100

PARTIES: **ROSEMARY MINOOTA PAMTOONDA**
(Applicant)
v
OSWALD SANDY COMPRABAR
(Respondent)

FILE NO/S: 246 of 2007

DIVISION:

PROCEEDING: Application for Criminal Compensation

ORIGINATING COURT:

DELIVERED ON: 28 February 2008

DELIVERED AT: Cairns

HEARING DATE: 30 November 2007

JUDGE: Bradley DCJ

ORDER: **That the respondent pay to the applicant the sum of \$15,000 by way of criminal compensation and that he pay the applicant's costs of and incidental to this application as assessed on a standard basis.**

CATCHWORDS:

COUNSEL: No appearance for either party. (Written submissions received on behalf of the applicant).

SOLICITORS: ILS QLD LIMITED Solicitors for the applicant

- [1] On 13 February 1995 in the District Court Cairns the respondent was convicted of unlawfully wounding the applicant. The offence was committed on 17 October 1994 at Aurukun, a remote Aboriginal community on Cape York Peninsula.
- [2] As the offence was committed prior to the commencement of the *Criminal Offence Victims Act 1995*, the applicant now seeks an order for compensation for the injuries suffered by her because of the offence pursuant to the now repealed Chapter 65A of the *Criminal Code* ("the Code"). Claims pursuant to the Code must be made within six years of the date of the conviction. In this case the application was not filed until 10 September 2007, over six years out of time. However, because the time limitation provisions operate to bar the remedy and not the right and operate only if sought to be relied upon¹ I will proceed to determine this application.

¹ Chong v Chong [2001] 2 QR 301

- [3] The respondent has been personally served with the application and the supporting material but did not appear at the hearing and the application is effectively uncontested.
- [4] At the time of the commission of the offence the applicant and the respondent were in a de facto relationship and she was asleep at their residence at about 11.00 pm. The applicant says that while she was asleep she was stabbed in the leg. She woke up and saw the respondent standing over her, he was holding a knife and he then ran out of the house. She could smell alcohol on him. When spoken to by the police the respondent told them that the applicant had “made me wild”.
- [5] The applicant was taken to hospital where she received seven stitches to the wound in her leg. The wound was about 7-8 cm long and about 2 cm deep.
- [6] It was submitted on behalf of the respondent during the sentence proceedings that an argument had erupted between the applicant and the respondent over a missing t-shirt. During the argument the applicant “swore up” the respondent’s family, particularly his parents who had both passed away. This was apparently the trigger to his using the knife. In sentencing the respondent His Honour Judge White said “I take into account that there was some provocation to this by reason of the insulting language about your deceased family. That is a very serious matter and I am sure it was deliberately used to try to provoke you but you cannot use a knife to stab people just because you are angry.”
- [7] Although there was the provocation by the applicant referred to by His Honour, the respondent’s actions in stabbing the applicant were out of all proportion to any provocation and accordingly I find that she did not contribute in anyway to her injuries.
- [8] In an affidavit sworn on 18 April 2007 the applicant states that as a result of the offence she suffers the following difficulties:-
- a. I was asleep when the respondent stabbed me.
 - b. I woke with a lot of pain in my leg.
 - c. I didn’t know what had happened – I just woke up and saw the respondent standing over me with a knife.
 - d. I was crying a lot because of the pain. I was scared because I did not understand what was happening.
 - e. I was taken to the clinic by the Community Police.
 - f. After I was treated by the nurses and received stitches I stayed with my mother because I was too scared to go home.
 - g. I don’t understand what happened and it scares me that it could happen again for no reason.
 - h. I have bad thoughts about that night now and it makes me a bit jumpy.
 - i. I am nervous going to sleep because I am scared of what will happen when I am asleep.”
- [9] On 12 April 2005 the applicant was interviewed and assessed by Chris Richardson, a psychologist and in her report of 23 April 2005 Ms Richardson concludes:-
- “It is apparent from Ms Pamtoonda’s report that she experienced distress that she reports was associated with Mr Comprabar’s

behaviour. However such distress was limited to a relatively short period after the incident.”

- [10] The applicant told Ms Richardson that she is no longer with the respondent and is in a new relationship. The applicant was born on 21 October 1962.
- [11] Ms Richardson found that “as a result of the incident, she experienced considerable distress and was afraid for her wellbeing. However, it appears that Ms Pamtoonda has generally recovered from the psychological impact the incident had on her and her symptoms were relatively contained in a temporal sense. In this respect, it is unlikely that she will require ongoing therapy to assist her with her recovery. She may however require some assistance from time to time should the symptoms cause her distress at any time in the future.”
- [12] Compensation pursuant to the Code is to be assessed according to the ordinary civil principles applicable to claims for damages for personal injuries subject to the prescribed amounts. The prescribed amount for mental or nervous shock is \$20,000 and that for physical injuries is the maximum amount specified in the relevant Workers’ Compensation legislation.
- [13] I assess compensation as follows:-
- | | |
|-----------------------------|---------------------------|
| 1. Physical injury | \$ 7,000.00 |
| 2. Mental and nervous shock | <u>\$ 8,000.00</u> |
| | <u>\$15,000.00</u> |
- [14] I order that the respondent pay to the applicant the sum of \$15,000 by way of criminal compensation and that he pay the applicant’s costs of and incidental to this application as assessed on a standard basis.