SUPREME COURT OF QUEENSLAND

CITATION:	*Coconut v Coconut & Anor* [2002] QSC 369
PARTIES:	**WARREN MICHAEL COCONUT** (applicant) **v** **GREGORY COCONUT and JERRY COCONUT (deceased)** (respondents)
FILE NO/S:	SC 10969 of 2000
DIVISION:	Trial Division
DELIVERED ON:	13 November 2002
DELIVERED AT:	Brisbane
HEARING DATE:	14 August 2001, 27 October 2002
JUDGE:	Philippides J
ORDERS:	**1. That the Estate of Jerry Coconut (deceased) pay to the applicant Warren Michael Coconut the sum of $80,000 and the respondent Gregory Coconut pay to the applicant Warren Michael Coconut the sum of $72,000 by way of compensation for injuries suffered by the applicant by reason of the offence for which the respondents were convicted on 1 June 1998;** **2. That the amounts awarded to the applicant be paid by the respondents to the Public Trustee whose receipt for such money shall be sufficient discharge;** **3. That the applicant's costs be taxed as between solicitor and own client unless otherwise authorised or agreed to by the Public Trustee;** **4. That the Public Trustee pay to the solicitor for the applicant the said taxed or authorised costs on a solicitor own client basis out of any moneys received from the respondents, or any other person, pursuant to this order;** **5. That the Public Trustee hold the balance of such moneys as a separate trust fund on trust for the applicant.**
CATCHWORDS:	CRIMINAL LAW – COMPENSATION – where respondents convicted of attempted murder and grievous bodily harm – where applicant struck repeatedly on the head – where applicant suffered severe head injuries – where applicant sought compensation for pain and suffering and nervous shock – where compensation assessed under s 663B(1) of the *Criminal Code* – assessment of amount to be paid – joint offenders – whether payment may be ordered against each offender – where subsequent assault contributed

to injuries – whether compensation can be apportioned between assaults – whether applicant contributed to own injuries.

Criminal Code (Qld), Chapter 65A, s 663A, s 663A(b), s 663AA, s 663AA(1),(2) and (3), s 663B(1) and s 663B(2)
Criminal Offence Victims Act 1995, Part III, s 46(2)
Limitation of Actions Act 1974, s 5, s 10(1)(d)
Workers' Compensation Act 1916, s 14(1)(C), s 14(1)(C)(a)
WorkCover Queensland Act 1996, s 167, s 167(1)
WorkCover Queensland Regulation 1997, Schedule 2

Dunbar v Carapellotti & Anor [2001] QSC 101, SC No 2418 of 1995, 9/04/01, considered
Ford v Ford DC No 1634 of 2002, 3/5/02, considered
Freeman v Grahame & Ors [2001] 2 Qd R 406, applied
Hedge v Suncorp Insurance & Finance Appeal No 4911 of 1996, 7/11/97, considered
Hendry v Llorente [2001] 2 Qd R 415, cited
Jacob v Roberts [2002] QCA 87, Appeal No 10194 of 2001, 21/03/02, cited
Jones v Coolwell [2001] QSC 130, SC No 10969 of 2000, 4/05/01, considered
Josiah v Patterson SC No 10846 of 1999, 10/12/99, considered
McClintock v Jones (1995) 79 A Crim R 238, cited
Mott v Boggan & Fire and All Risks Insurance Co Ltd [1998] QSC 265, SC No 1209 of 1989, 12/11/98, considered
R v Chong; ex parte Chong [2001] 2 Qd R 301, cited
R v Ferguson; ex parte Matthews [1998] 2 Qd R 282, considered
R v Sainty [1979] Qd R 19, cited
R v Tiltman; ex parte Dawe [1995] QSC 345, SC No 324 of 1995, 22/06/95, applied
Schelker v McColl Appeal No 9412 of 1996, 21/10/97, considered
Wenn v Richardson (1999) 22 SR (WA) 325, considered
Whyte v Robinson [2000] QCA 99, Appeal No 7292 of 1999, 28/03/00, cited

COUNSEL: A J Kimmins for the applicant
No appearance for the respondents

SOLICITORS: T Bailey for the applicant
No appearance for the respondent

PHILIPPIDES J:

The Application

[1] On 14 December 2000 Warren Michael Coconut ("the applicant") filed an application seeking compensation pursuant to s 663B(1) of the *Criminal Code* (Qld) ("the Code") for injuries he sustained as a result of the offences of attempted murder and grievous bodily harm committed on 21 August 1987 for which the respondents, the applicant's father and brother, were convicted and sentenced on 1 June 1988.

[2] The criminal compensation scheme applicable to injuries sustained as a result of the commission of a criminal offence prior to 18 December 1995 is governed by Chapter 65A of the Code. The offences were committed prior to the commencement of Part III of the *Criminal Offence Victims Act* 1995. Chapter 65A of the Code therefore applies, as if not repealed: see s 46(2) *Criminal Offence Victims Act* 1995.

[3] Section 663B(1) of the Code provides:

> "Where a person is convicted on indictment of any indictable offence relating to the person of any person or of more than one indictable offence relating to the person of any person (whether in respect of one indictment or more than one indictment) arising out of the one course of conduct or closely related courses of conduct of that person so convicted, the court, on the application by or on behalf of the person aggrieved by the offence or offences may, in addition to any other sentence or order it may make, order the person to pay to the person aggrieved a sum not exceeding the prescribed amount by way of compensation for injury suffered by the person by reason of the offence or offences of which the offender is convicted."

[4] On 18 July 1990 the respondent, Jerry Coconut, who was the applicant's father, died. At the time of his death he left no estate or will. The applicant's action survives the respondent's death: see *R v Chong; ex parte Chong* [2001] 2 Qd R 301.

[5] Although served with the application, there was no appearance on behalf of the respondent Gregory Coconut or the estate of the respondent Jerry Coconut on the hearing of the application.

[6] The offence occurred some 14 years ago. While no time limitation is specified in s 663B(1) of the Code, the application being characterised as "an action to recover a sum recoverable by virtue of [an] enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture" within the meaning of s 5 and s 10(1)(d) of the *Limitation of Actions Act* 1974, a six year limitation period would normally apply (see *R v Chong; ex parte Chong* [2001] 2 Qd R 301). The applicant states that he was unaware that he could bring an application until recently before the application was brought. The question of application of the *Limitation of Actions Act* 1974 is not a matter for the court to raise: see *Jacob v Roberts* [2002] QCA 87, 21/03/02. Accordingly, I proceed to assess the applicant's entitlement under the Code.

Background

[7] The applicant was born on 4 April 1970 and was aged 17 at the date of the offences. He is now aged 32. The applicant and the two respondents resided together at

Weipa South, Queensland. The respondents were the brother and father of the applicant.

[8] In his affidavit sworn 29 November 2000, the applicant states that he remembers "that a long time ago I had a fight with my father and my brother Greg and they hit me over the head with a stick, but I can't remember anything else. I remember that a long time ago I was in the Townsville Hospital and I was very sick and my head was sore. Before I went to Hospital I could speak well, but now I have trouble talking. … I have scarring on the left side of my shoulder blade, top of my [head] and right ear. … the injuries I received upon which I can presently comment are as follows:

(a) Severe head injuries;
(b) Scarred head;
(c) Scarred back;
(d) Scarred ear;
(e) Partial deafness;
(f) Post-Traumatic Stress."

[9] The circumstances of the offence were as follows. On 21 August 1987, witnesses were alerted to the sound of a disturbance taking place on Kwokanum Street, Weipa South. The witnesses observed the applicant lying on the ground with the applicant's father, Jerry Coconut, striking him hard repeatedly with a tent pole causing the pole to break. The applicant's brother, Gregory Coconut, then picked up a small post and commenced hitting the applicant with it. At this stage both respondents were striking the applicant. It was believed that the applicant was unconscious as both his hands were out in front of him and he was not moving.

[10] Whilst the assault was occurring the applicant's brother, Gregory Coconut, said words to the effect "I'll kill you, I'll kill you". A number of people then walked over towards where this assault was taking place. As they approached, the respondents dropped their sticks and walked away. The applicant was observed to be bleeding heavily from the left side of his face and ear and from his nose and mouth.

[11] The applicant seeks a global award for pain, suffering and loss of amenities of life, based on the following injuries:

(a) deafness in the left ear;
(b) a blood clot on the brain;
(c) palsy of the right hand;
(d) temporary loss of speech;
(e) a fractured skull;
(f) mild right lower leg weakness;
(g) brain damage;
(h) nervous shock.

Medical Evidence

[12] The applicant was taken by ambulance to the Weipa Hospital on 21 August 1987, but discharged on the same day. Dr Sainsbury, who treated the applicant at the

Weipa hospital, gave a statement in relation to the criminal trial of the respondents, in which he stated that:

> "… [the applicant] first presented to the casualty department of the Weipa Hospital on Friday the 21/8/87 at 2230 hours. He had been drinking heavily and stated that he had been kicked and beaten about the head with a piece of wood. At this time [the applicant] was abusive and threatening to casualty staff. He refused a full physical and X ray examination. He was discharged into the company of his brother and a Community Policeman to return if worried.
>
> Injuries noted at the initial examination were:
>
> (a) 2 cm laceration to right eyebrow;
> (b) Abrasion to forehead;
> (c) Bruising to left temple;
> (d) Clotted blood to left ear."

[13] The applicant's condition deteriorated and on 24 August 1987, the applicant was brought to the Weipa hospital. He was found to be deeply unconscious with a left subdural haematoma and a skull fracture in the left temple. Dr Sainsbury's report records the following injuries:

(a) 2 cm laceration to the right eyebrow;
(b) abrasion to the forehead;
(c) bruising to the left temple;
(d) clotted blood to the left ear;
(e) recent contaminated abrasion to the left third toe;
(f) old infected lesions to both knees and elbows;
(g) abrasion to the right shoulder.

[14] The applicant was evacuated by the Royal Flying Doctor Service to Townsville General Hospital. Dr Costello, Registrar at Townsville General Hospital, noted that the applicant was admitted to the intensive care unit. He was sedated and ventilated and underwent an emergency craniotomy to evacuate the left intracerebral haematoma and the left extradural haematoma. The applicant was observed as suffering from:

(a) an infected laceration above the right eye;
(b) a boggy haematoma in the left temporal region;
(c) a left extra dural haematoma;
(d) a left tempero-parietal intracerebral haematoma;
(e) a fronto-parietal depressed skull fracture.

[15] Following ventilation for three days, the applicant displayed a marked paresis in the right upper arm and mild weakness in the right lower leg, which according to Dr Costello, possibly would be permanent.

[16] The applicant was transferred to the Cairns Base Hospital on 4 September 1987 for rehabilitation. In a report from Dr Lee of the Cairns Base Hospital, it was recommended the applicant obtain physiotherapy for his right-sided weakness. The

applicant also received speech therapy for expressive and receptive speech problems, which had recovered by his discharge on 15 September 1987.

The Subsequent Assault in 1991

[17] On 16 February 1991, the applicant suffered further head injuries as a result of another assault, whereby the applicant was struck on the head with a long piece of wood. This later assault forms the basis of a separate application for criminal compensation. There is some difficulty in distinguishing the causes of the applicant's injuries as between the two assaults.

[18] Dr Altman, neurosurgical registrar with the Townsville General Hospital, in his report of 25 March 1991 observed that the applicant may have been hit over the head over his previous injury site and noted that difficulty would arise in determining how many of the applicant's deficits were "due to the second injury and how many were due to the first injury from which he did not ever fully recover".

[19] Dr Craig, a musculoskeletal physician, provided a report dated 5 March 2001, in which he dealt with this further incident:

> "[The applicant] sustained a depressed left parietal skull fracture and underlying extradural haematoma, confirmed on CT scan. [He] was admitted to Weipa Hospital prior to transfer to Cairns Base Hospital on 17 February 1991. He was then electively paralysed and intubated for transfer to Townsville General Hospital that same day, where the skull fracture was elevated and extradural haematoma drained. Post-operatively, he remained in intensive care for 2 days, was later transferred to the ward, and discharged back to Cairns based hospital on 25 February 1991. He was reviewed there by the speech therapist who detected moderate to severe expressive and receptive dysphasia. A physiotherapy assessment detected hypertonia on the right side of the body with decreased coordination of the right upper limb.
>
> There was also a history of prior admission to Townsville general hospital in 1988, following another assault, in which he sustained a depressed skull fracture of the left temporal parietal bone with an intracerebral parietal bleed on the left side. Craniotomy and evacuation of haematoma was performed and he was left with a mild residual right limb weakness.
>
> When I saw him on 30 November 2000 he claimed that following his 1991 assault, he lost the use of his right arm, with symptoms of hypertonia in the hand manifesting as a "closed fist". Clinically, I found expressive and receptive dysphasia and right-sided hypertonia consistent with the findings of the therapists in 1991. <u>It is now impossible to determine how much each assault has contributed to his current impairment.</u>

> There was also a recent history of hearing voices and self-mutilation, suggesting an emerging psychosis. It is difficult to say whether this is related to his serious head injuries, to his alcohol consumption, both, or unrelated to either.
>
> In summary, this 30-year-old man is the victim of a serious, life-threatening assault and is left with permanent disability and impairment in the right side of the body and possibly an organic brain syndrome." (emphasis added)

Psychiatric Assessment

[20] In relation to the applicant's psychiatric problems, consultant psychiatrist, Dr Curtis, prepared a report dated 9 November 2000, wherein he concluded that the applicant suffered chronic brain damage and accompanying hemiparesis, amounting to "a nervous/neurological shock of the most severe degree". Dr Curtis also diagnosed Chronic Organic Brain Syndrome, as a result of the assault, and reported symptoms of organic brain disease and accompanying functional psychosis. Dr Curtis noted signs of self-mutilation, partial paralysis on the right side of the applicant's body and deafness in the left ear. He also diagnosed the applicant as suffering Chronic Paranoid Schizophrenia, although this was in partial remission and it was unclear whether it was attributable to the assault.

[21] Dr Curtis provided a report dated 15 May 2002 in which he attempted to apportion the causes of the applicant's injuries between the two separate assaults. Dr Curtis was also of the view that "the 1991 injury might replicate … the effects of the [1987] injury" . However, he noted in his report that the assault in 1987 involved haemorrhage and death of cerebral tissue within the brain itself, while the 1991 assault resulted in a haemorrhage which was external to the brain. Dr Curtis was of the view that the 1987 incident was "much more severe in its effects short-term and long-term than the 1991 injury" and suggested an apportionment of 3:1 or 2:1 for the 1987 assault : 1991 assault.

Assessment of Compensation

[22] Compensation is to be assessed in accordance with the ordinary principles of assessment of damages for personal injury in civil cases and economic loss is recoverable. However, there is an upper limit applicable in all circumstances. That amount should be awarded if it is less than the compensation assessed: see *McClintock v Jones* (1995) 79 A Crim R 238 per Fitzgerald P at 242. Compensation should be awarded for all of the injuries sustained by the applicant as a result of the attack: *R v Sainty* [1979] Qd R 19.

[23] The prescribed amount or upper limit is relevantly specified by s 663A and s 663AA of the Code to be:

> (a) where an injury suffered by reason of the offence is the same or substantially the same as an injury specified in the table set forth in s 14(1)(C) of the *Workers' Compensation Act* 1916, the amount specified for that injury in the table: see s 663AA(2) of the Code;

(b) where it is not the same or substantially the same, the amount specified in s 14(1)(C)(a) of the *Workers' Compensation Act* 1916, as varied: see s 663A(b) of the Code;

(c) where there are more injuries than one, the amount specified in s 4(1)(C)(a) of the *Workers' Compensation Act* 1916 as varied: s 63AA(3) of the Code; and

(d) in the case of mental or nervous shock it is $20,000: see s 663AA(1) of the Code.

[24] The references to s 14(1)(C) of the *Workers' Compensation Act* 1916 are to be read as s 167 of the *WorkCover Queensland Act* 1996 and Schedule 2 of the *WorkCover Queensland Regulation* 1997: see *Hendry v Llorente* [2001] 2 Qd R 415; *Whyte v Robinson* [2000] QCA 99, 28/03/00.

[25] It was submitted by counsel for the applicant that the effect of s 663AA(1) of the Code is merely to limit compensation for the "mental or nervous shock" component to $20,000 and not to impose a $20,000 cap on the total amount of compensation, if a claim for "mental or nervous shock" is made in conjunction with other physical injuries. Although, in the latter case, it was submitted the total award, including the component for "mental and nervous shock" cannot exceed the prescribed amount.[1] Those submissions are clearly correct.

[26] The upper limit or prescribed amount is the amount stated in s 167(1) of the *WorkCover Act*, being $121,005.

[27] Where multiple accused are involved in the commission of one or more offences upon an applicant, different considerations arise. In *Freeman v Grahame & Ors* [2001] 2 Qd R 406, de Jersey CJ stated:

> "[1] It is well established that where joint offenders inflict injury upon a victim of their crime, the court may, under s 663B of the *Criminal Code* (if applicable), order each offender to pay, by way of compensation, an amount not exceeding the prescribed maximum. See, on a comparable South Australian provision, *In Re Poore*; *In Re Scully and Scully* (1973) 6 SASR 308, 312, 315-316; and in relation to s 663B itself, *R v Wraight and Dakin*; *ex parte Fullerton* [1980] Qd R 582 and *R v Bridge and Madams; ex parte Larkin* [1989] 1 Qd R 554, 556-557.
>
> ...
>
> [3] What is not expressly established is whether, in the case, say, of equally culpable offenders, the court may legitimately order an amount equal to the prescribed maximum against each, where that maximum is less than

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[1] Counsel relied on *R v Farrell; Ex parte Farrell* SC No 2985 and 2196 of 1992, unreported, 13 July 1992 per Mackenzie J; and *Re MJ Hudson* SC No 358 of 1992, unreported, 26 August 1992 per Shepherdson J. *R v Bridge and Madams; Ex parte Larkin* [1989] 1 Qd R 554 was said to be distinguishable, because in the circumstances of that case, compensation for suffering, loss of amenities and loss of earnings, past or future, arose only out of the nervous or mental shock, which was the form of injury suffered.

> the civil damages to which the victim would be entitled, but the aggregation of the amounts ordered would exceed the amount of those civil damages.
>
> [4] *In Re Poore*, supra, decided on comparable legislation, would suggest that the amount assessed for civil damages should in such a case be divided equally between the co-offenders, and the amounts so obtained ordered against each, provided that no amount so ordered exceeds the prescribed maximum.
>
> [5] That is in my view the correct approach, acknowledging that the section provides for the payment of such sums "by way of compensation for injury suffered".
>
> [6] In other words, the total amount of compensation should be calculated by adopting the ordinary civil damages approach. The comparative degrees of responsibility of the respective joint offenders should then be assessed, and their respective "shares" of the compensation calculated accordingly. If, in any case, the amount calculated exceeds a prescribed maximum amount, then only that maximum amount may be ordered against that offender. But otherwise the amounts ordered are those calculated in that way. That would result, were the orders met, in the applicant's being "compensated", subject only to the statutorily imposed limitation on the maximum amount for any one offender. This approach reflects the legislative intention implicit in the provision."

[28] In considering what compensation should be made, regard must be had to the following claims:

(a) general damages including:

(i) deafness in left ear;
(ii) blood clot on brain;
(iii) palsy of right hand;
(iv) temporary loss of speech;
(v) fractured skull;
(vi) mild right lower leg weakness;
(vii) brain damage.

(b) nervous shock;
(c) pain, suffering and loss of amenities.

[29] It is appropriate to award a global figure for pain, suffering and loss of amenities of life. There is no claim for special damages (the applicant being treated under the Public Health System) or future out of pocket expenses. I make no allowance for economic loss, nor for any *Griffith v Kerkemeyer* component. On behalf of the

applicant it was submitted that an award of $242,000 was appropriate in relation to the 1987 assault.

[30] Counsel has referred to a number of quantum cases as a guide in this case, in particular:

1. *Ford v Ford* DC No 1634 of 2002, 3/5/02, where the respondent struck the applicant in the head with a hammer, resulting in a permanent depression in the skull with a neurological sequelae and nervous shock. An award of $100,000 was made.
2. *Josiah v Patterson* SC No 10846 of 1999, 10/12/99, which concerned two separate offences, the first a rape with severe injuries to the genitalia area as well as severe head injuries, and the second being an unlawful wounding where the respondent severely beat the applicant around the head with an iron tool until she was unconscious. The applicant was shown to suffer from an organic brain defect with an allied organic personality problem. An award of the maximum amount of $121,000 was made in respect of each offence.
3. *Hedge v Suncorp Insurance & Finance* Appeal No 4911 of 1996, 7/11/97, where as a result of a motor vehicle accident the plaintiff suffered severe brain damage, leaving the plaintiff with persistent physical and mental disability, including a gross speech defect, clumsiness of hand movements, impaired balance, difficulty in swallowing, and right-sided weakness affecting the face, arm and leg due to damage to the left hemisphere of the brain. An assessment of $150,000 was made in respect of pain and suffering and loss of amenities.

[31] In addition, I note the following quantum cases:

1. *Mott v Boggan & Fire and All Risks Insurance Co Ltd* [1998] QSC 265, SC No 1209 of 1989, 12/11/98, where the plaintiff suffered severe head injuries in a motor vehicle accident, which left him unable to walk, crawl or talk. Pain and suffering and loss of amenities was assessed as $100,000.
2. *Schelker v McColl* Appeal No 9412 of 196, 21/10/97, where the plaintiff suffered head injury with a depressed right parietal skull fracture with underlying extradural haematoma and cerebral contusions, as well as right brachial plexus injury, fractured right humorous and abdominal injuries. General damages of $80,000 were awarded.
3. *Dunbar v Carapellotti & Anor* [2001] QSC 101, SC No 2418 of 1995, 9/04/01, where the plaintiff suffered severe head injuries when struck by a car, involving multiple intracerebral shearing haemorrhages of the deep right hemisphere, diffuse cerebral oedema, a fracture of the left radial head, fracture of the right superior pubic ramus and fracture of the right mandible. He was in a coma for approximately 5 months and suffered permanent serious neurological impairment. He was left with an inability to communicate verbally for more than a year, limited short and long term memory, severe slurring dysarthria, very little use of the right arm and weakness in both legs. General damages were assessed at $200,000.

[32] Assessment in this case is made more difficult because of the complicating factor of the second attack in 1991. Counsel referred me to the decision of Lee J in *R v Tiltman; ex parte Dawe* [1995] QSC 345, SC No 324 of 1995, 22/6/95, which

concerned assessment in the context where a single indivisible injury results from two offences. In that case, Lee J held that:

> "if … the offences of which the respondent was convicted made a material contribution to the applicant's injury then, unless the respondent is able to separate the effects of the compensable and non-compensable conduct on the applicant with some reasonable measure of precision, the applicant is entitled to have his compensation assessed in respect of his whole injury."

[33] There is in this case some medical evidence as to the appropriate apportionment to be made in respect of the 1987 and 1991 offences, in that Dr Curtis suggested an apportionment of 3:1 or 2:1. However, I note that Dr Craig considered it impossible to determine how much each assault had contributed to the applicant's current impairment. Accordingly, in this case, I find that the approach taken by Lee J in *R v Tiltman; ex parte Dawe* (supra) is applicable. The applicant is entitled to have his compensation assessed in respect of his whole injury.

[34] The appropriate compensation payable in this case in respect of the applicant's injuries, according to the principles of assessment of damages for personal injuries, is $160,000. I find that the respondents were equally culpable. The amount of $160,000 should, in accordance with the principles in *Freeman v Grahame & Ors* (supra), be divided equally between the co-offenders. That would result in an order of $80,000 against each, save for any reduction due to contribution by the applicant.

Contribution by the Applicant

[35] According to s 663B(2) of the Code, the court must have regard to any behaviour of the applicant which directly or indirectly contributed to his injury. There is some evidence that the applicant may have provoked the respondents and thus directly or indirectly contributed to his injury.

[36] In his sentencing remarks concerning the respondent, Gregory Coconut, the learned sentencing judge, while not specifically addressing this issue, made the following comments:

> "Even though what [the applicant] did was wrong, you went too far in hitting him on the head like this.
> …
> It is because you have a reasonably good background, that you haven't committed any serious offence in your life and because there was provocation by your son, that I have given you this chance, that I have not sent you to gaol."

[37] I note that the submissions made by counsel on sentencing and the statements given to police by the respondents are unavailable.

[38] As regards the respondent, Gregory Coconut, a statement by Mr Giblet, a community policeman on duty on the night in question, records as follows:

> "Gregory came in the ambulance with me as well because he had a cut on his head. When I was in the ambulance I asked Gregory what had happened and he said, 'He picked on me first, he cracked me over the head with a louvre frame. Me and dad start chasing him up to Maria's house and then we start hitting him.' I didn't ask him any more about this fight and I left them at the hospital."

[39] A statement by Mr Cater, Detective Senior Constable, also records that one side of a metal louver frame was located on the footpath near the scene of the incident, which appeared to have splatters of blood on it. In addition, a Mr Budby, who witnessed the aftermath of the incident, gave a statement which recorded:

> "I see that Gregory and Jerry just walk away and leave Warren there. Just before Gregory and Jerry walk away I asked Gregory, 'Why did you hit him for?' He said, 'He hit me first'. After that he just walked up."

[40] Counsel for the applicant submitted that in respect of the respondent Jerry Coconut no contribution can be found as the available material only suggests a contribution on behalf of the applicant in relation to Gregory Coconut.

[41] In respect of the respondent Gregory Coconut, counsel submitted that I should not consider myself bound by any findings made at the time of sentencing the respondents so far as the issue of contributory conduct was concerned. Counsel referred to a number of difficulties in the evidence such as the fact that due to the nature of the assault the applicant is unable to shed much light on the incident because of his poor memory. Further, there was no evidence at the hearing of the application on behalf of the respondents. In addition, it is not clear what the time interval between the contributing conduct and the attack on the applicant was.

[42] Counsel referred to *Wenn v Richardson* (1999) 22 SR (WA) 325 in support of the submission that only a small reduction is warranted, given the grossly disproportionate response of the respondents, and contended for a reduction of between 10 % and 15 %. This approach is supported by *Jones v Coolwell* [2001] QSC 130, 4/05/01, where the applicant contributed to his own injury by assaulting the respondent, whose reaction of severely stabbing the applicant was so grossly disproportionate that the court found that only a small adjustment was warranted and discounted the award by 15 %.

[43] In the circumstances, I find there is insufficient evidence to warrant any reduction for contribution in respect of the respondent Jerry Coconut. In respect of the respondent Gregory Coconut, while there are difficulties with the paucity of the evidence, a discount is still warranted. The appropriate discount is one of 10 %. In the case of the respondent Gregory Coconut, the award to be paid is the amount of $80,000 reduced by 10 %, making $72,000.

The Award

[44] In respect of the respondent Jerry Coconut, his Estate is ordered to pay the amount of $80,000. In respect of the respondent Gregory Coconut, he is ordered to pay the amount of $72,000.

[45] Given the applicant's disabilities, it is appropriate that an order be made that the Public Trustee administer any amount paid.

[46] I therefore order that:

1. The Estate of Jerry Coconut (deceased) pay to the applicant Warren Michael Coconut the sum of $80,000 and the respondent Gregory Coconut pay to the applicant Warren Michael Coconut the sum of $72,000 by way of compensation for injuries suffered by the applicant by reason of the offence for which the respondents were convicted on 1 June 1998;
2. The amounts awarded to the applicant be paid by the respondents to the Public Trustee whose receipt for such money shall be sufficient discharge;
3. The applicant's costs be taxed as between solicitor and own client unless otherwise authorised or agreed to by the Public Trustee;
4. The Public Trustee pay to the solicitor for the applicant the said taxed or authorised costs on a solicitor own client basis out of any moneys received from the respondents, or any other person, pursuant to this order;
5. The Public Trustee hold the balance of such moneys as a separate trust fund on trust for the applicant.