

SUPREME COURT OF QUEENSLAND

CITATION: *Morrison v Lester* [2006] QSC 375

PARTIES: **ALISDAIR MORRISON**
(applicant)
v
JIM LESTER
(respondent)

FILE NO/S: BS 8257 of 2006

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 13 December 2006

DELIVERED AT: Brisbane

HEARING DATE: 8 December 2006

JUDGES: Mackenzie J

ORDER: **It is ordered that the respondent pay the applicant \$24,000 compensation for the injuries suffered by the applicant because of the offence of attempted murder committed against him by the respondent on 25 December 2001.**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – ORDERS FOR RESTITUTION AND COMPENSATION – QUEENSLAND – where the respondent was convicted at trial of attempted murder – where the applicant suffered multiple injuries to face, scalp, legs and shoulder – where the applicant seeks criminal compensation for physical and psychological injuries sustained

Criminal Offence Victims Act 1995 (Qld) s 25(4)(b), s 25(7), Sch 1.

COUNSEL: B W Farr for the applicant
W L Hampton for the respondent

SOLICITORS: Lowes & Co Solicitors for the applicant
Quinn & Scattini Lawyers for the respondent

- [1] **MACKENZIE J:** This is one of the rare instances of an application for criminal compensation where a respondent is represented by a legal advisor and contests certain aspects of the applicant's claim. The respondent was convicted at trial of attempting to murder the applicant. The applicant and the respondent's estranged wife were camping at Woodgate when the respondent drove into the camping area, drove to where they were camping and got out of his vehicle in which he had his two sons.
- [2] I assessed what happened next in the following way in my sentencing remarks. The incident seemed to have started verbally and deteriorated quickly into physical combat instigated by the prisoner, followed by use of a knife and then tent poles. The jury's verdict implied that the respondent was the aggressor.
- [3] The knife was not taken to the site by the respondent but was one at the camp site which was picked up by him and used to stab the applicant until it broke. My sentencing reasons do not set out all of the facts in detail but there is a concise summary of them in the reasons of Davies JA in the Court of Appeal [2004] QCA 34.
- [4] Section 25(4)(b) *Criminal Offence Victims Act 1995* (Qld) governs all of the categories of the applicant's claim. Section 25(7) requires everything relevant to be taken into account in deciding whether compensation should be ordered and if so, what amount. It was submitted for the respondent that there should be some reduction, essentially because the applicant engaged in a verbal exchange and then physical combat with him before the knife was used. I reject that it is demonstrated that there was any behaviour of the applicant that directly or indirectly contributed to his injury within the meaning of s 25(7). Any physical involvement on his part was essentially defensive against an attack launched on him by the respondent.

Applicant's injuries

- [5] The applicant suffered a three centimetre wound to the face near his left eye and continuing across his cheekbone, a six centimetre stab wound to the bone in his left leg, cuts to his toes, swelling in several places on his scalp, bruising to the left side of the neck, which led to a very large swelling, bruising to his back, and a V shaped laceration to his forehead. These were uncontentious. The only claimed injury that was contentious was what was described as a soft tissue injury to his left shoulder.
- [6] The facial wound had to be extended to facilitate evacuation of a very large blood clot. Veins had to be clipped and eventually 31 stitches were required to close it. This left a scar 15 to 20 centimetres long that, according to the photographs tendered, remains obvious.
- [7] The leg wound required seven stitches and the forehead wound was also stitched. Glue was used to close the wounds to his toes.
- [8] The applicant also complained of pain radiating from the left side of his neck to the shoulder and numbness in the neck which, in the absence of any observable physical cause, an orthopaedic surgeon Dr Bartlett attributed to soft tissue injury. The

applicant deposes to ongoing loss of sensation and discomfort which requires massage and acupuncture approximately twice a month.

- [9] The respondent submits that a specific injury to the shoulder had not been proved. It was pointed out that there is no medical evidence of the nerve damage claimed by the applicant. Nor is there any report of an injury to the left shoulder in the records of either of the hospitals at which the applicant was treated after the event. (The reference to nerve damage may have been generated by the applicant's GP's opinion, stated in his referral letter to Dr Bartlett, that there was "presumed nerve damage". That letter was apparently written no later than three months after the incident.) There was evidence, however, that there had been bruising to the left side of the neck. The fact that the pain was described as radiating from the neck to the shoulder reduces the significance of any report of injury to the shoulder itself. The fact that it was being investigated within three months of the incident limits the possibility that the symptoms claimed may have been unconnected with the incident and enhances Dr Bartlett's opinion that it was likely that the assault caused it. On the balance of probabilities, I am satisfied that the discomfort is due to soft tissue injury apparently caused during the incident, but is not properly to be understood as a shoulder injury within the meaning of the compensation table in Schedule 1 of the Act. The applicant did not suggest it was, but included it in the bruising/lacerations category.

Mental/Nervous shock

- [10] The applicant deposes that he suffered a nervous breakdown at work, caused as a result of delayed reaction to the incident and was on antidepressants for a few months but decided to cease taking them. About a year after that incident, his partner, the respondent's estranged wife, was murdered. He deposes that as a result of that incident and for other reasons he relocated his home and changed his occupation. He says that he has now retrained in a completely different area and has been required to establish himself with new friends in a different community.
- [11] According to a psychological report prepared by Mr Stoker, a history was given of fear and flashbacks in the weeks after the incident, which had subsided but were prone to flare up if triggered by news reports of domestic violence. He also felt a sense of disempowerment. Mr Stoker described him as having suffered from post traumatic stress disorder. However, he had a fair prognosis. Mr Stoker believed that the applicant's psychological health would improve with counselling and passing of time, although the applicant would retain a significant degree of suspicion and fear of further assault. In his opinion, the applicant suffered a severe form of mental and nervous shock at the time of the assault but his psychological health had improved. At the time of the report in June 2005, he was suffering from a moderate degree of mental and nervous shock and his percentage impairment was in the mid to lower level of the moderate range.
- [12] It was pointed out for the respondent that personality testing showed the applicant had a neurotic introverted personality. It was submitted that he had not been in meaningful relationships prior to the incident. However, that is debatable since his history shows he had various serious relationships, although they never reached de facto status. It was also said that there was no record of the applicant seeking or

accessing treatment for nervous shock between 25 December 2001 and 26 June 2005. However, the applicant does depose to the fact that he was on antidepressants for period until he gave them up.

- [13] There was also an issue about the effect that the death of the respondent's estranged wife had on the psychological opinion. That was the subject of a clarification by a recent specific comment from Mr Stoker to the effect that his assessment of the applicant's mental and nervous shock as being in a moderate degree and his percentage impairment being in the mid to lower level of the moderate range was referable only to the assault and was not related to the subsequent death of the woman.
- [14] The applicant contends for 15 per cent which is the middle of the moderate range. The respondent contends for five per cent. In my view, it falls within the moderate range but not quite as high on the scale as the applicant submits. In my view, 12 per cent is more appropriate. Accordingly \$9,000 will be allowed.

Bruising/lacerations

- [15] The applicant claims for this category on the basis of minor to moderate bruising and lacerations which, despite the reference to five per cent in the written submissions, would place it in the one per cent to three per cent range in the table in Schedule 1. There is, of course, a separate component sought for stab wounds and for that reason the component will not include them but will be calculated by reference to the other bruising and lacerations. The respondent concedes, in the written submissions, three per cent but that seems to be conceded in the context of the issues raised with respect to the stab wounds. Leaving aside the matters in respect of which separate compensation will be awarded for that item under the table, three per cent is in my view an appropriate assessment, being a borderline between moderate and severe categories in the table. It must be borne in mind that there was significant force used and the bruising would have been more than minor.
- [16] The respondent's submissions with respect to the shoulder discomfort and my conclusions as to that have been referred to previously. Since the orthopaedic opinion is that it is due to soft tissue injury and the general practitioner's comment about nerve damage is merely a hypothesis at highest, it should fall more comfortably within the category of bruising rather than form a separate category of compensation which requires fracture or loss of use of the shoulder. Accordingly \$2,250 will be allowed for this category.

Stab wounds

- [17] The applicant places this in the middle of the range (eight per cent to 16 per cent) of the moderate classification. The respondent effectively submits that there should be no separate award for this category, the facial wound being picked up by the facial disfigurement category. It is, of course, necessary not to overcompensate by including matters in more than one category. However, the facial wound which, apart from the fact that it ultimately left residual scarring, caused significant bleeding that led to the complications which required enlargement of the scar. It

was a significant wound in its own right. There was also a deep stab wound to the leg to be taken into account. I am satisfied that an award in the middle of the moderate range of stab wounds is justifiable on the facts. \$9,000 will be allowed.

Facial disfigurement/bodily scarring

- [18] The applicant contends for award of five per cent, placing it in the minor/moderate category (two per cent to 10 per cent). The respondent proposed five per cent, but on the basis previously described. In addition to the immediate complications caused by the face wound which resolved after treatment necessitating enlargement of the wound by the medical practitioners treating it, the applicant has been left with an obvious scar which impairs his appearance. I am satisfied that placing it just below the mid point of the minor to moderate range is appropriate. \$3,750 will be allowed.

Amount of award

- [19] The award therefore consists of the following:
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|----------------------|--------------------|
| Bruising/lacerations | \$2,250.00 |
| Stab wounds | 9,000.00 |
| Facial disfigurement | 3,750.00 |
| Mental/nervous shock | 9,000.00 |
| Total | \$24,000.00 |

Order

- [20] It is ordered that the respondent pay the applicant \$24,000 compensation for the injuries suffered by the applicant because of the offence of attempted murder committed against him by the respondent on 25 December 2001.