

1.12/94

ADMINISTRATIVE APPEALS TRIBUNAL

SMITH v CCT

Mr Dillon

5 January 1994

THE APPLICANT WAS A SIGNALS ASSISTANT WHO WITNESSED A PERSON BEING MURDERED ON A TRAIN. AS A RESULT, THE APPLICANT SUFFERED POST TRAUMATIC STRESS DISORDER. AWARD: \$4500 PLUS COSTS.

"... [4] Although clearly the conduct of Towns constituted a "criminal act" within the meaning of the *Criminal Injuries Compensation Act* 1983, it is necessary for me to consider whether the Applicant can be said to have been a "victim" within the meaning of the *Criminal Injuries Compensation Act*. In *Fagan v Crimes Compensation Tribunal* [1982] HCA 49; (1982) 150 CLR 666; (1982) 42 ALR 511; 56 ALJR 781 the High Court unanimously upheld an Appeal from the Full Court of the Supreme Court of Victoria which had, by majority, decided that under the *Criminal Injuries Compensation Act* 1972 (the predecessor to the Act now under consideration) that the five year old son of a mother who had been stabbed to death in her home was not entitled to compensation in the circumstances of that case because he was not a victim as defined in the Act. The Full Court had decided the Tribunal could only award compensation to the "direct" or "immediate" victims of crimes. By Section 3(1) of the 1972 Act, in order to be compensable, an injury had to have occurred "by or as a result of a criminal act". The High Court in upholding the Appeal from the Full Court decided that in construing the words "by or as a result of a Criminal Act" the tortious notion of remoteness had no part to play. In *Newitt v Crimes Compensation Tribunal* – Smith, J. President Administrative Appeals Tribunal 19/9/1990 held that all that was necessary in order for an Applicant to succeed was to satisfy the Tribunal that there has been a causal connection between the criminal act and the "injury". I am satisfied that in this case the Applicant is a "victim" within [5] the meaning of the *Criminal Injuries Compensation Act*.

The report of Mr McLachlan and Dr. Kelly both express the opinion that although the Applicant had suffered stress from his exposure to the incident, he had not suffered a post traumatic stress disorder. Mr Watson-Munro in his report dated the 29th September, 1993 and in his oral evidence before me stated that the Applicant was suffering from a post traumatic stress disorder, that the condition had reached the chronic stage and that the Applicant would benefit from ongoing treatment for this condition. In his report Mr Watson-Munro specifically referred to the opinion of Mr McLachlan that the Applicant was not suffering symptoms consistent with a diagnosis of post traumatic stress disorder as contained in and referred to in the *Diagnostic and Statistical Manual of the Psychiatric Association*, Third Edition, Revised, and known as the "DSM3", (it appears this work is the standard classification for psychiatrists and provides a number of criteria for the diagnosis of "Post-Traumatic Stress Disorder") and stated that he disagreed with the opinion of Mr McLachlan.

On the basis of the medical evidence before me I am satisfied that the Applicant as a result of the incident on the 1st May, 1991 did suffer a post-traumatic stress disorder and that such a disorder is "an injury" within the meaning of the *Criminal Injuries Compensation Act* and accordingly the Applicant is entitled to compensation as provided in Section 18 of the *Criminal Injuries Compensation Act*.

The principles applicable to the nature of compensation to be awarded under the Act have often been stated by reference to the Decision of *Fagan v Crimes Compensation Tribunal* [1981] VicRp 84; (1981) VR 887 at 889 where Anderson J stated -

"The purpose of the Act as I see it is not to award damages of a kind comparable or analogous to damages which an injured party, as a Plaintiff, might seek and recover from a tortious wrongdoer, but to give to the victim of a criminal act or omission some *solatium* by way of compensation out

of the public purse for the injuries sustained, whether or not the culprit is brought to book, and whether or not the culprit might otherwise be liable to the victim".

Anderson J went on to state -

"The payment of compensation on the basis contemplated by the Act is unknown to the [6] Common Law, and the measure of damages is not determined by the gravity of the injuries – that is, it is not proportionate to the injuries sustained, for there is a statutory limit ... which in many cases will fall far short of the amount which an injured person would be entitled to recover at common law. There is no suggestion in the Act that common law principles governing liability and damages, or any principles analogous thereto are to apply".

The "statutory limit" prescribed as at 1st May, 1991 was \$20,000. I am satisfied on the evidence that an appropriate Award of Compensation for pain and suffering is the sum of \$4,000. Should the Applicant undergo future treatment, application for reimbursement of treatment expenses could be made in due course to the Crimes Compensation Tribunal.

Accordingly the Tribunal sets aside the Decision of the Respondent and determines that the Applicant be paid the sum of \$4,000.

Costs

It appears the following disbursements have been incurred -

Mr T. Watson-Munro report	\$150.00
Witness expenses	\$300.00
Mrs. Debbie Joy Smith witness and travelling expenses	\$100.00

So far as the question of professional costs is concerned it is appropriate at this stage to make reference to the fact that the Reasons for Decision of the Crimes Compensation Tribunal indicated that the Tribunal had dismissed the Application on the basis that the Applicant had not suffered a post-traumatic stress disorder and accordingly had not suffered an "injury" within the meaning of the *Criminal Injuries Compensation Act*.

It is significant that the Crimes Compensation Tribunal did not have available the oral evidence and written report of Mr Watson-Munro. I am of the view that whilst an Order for Disbursements in relation to medical reports and witness fees totalling \$550 should be made, [7] professional costs should be fixed in the sum of \$1,200 including Counsel's fees. Accordingly I order that costs be fixed in the sum of \$1,750 and be paid by the Respondent to the Applicant."
