

1.15/94

ADMINISTRATIVE APPEALS TRIBUNAL

TURFREY v CCT

Mrs Cooney

22 October 1993

THE APPLICANT'S 19 YR-OLD DAUGHTER HAD BEEN RAPED AND MURDERED. AS A RESULT, THE APPLICANT SUFFERED POST-TRAUMATIC STRESS DISORDER. AWARD: \$12,500 PLUS COSTS.

"[1] This is an application to review a decision of the Respondent refusing to make an award of compensation under the *Criminal Injuries Compensation Act* 1983 ("the Act"). The Applicant is a Police Officer who sought an award from the Crimes Compensation Tribunal for Post-Traumatic Stress Disorder he suffered following the rape and murder of his nineteen year old daughter Jodie at Croydon on Friday 19 July 1991.

The Crimes Compensation Tribunal ("CCT") declined to make an award stating it was not satisfied that Turfrey had sustained a compensable injury (that is, a recognised mental illness as defined by section 3 of the Act). The Magistrate found that Turfrey had suffered a moderate to occasional severe distress reaction, but not a recognised mental illness, namely a Post-Traumatic Stress Disorder. The Application had been presented by way of documentary evidence only. When the Magistrate indicated that he was not satisfied with that evidence, the Applicant's solicitor sought an adjournment for witnesses to be called. That application was refused. At the hearing before the Administrative Appeals Tribunal I had the benefit of evidence from the Applicant (who is a detective of police stationed at Warragul CID) and his superior officer Detective Sergeant Keith Robin Gilbert. I also had the benefit of further medical reports obtained since the CCT hearing. Turfrey's treating doctor (Dr. Fogarty) provided a further report dated 29 March 1993. This included a copy of the accepted diagnostic criteria of Post-Traumatic Stress Disorder taken from the *Diagnostic and Statistical Manual of Mental Disorders*, 3rd Edition (R) Washington, D.C.; American Psychiatric Association (DSM-III-R). Dr. Fogarty identified Turfrey's symptoms which substantiated a diagnosis of Post-Traumatic Stress Disorder. Dr. Fogarty also pointed out that the Magistrate had misinterpreted his report of 17 September 1992. He had doubted a link between the Applicant's high blood pressure [2] and his daughter's death, but had not questioned the link between his stress problems and Jodie's death. Mr John A. Reeves, Counselling Psychologist provided a further report dated 18 March 1993 also detailing Turfrey's symptoms which substantiated the currently accepted criteria for Post-Traumatic Stress Disorder. He said "My own analysis of his previous and continuing symptomatology is that it at least fulfils the minimum criteria for determination of a PTSD diagnosis. Certainly his continuing high level of depressive and anxiety symptoms are sufficient to indicate significant psychological dysfunction".

A report dated 5 January 1993 from Dr. David W. Bruce, Forensic Psychologist, was also provided. He concluded that Turfrey was suffering from a very significant degree of Post-Traumatic Stress Disorder, and also identified the symptoms which satisfied the diagnostic criteria of Post-Traumatic Stress Disorder. Those reports were provided earlier this year (nearly two years after Jodie's death) when Turfrey was still feeling stressed all the time, having great difficulty in concentrating, had lost enthusiasm for his police work, strain on his marriage, sudden feelings of panic and nightmares and flashbacks and outbreaks of sweating, sleeplessness, irritability. He still dreamt about Jodie and had very frequent intrusive thoughts about what happened to her. The Respondent did not provide any contrary evidence and I have no hesitation in finding that Turfrey has suffered a compensable injury pursuant to section 3 of the Act, namely a Post-Traumatic Stress Disorder.

The next issue is that of quantum. The Applicant told the Tribunal that he still suffered from the symptoms set out in Mr Bruce's report but to a lesser degree than before. He feels he is improving, although he is still unable to perform his work duties, particularly investigating crimes such as sexual offences. Detective Sergeant Gilbert gave evidence that Turfrey's demeanour [3]

and work performance had deteriorated since the death of Jodie. He seemed unable to interview suspects in matters involving rape or serious youth assault. Gilbert said he had discussed the matter with Turfrey. It was difficult to conduct a small four man station such as Warragul with one officer unable to perform all his required duties. He was aware that Turfrey had had quite a bit of counselling and medication over the last two years. This had improved but not cured his problems. He knew and approved of the fact that Turfrey had now sought a transfer to a desk job in Melbourne where he would not have to be involved in the investigating side of police work.

There are a number of factors to be taken into account in deciding an appropriate amount to award the Applicant for pain and suffering. One is the amount of other awards arising out of the same incident. One is the desirability of consistency in awards for the same type of injury. This is particularly relevant in claims made by each parent resulting from the death of their child. Another factor is whether the Applicant was directly injured in the criminal incident, or an indirect victim. High Court decided in 1982 in *Fagan's* case (150 CLR 666) that the Applicant did not have to be present at the scene of the crime to be entitled to compensation under the Act.

Mr Sizeland for the Respondent told the Tribunal that the Magistrate's CCT manual indicated awards between \$10,000.00 and \$20,000.00 were appropriate for Post-Traumatic Stress Disorder. There is an intrinsic difficulty in assessing an award for pain and suffering where a statutory limit applies. This difficulty was dealt with in *Cunningham v Crimes Compensation Tribunal* (1987) 1 VAR 400; and *Thomson v Crimes Compensation Tribunal* (1986) VAR 186. It is well established the correct approach is not to commence at the statutory maximum and work downwards from that figure. Instead one must find the extent of the pain and suffering suffered by the Applicant in each [4] case. Then bearing in mind there is a maximum figure, fix a proper award of compensation. Deputy President Forrest said in *Thomson's* case:

"Ideally it is desirable for there to be parity as between awards. However there are so many "imponderables" wrapped up in each individual case that often parity for the sake of apparent parity can only lead to injustice. Put another way, each case should be treated individually, should be considered individually on its own facts and a proper award brought in by the Tribunal's findings on those facts."

Counsel for the Applicant told the Tribunal that Jodie's mother (Turfrey's ex wife) was awarded \$12,500.00 for pain and suffering as a result of Jodie's death, in December 1991, five months after her daughter died. I have no knowledge of the evidence on which that award was based. However I do take into account the delays which have occurred in resolving the Applicant's claim. His illness has caused him pain and suffering for more than two years, without acknowledgment that he must be compensated for it.

The effect of the trauma was exacerbated by other factors:

- the inappropriate way Turfrey learned of Jodie's death from a police investigating officer who was seeking a suspect;
- the media reports which made much of the fact that Jodie's father was a policeman;
- although Turfrey refused media interview, Jodie's mother appeared on the "Hinch program" to complain that Jodie was her daughter too;
- her parents had disputed custody of Jodie since she was 2½ years old and the mother went to Australia leaving the children with Turfrey. After he obtained a custody order in 1987, Jodie's relationship with her father was very close.

[5] I accept that Senior Constable Turfrey has suffered greatly as a result of the horrific rape and murder of his only daughter more than two years ago. There are now some signs of improvement but he still cannot function effectively in his occupation at the Warragul C.I.B. and has had to seek a change of occupation. Taking all these factors into account I believe that it is appropriate to award the sum of \$12,500.00 compensation for the disability he has suffered as a result of this incident. In the result I set aside the decision of the Respondent and award the Applicant \$12,500.00 for pain and suffering. I further order that the Respondent pay the Applicant's expenses incurred as a result of the injury, amounting to \$760.00. The Applicant also sought an order for costs. No costs had been awarded at the hearing before the Crimes Compensation Tribunal.

I do not believe I am able to make any order for costs in relation to that hearing. Nevertheless the application to this Tribunal was a thorough and comprehensive one, including statements from eight witnesses, and a total of nine reports from four medical practitioners. In my view the number of witnesses statements was greater than was necessary. The Applicant sought reimbursement of disbursements, including the medical reports, of \$716.50. The Applicant's solicitor who had conducted his application before the Crimes Compensation Tribunal at Moe came from Moe to instruct at the hearing. I believe the usual practice of this Tribunal is to order costs on the County Court Scale A or alternatively fix an amount of costs. In the circumstances of the present case I believe it appropriate to fix the Applicant's costs at \$1,500.00 and I order that that amount be paid together with disbursements of \$716.50 and Counsel's fee of \$650.00."
