

1.1/94

AGUSTIN v CCT**ADMINISTRATIVE APPEALS TRIBUNAL****Deputy President Mr Galvin****16 November 1993**

THE APPLICANT CLAIMED COMPENSATION FOR PHYSICAL AND MENTAL INJURY SUSTAINED AS A RESULT OF AN UNLAWFUL ASSAULT ON HIM. THE PHYSICAL INJURY WAS A MUSCULO-LIGAMENTOUS STRAIN OF THE CERVICAL SPINE: AWARD: \$3000. THE MENTAL INJURY WAS POST-TRAUMATIC STRESS DISORDER. AWARD: \$4000.

".... [5] In cross-examination, the applicant said that the assailants had been arrested and charged and were subsequently sentenced to terms of imprisonment. He told the Tribunal that he and his family have often been the victims of racial abuse in the Traralgon area and that racial abuse had ruined his life. He said that he could not go out into the street without being abused. He was not able to lead a normal life because of it. He said that following the assault, it was even more difficult for him to walk in the street and he became hypertensive, hypersensitive and security conscious. He has continued to experience regular episodes of racial abuse and harassment including telephone calls to the house from those who were involved in the assault, knocks on the front door and threats even death threats. He said that the neck injury which he sustained in the assault is not improving and that nothing in that regard has changed. He [6] disagreed with Dr Jablonski's report that his ability to move his neck had improved and attributed the doctor's opinion to an attempt to encourage him to have a positive outlook. He said that he had injured his back on 3 August 1992 but that he had not experienced any improvement in his symptoms as a result of the injury in the assault before that time. He is unable to go out without company other than within the protection of a motor vehicle.

He still sees Dr Jablonski and is still on medication. He has trouble coping with himself and with his family. He has not participated in sport since the assault upon him and he has trouble facing people. His social life has suffered to the point of his perceiving that he has no social life whatsoever. He is currently attending a physiotherapist for his neck injury and alleges that the pain "is killing" him. He sees the physiotherapist once or twice a fortnight. Although the physiotherapist treats him for both neck and back, he concentrates on the neck. The applicant presented as having a stiff back and appeared to walk with difficulty. He spoke in a hushed manner, at times adopting a pathetic tone.

In his report dated 4 December 1992, Dr Jablonski concluded that as a result of the assault upon him, the applicant had [7] suffered a musculo-ligamentous strain of the cervical spine. He observed that his neck injury had caused ongoing pain "but mobility improved to 70% of normal". He added:

"The main necessity of the visits was to provide counselling for Mr Agustin for the anxiety/stress reaction to the assault and the sequelae of telephone and other harassment by the assailants".

The report concludes:

"Mr Agustin has had intermittent neck pain in the following months and has at times needed to use the collar again as well as prescribed analgesic medication".

In a further report dated 15 October 1993, Dr Jablonski said;

"My conclusion at the present time is that Mr Agustin has persisting mild impairment of neck function as a result of the original injury. In addition he is experiencing a prolonged post-traumatic stress reaction which, from his account is significantly restricting his social and family life".

Psychologist Gavin Hoare assessed the applicant on 27 July 1992. Having recorded his

experiences of racism and racial abuse over the period he had lived in the Gippsland region, he referred to the physical assault and continued:

"I believe that Mr Agustin is presently in a precarious psychological state. He is presently profoundly depressed, he exhibits physical phobic symptoms and he expresses negligible hope for any amelioration of his situation in the foreseeable future. [8] I am of the opinion that Mr Agustin needs both civil assistance to prevent the abuses referred to above, and a consistent program of psychotherapy, in order to stabilise his condition in the medium-term future".

Mr Hoare died some time after the preparation of the report. The applicant was referred to another clinical psychologist, Mr John Redman who assessed him on 10 March 1993 and who had regard to the reports of Mr Hoare and Dr Jablonski. His conclusion was:

"I believe that Mr Agustin has suffered a persistent mental disorder that has created extreme dissatisfaction and maladjustment in his makeup. The cultural differences would also have an impact on his integration into the community where there is considerable unwarranted antagonism towards his family. He would need considerable support and rehabilitation to overcome his disordered way of thinking in relation to the events that have occurred to him and renewing his confidence in himself and the future of his family".

Mr Redman found that the applicant exhibited "a high degree of emotional distress bordering on maladjustment". In his opinion, the maladjustment is due to "his pre-occupation with the assault and a sense of indignant anger, distraught worry and fear over what has happened to himself and his family". He assessed the applicant as having "a high degree of health concerns, in that he worried about recovery and being protected from the difficulty of racial abuse".

Mr Redman gave evidence to the Tribunal. He considers that the applicant is suffering from post-traumatic stress disorder brought on by the assaults upon him and his family. He is of the view that the applicant was able to cope with [9] the racial abuse and prejudice encountered prior to the assault but following the assault, lost the capacity to cope. He is uncertain as to his prognosis but is of the view that he is likely to suffer from the disorder for the rest of his life. He considers that the applicant's post-traumatic stress disorder fluctuates from moderate to severe.

A letter from the applicant's employer Latrobe Regional Hospital (Exhibit F) confirms that the applicant was absent on sick leave on the following occasions:

16/12/1991	5 Hours
19/1/1992 - 26/1/1992	29½ Hours
3/4/1992 - 4/4/1992	3½ Hours
20/5/1992 - 25/5/1992	25 Hours
25/6/1992 - 26/6/1992	9½ Hours
20/7/1992	7.2 Hours

The letter also indicates that the applicant commenced WorkCare on 3 August 1991. However, it was submitted at the hearing that this was a typographical error and that the date of commencement of WorkCare was in fact 3 August 1992. It was further submitted that the time lost from 16 December 1991 to 20 July 1992 was because of injuries sustained in the assault.

It is not in dispute that the applicant is the victim of a criminal act in that he was unlawfully assaulted on 6 July 1991 and suffered injury in consequence. The respondent awarded him the sum of \$1800 as compensation for pain and suffering arising out of his physical injuries. [10] From the further report of Dr Jablonski, it appears that the symptoms of neck injury incurred in the assault have continued to recur over a long period of time and still require medication. In the circumstances, I consider that the award of \$1800 was inadequate and I substitute for that sum the sum of \$3000 as compensation for pain and suffering arising out of the applicant's physical injuries.

Upon the evidence, I am satisfied that the applicant suffers from mental illness in the form of depression and post-traumatic stress disorder. I consider it more probable than not that, in part, his mental disorders are attributable to the alarming racial prejudice and abuse to which he and his family have been subjected since they have lived in Traralgon. Whatever the position was before the assault, it appears clear that the assault either seriously exacerbated or significantly

precipitated the applicant's post-traumatic stress disorder and depression to the extent that, whereas the applicant was able to cope prior to the incident, his capacity to do so drastically diminished thereafter.

I accept that in assessing compensation under the *Criminal Injuries Compensation Act* 1983, I am entitled to take account of the principle that the victim is entitled to be taken as found. I find that the applicant was a victim not only in respect of physical injury but also in respect of mental injury. Being guided by awards which have been made by this Tribunal [11] on previous occasions, I consider that a proper award for pain and suffering arising out of mental injury would be \$4000.

Accordingly, I vary the decision of the respondent in that I award to the applicant the sum of \$7000 for pain and suffering in lieu of the sum of \$1800. I order that the applicant be compensated for loss of income in respect of 79.7/10 hours at the rate of \$359.20 per week, that being the relevant weekly salary about which there was evidence given to the Tribunal. I order that the respondent pay the applicant's costs which (having regard to the fact that this matter was heard together with Application No 92/50749 in which the applicant is the applicant's de facto wife) I fix at \$1000. I further order that the applicant be reimbursed for the cost of medication, medical and psychologists' reports and witness fees reasonably and actually incurred. I grant liberty to the parties to apply in the event of any disagreement as to the amount of same."
