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## ADMINISTRATIVE APPEALS TRIBUNAL OF VICTORIA

**THOMPSON AND ORS v CRIMES COMPENSATION TRIBUNAL**

Judge Fagan P

5 November 1993

**CRIMES COMPENSATION – MURDER OF RELATIVE – INJURY SUFFERED – POST-TRAUMATIC STRESS DISORDER – "MENTAL DISORDER" – MEANING OF – WHETHER INJURY WITHIN TERMS OF DEFINITION: CRIMINAL INJURIES COMPENSATION ACT 1983, S3.**

Section 3 of the *Criminal Injuries Compensation Act 1983* ('Act') provides:

"injury" means—  
 (a) actual physical bodily harm;  
 (b) mental illness or disorder (whether or not flowing from nervous shock); .... "

**1. The words "mental disorder" in the definition of "injury" in s3 of the Act should be given their ordinary common sense meaning.**

***W v L* (1974) 1 QB 711, applied.**

**2. Where as a result of the murder of a family member, other members suffered post-traumatic stress disorder, it was open to conclude that they suffered "mental disorder", were injured within the meaning of "injury" and entitled to compensation as follows:**

<b>Son-in-law</b>	<b>\$10000</b>
<b>Grand-daughter aged 16 yrs.</b>	<b>\$7500</b>
<b>Grand-daughter aged 10 yrs.</b>	<b>\$5000, plus costs.</b>

**JUDGE FAGAN: [1]** These three matters are applications for review of three decisions of the Crimes Compensation Tribunal. Each of the decisions was made on 23 April 1993. In the case of each of the applicants, the decision was that the application for compensation be refused and that no award of compensation be made. Each of the applications for review come to the Administrative Appeals Tribunal pursuant to section 26(1)(a) **[2]** of the *Criminal Injuries Compensation Act 1983* and section 25 of the *Administrative Appeals Tribunal Act 1984*. The reason why the applicant in each case failed before the Criminal Injuries Compensation Tribunal was in essence that the evidence in each case did not satisfy the Tribunal that the applicant was a victim within the meaning of the Act or did not suffer an injury within the meaning of the Act because it was not satisfied the applicants suffered from 'mental disorder'.

Section 15 of the Act provides:

(1) The Tribunal may award compensation for expenses actually and reasonably incurred as a result of a victim's injury or death, including expense incurred through loss of or damage to clothing worn at the time of the injury".

Section 18 of the Act provides:

"The Tribunal may award compensation for a victim's pain and suffering, not exceeding an amount prescribed for the purposes of this section."

The amount prescribed for the purposes of that section is \$20,000 by reason of Regulation 19 of the *Criminal Injuries Compensation Regulations 1988* - Statutory Rule 294 of 1988.

**[3]** Section 18A provides:

"The total compensation awarded by the Tribunal to an applicant under this Act in respect of a victim's injury or death shall not exceed the amount prescribed for the purposes of this section."

Regulation 20 of the above mentioned regulations prescribes a total amount of \$50,000 for the purposes of that section.

The definition section of the Act, section 3 provides as follows:

"'Victim' means a person injured or killed in Victoria by the criminal act of another person, and includes ...."

"'Injury' means—

(a) actual physical bodily harm;

(b) mental illness or disorder (whether or not flowing from nervous shock); ...

(d) any combination of the foregoing arising from an incident or related incidents—  
but does not include ...".

The three cases were heard together and simultaneously. The evidence was tendered as common to each case and received without objection. [4] The applicants Jacqueline and Kelly were born respectively on 27 March 1976 and 26 October 1981. They are daughters of the applicant Neville who himself was born on 14 October 1945. The two girls are daughters of Neville and his wife Carmen who has brought her own application for criminal injuries compensation. All the applications arise out of the one set of circumstances. They arise out of the tragic murder of Teresa Zammit the grandmother of the applicant girls and the mother of Carmen on Saturday 18 January 1992. She was murdered in Altona at her matrimonial home by her husband Paul Zammit. Her throat was cut. She was battered around the face and stabbed many times in the body. She was discovered lying on the floor in blood with a knife sticking out of her vagina.

Paul Zammit was found on a bed in the house drunk and had tried to overdose on tablets. Paul Zammit who was a cleaner at a hospital apparently became deranged after accidentally pricking himself with a needle in the course of his work and I will say, thus becoming infected with AIDS. He was nevertheless convicted of murder and sentenced to imprisonment and ultimately suicided in custody on 9 June 1993. [5] Prior to the murder, the Thompson family had lived in Melbourne. They moved to Foster in South Gippsland in 1986. Neville and Carmen conducted a caravan park business there in partnership. They and the two girls lived in those premises until about Christmas 1992 when they moved into a nearby house in Foster. Neville and Carmen continued to conduct their business until the murder after which Carmen ceased fully active participation. After some hesitation, they have recently purchased the business.

The Zammit family was of Maltese-Italian origin. There was a particularly close relationship between the Zammits and the Thompsons until the murder. The applicant girls and their grandmother Teresa ere especially close. There was a particularly close relationship between the applicant father and his parents-in-law and in particular his mother-in-law Teresa, the girls' grandmother. The relationships were characterised especially by a particular affection between the girls and their grandmother. She regularly stays with the Thompsons at Foster and for relatively lengthy periods. On visits to Foster, Teresa Zammit was a friendly and happy assistant to Neville in the running of the Caravan Park business and a habit of good natured banter developed between them.

The Thompsons regularly visited the grandparents' home at Altona for family functions, birthdays and anniversaries [6] and, from time to time, the girls spent periods of the school vacations with Teresa Zammit at Altona. I find there was a particularly strong bond between each of Neville Thompson and the applicant girls on the one hand and Teresa Zammit. Neville Thompson came to learn of her murder while he and his wife were playing golf at Foster on Sunday 19 January 1992. An urgent message was passed to them. The wife immediately returned home where her sister Christine gave her some account over the telephone of what had happened. The husband followed home soon after. On his arrival, he found Carmen on the floor in a state of great distress, screaming, among other things, "What has my father done"? They both then drove to Altona where they found the Zammits' house sealed off by the police.

Confining myself to the situation of Neville Thompson, he, as a result of conversations with various relatives and others, gradually pieced together in his mind the details of what had happened. He had to identify the body of Teresa the next day. He saw the injuries and broke down. Soon after his own mental troubles began. These involved recurrent headaches, sweating, weeping, sleeplessness and disturbing nightmares. He took sleeping tablets. Whereas he previously slept well for a full eight hours, he could [7] now only sleep badly and for a short time. He began to

see mental flashbacks of the murder scene. That situation persisted for more than three months before commencing to improve. His local general practitioner was unable to help. Neville Thompson began to consult Evelyn Field, psychologist. He lost interest in his work and tended to neglect the business. He had difficulties with his concentration. Prior to the murder, he had been a well rounded active person. He was a regular and good golfer with a handicap of 9 at the local golf club.

Details of the murder became common knowledge in his community as a result of various media reports. He felt shunned and embarrassed in both the local community and the golf club. His golf and handicap fell away. There has not been much improvement as time has gone by and he still suffers sleeplessness, loss of concentration and has visions of the scene. His ability to cope with the problems of marriage has deteriorated and this worries him. He has become tense and over-protective of both wife and daughters leading to nervousness, agitation and family tension. He reacts badly to stress. He had great difficulty recently in coming to a decision to purchase the caravan park business. His problems have [8] resulted in difficulties in the relationship between husband and wife. It is fair to say that he has not shown much improvement over time and all his problems still persist and are likely to for some while. Mrs Field, a psychologist of some 17 years experience, assesses Neville Thompson as suffering from a post-traumatic stress disorder by reason of the murder. She reached this opinion by personal assessment and assisted by such guidelines as the American Diagnostic System "DSMIIIIR". She thought him to exhibit one or more of the indicia in all classes of characteristics for that disorder as described in that Diagnostic System. She regarded him as suffering from a serious disorder.

Jacqueline Thompson was 16 when her grandmother died. I have mentioned the close relationship which existed between the two. Jacqueline was going to school – Mary McKillop in Leongatha at the time. Her friends there had all learned of the details of the murder. They treated her awkwardly. She felt that the teachers did also. She felt isolated and that she had no friends there. She changed schools to one in Foster. She started to have sleeping problems and nightmares after being told of the death. These problems occurred perhaps twice a week. She could not think straight. She is worse [9] if the matter of the death is brought up. She is scared of being alone. She is petrified at night. Her studies have suffered. The two sisters comfort each other and talk about the event. Jacqueline is not really improving as yet. She is disillusioned now and has lost trust in people. Many everyday events reactivate her recollections of the murder. She has become moody, angry, argumentative and weepy. Her mother says that the girl could not come to terms with what had happened and that she simply refuses to stay at home on her own. She copes at school and has a boyfriend. Previously to the incident, she had not had these kinds of problems and she had thought her grandparents "were great". Mrs Field assesses her as suffering from post-traumatic stress disorder of some severity as a result of the murder which she expects to persist for many years.

Kelly was 10 years old when her grandmother died. She was told about the circumstances of the death by the family. She had previously had a loving relationship with both grandparents. She now finds it difficult to verbalise her feelings and she is frightened to be alone. She pursues company within the family. She dwells on what her grandfather has done. She complains to her mother of nightmares. She cries out during the night. She copes socially but will not talk about the family. She could not [10] cope with a school project concerning her family tree. Special alternative arrangements had to be made for her for that project. Whereas she was formerly quite independent, she now clings to her mother and sister. To date, she has not improved. Mrs Field assesses this girl as also suffering post-traumatic shock disorder by virtue of the murder. She finds it difficult to assess its severity which she thinks is not yet fully manifest. She thought the girl emotionally blocked and terrified. The girl feels that she is holding back a big secret. I think she will continue to suffer for some time to come. I should say that I do not think the applicants' problems are caused either by matrimonial problems between Mr and Mrs Thompson or by the applicants' own reactions to Carmen Thompson's problems or for that matter any other cause independent of the murder.

Turning my mind to section 3 of the Act, in my opinion each of the applicants was a person "injured ... by the criminal conduct of another" i.e. Paul Zammit, and was thus a "victim" within the meaning of the Act. The injury so sustained was in the case of each applicant of such a nature and degree as to amount to a "mental ... disorder" and thus falls within the meaning of "injury"

as defined in the Act. **[11]** In coming to this conclusion, I am particularly assisted by what was said in the judgments in *Fagan v Crimes Compensation Tribunal* (1982) 150 CLR 666 concerning the use of the words "victim" and "injury" in the Act as it then stood.

I am further assisted by the discussion of "mental disorder" appearing in the article titled '*Mental Illness*' in *Australian Legislation* by Michael Errington 1987 61 ALJR 182 (see also the article entitled *The process of civil commitment under the Mental Health Act 1986* by Neil Rees *Law Institute Journal* Vol 63, No. 4 April 1989 p254). It appears to me that the words of the expression "mental ... disorder" appearing in the definition of injury contained in section 3 are there used in their ordinary common sense meaning. According to the *Macquarie Dictionary* 2nd Revised Edition the adjective "mental" means

1. of or pertaining to the mind
2. performed by or existing in the mind
3. pertaining to the intellect; intellectual;
4. denoting a disorder of the mind ...."

"disorder" means

1. lack of order or regular arrangement; disarrangement; confusion
2. an irregularity. ....

**[12]** 4. a derangement of physical or mental health or functions"

"disordered" means

1. in confusion
2. mentally ill."

Having regard to the reason why these applicants failed before the Criminal Injuries Compensation Tribunal, it may be useful to quote the following extract from the first of the two articles cited above at p182:

"For the medical practitioner, of course, the precise delimitation of the boundaries of "mental illness" or "mental disorder" is of no significance. In the third edition of the Diagnostic and Statistical Manual of Mental Disorders (DSMIII) the following was stated;

"There is no satisfactory definition that specifies precise boundaries for the concept "mental disorder" (also true for such concepts as physical disorder and mental and physical health)".

In DSMIII, the term "mental disorder" is conceptualised as a clinically significant behavioural or psychological syndrome or pattern that occurs in an individual and that typically is associated with either a painful symptom (distress) or impairment in one or more important areas of functioning (disability). The term is limited to behavioural, psychological, or biological dysfunction, other than in the relationship between the individual and society (in which case it may represent social deviance, not by itself a mental disorder)".

For the lawyer who asked how the expression "mental ... disorder" should be construed, I answer with the words of Lawton LJ in *W v L* (1974) 1 QB 711 at 719:

**[13]** "The answer in my judgment is to be found in the advice which Lord Reid recently gave in *Cozens v Brutus* (1973) AC 854 at 861, namely that ordinary words of the English language should be construed in the way that ordinary sensible people would construe them. That being, in my judgment, the right test, I ask myself what would the ordinary sensible person have said about the patient's condition in this case if he had been informed of his behaviour to the dogs, the cat and his wife? In my judgment such a person would have said; "Well the fellow is obviously mentally ill" (I substitute mentally disordered ...)."

In this case I accept the assessments of Mrs Field and in any event hold in relation to each of the three applicants that obviously they are all suffering from mental disorder. Bearing in mind the nature of and the statutory pecuniary limits upon awards of compensation, I think that the applicants should be awarded criminal injuries compensation for pain and suffering and for expenses as follows:

Neville Thompson	-	\$10,000
Jacqueline M. Thompson	-	\$7,500
Counselling expenses	-	\$132

Kelly Thompson	-	\$5,000
Counselling expenses	-	\$132

I order that the respondent in each case pay the applicant's costs to be taxed on Scale A of the County Court scale of costs including the costs of psychologist's reports.

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