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ADMINISTRATIVE APPEALS TRIBUNAL**LANZA v CCT****Deputy President Mr Ball****10 January 1994****THE APPLICANT WAS ASSAULTED BY BEING KICKED IN THE RIGHT SHOULDER CAUSING PERMANENT RESIDUAL INJURY. AWARD: \$4500 PLUS PECUNIARY LOSS AND COSTS.**

"... [4] Mr John Stephens, who has recently retired from medical practice as an Orthopaedic Surgeon, gave evidence. In a medical report dated 23 March 1992 Mr Stephens stated that he had examined the Applicant and that in his opinion:

"Clearly this man has sustained a dislocation at the right sterno-clavicular joint as a consequence of his trauma. He is now experiencing current subluxation at this junction which is notoriously painful, there is no adequate treatment for it, and I expect that over two (2) or three (3) years it will gradually subside"

This report was the only evidence available to the Crimes Compensation Tribunal as to whether or not the Applicant would suffer permanent residual injury. However in a later report dated 29 June 1993 Mr Stephens said:

"The subluxation of the right sterno-clavicular joint is now established, and permanent. I do not expect any further resolution, nor is there any treatment appropriate. He will just have to put up with the occasional discomfort and clicking sensation. He is now prone to the development of degenerative change in the future here however. The left shoulder has now settled as expected."

... [12] Mr Lanza stated in his evidence that after being injured he had lost his employment with FP Cleaning Services as he was not available for work and was not able to do work requiring physical exertion comparable to that necessary in his former employment at BBC Hardware. He is now employed as a factory hand by Diana Ferrari Pty Ltd, Footwear Manufacturers, in Preston. The work is of a sedentary nature.

I am satisfied on the evidence given by Mr Stephens and Dr Tyshing at the hearing that the Applicant has suffered pain and suffering and a permanent residual injury. Mr Stephens estimated that the Applicant would suffer a 10% impairment in relation to work which is carried out in a sedentary position and confirmed that if the Applicant had continued to work at the timber yard or carry out other work requiring significant physical exertion, that the impairment would have been greater. I am satisfied, on the balance of probabilities, that the Applicant was kicked in the right shoulder by his assailant which caused tearing of the sterno-clavicular ligament in the manner described by Mr Stephens and that in the circumstances the award of compensation to the Applicant for pain and suffering made by the Crimes Compensation Tribunal is inadequate. I have available to me evidence of a permanent residual injury suffered by the Applicant which was not available to the Crimes Compensation Tribunal. Under the circumstances I am satisfied that the award of compensation [13] for pain and suffering should be increased from the amount originally awarded \$2,500, to an amount of \$4,500.

I am also satisfied that it is appropriate to make an award of compensation to Mr Lanza for pecuniary loss of his wages from his second part-time employment of an amount of \$338.40. I will also make an award for award of legal costs in the favour of the Applicant and direct payment of certain disbursements namely the cost of Mr Stephens' further report and amounts for the attendance at the Tribunal hearing of both Mr Stephens and Dr Tyshing. The decision under review will be set aside and an order made for payment of compensation and costs and disbursements."