

1.6/94

ADMINISTRATIVE APPEALS TRIBUNAL

GREGORY v CCT

Mr Dillon

2 December 1993

THE APPLICANT CLAIMED COMPENSATION FOR POST-TRAUMATIC STRESS DISORDER SUFFERED AS A RESULT OF HER INVOLVEMENT IN AN ATTEMPTED ROBBERY. AWARD: \$4000 PLUS COSTS.

".... [4] I am satisfied on the evidence that sofar as the incident on the 1st October 1991 is concerned the conduct of Kuklinsky constituted a "criminal act" within the meaning of the *Criminal Injuries Compensation Act* 1983 and that Kiklinsky was convicted in respect of his conduct on that date and received a custodial sentence in relation thereto. Sofar as the incident on the 11th October 1991 is concerned, it appeared that Kuklinsky was charged with harassment of a witness but the charge was not sustained. On the evidence before me I am unable to conclude that the conduct of Kuklinsky on that date constituted a "criminal act" within the meaning of the *Criminal Injuries Compensation Act* 1983, although the incident itself is a matter to be taken into account when considering the Applicant's claim for compensation in respect of the incident on the 1st October 1991.

The medical report of Dr J Buras of the Churchill Community Health Centre dated 23rd July 1993 indicated that in his view the Applicant [5] had suffered a post-traumatic stress disorder and Dr. Buras specifically made reference to the distinction between a post-traumatic stress reaction and a post-traumatic stress disorder.

The medical report of Mr David Bruce, Forensic Psychologist, dated 21st January 1993 set out his opinion that the applicant has "suffered and is still affected by post-traumatic stress disorder". In his evidence before me Mr Bruce gave evidence of the principal diagnostic criteria of post-traumatic stress disorder and referred to the Diagnostic and Statistical Manual of the American Psychiatric Association, Third Edition, Revised and known as the "DSM3R". It appears that this work is the standard classification for psychiatrists and provides a number of criteria for the diagnosis of "Post-Traumatic Stress Disorder".

On the basis of the medical evidence before me I am satisfied that the Applicant as a result of the incident on the 1st October 1992 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) 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 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 [6] 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 October 1991 was \$20,000.

I am satisfied on the evidence that an appropriate Award of Compensation for pain and suffering would be the sum of \$4,000. Accordingly the Tribunal sets aside the Decision of the Respondent in Crimes Compensation Tribunal Application No. 1991/5329 and determines that the Applicant be paid the sum of \$4,000 for pain and suffering. Sofar as Crimes Compensation Tribunal Application No. 1991/5328 is concerned the Tribunal affirms the Decision of the Respondent.

Costs

It appears the following disbursements have been incurred-

Dr. Buras medical report - May 1992	\$ 65.00
Dr. Hoare medical report - October 1992	\$200.00
Dr. Hoare medical report - January 2nd, 1993	\$157.00
Mr Bruce conference and report - 21st January, 1993	\$300.00
Mr Bruce - Witness fee	\$150.00
Dr. Buras medical report - 21st May 1993	\$125.00
TOTAL	\$997.00

Sofar 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 both Applications on the basis that the Applicant had not suffered a post-traumatic stress reaction which in the view of the Tribunal was not an "injury" within the meaning of the *Criminal Injuries Compensation Act*. It is significant that the Crimes Compensation Tribunal did not have available the reports of Dr. Buras dated 23rd July, 1993 and Mr Bruce dated 21st January, 1993, nor was the oral evidence of Mr Bruce available to the Tribunal. I am of the view that whilst an Order for Disbursements in [7] relation to medical reports and witness fees totalling \$997.00 should be made, professional costs should be fixed and in the sum of \$1,200 including Counsel's fees. Accordingly I order that costs be fixed in the sum of \$2,197 comprising disbursements of \$997.00 and professional costs of \$1,200 and be paid by the Respondent to the Applicant."
