

RIGBY v SOLICITOR FOR THE NORTHERN TERRITORY

Supreme Court of the Northern Territory of Australia

Angel J

30 September and 3 October 1991 at Alice Springs

CRIMINAL LAW - Criminal injuries compensation - reservation of a question of law - use of comparative verdicts - Criminal Injuries (Compensation) Act 1976 s.9

CRIMINAL LAW - Assault - personal injury - assessment - principles to be applied - Criminal Injuries (Compensation) Act 1976 (NT) s.9

Cases Distinguished

Percario v Kordysz (1989) 54 S.A.S.R. 259

Southgate v Waterford (1990) 21 N.S.W.L.R. 427

Cases Followed

Davey v Haidukewicz (1980) 4 N.T.R. 40

Hirsch v Bennett [1969] S.A.S.R. 493

Packer v Cameron (1989) 54 S.A.S.R. 246

R v Forsythe [1972] 2 N.S.W.L.R. 951

R v McDonald [1979] 1 N.S.W.L.R. 451

Cases Referred To

Bresatz v Przibilla (1962) 108 C.L.R. 541

Jag Singh v Toong Gong Omnibus Co Ltd (1964) 1 W.L.R. 1382

Moran v McMahon (1985) 3 N.S.W.L.R. 700

Morrison v Groom (1979) 21 S.A.S.R. 153

Paul v Rendell (1981) 34 A.L.R. 569

Planet Fisheries Pty Ltd v La Rosa (1968) 119 C.L.R. 118

Roulstone v Ketley (1966) 2 N.S.W.R. 389n; (1961) 34

A.L.J.R. 495

Rust v Needham (1974) 9 S.A.S.R. 510

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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA

No. 55 of 1991

IN THE MATTER of  
An application for a  
compensation certificate under  
the Crimes Compensation Act  
AND IN THE MATTER of  
A reservation of a question of  
law stated by the Local Court  
in matter 9104241 of 1991 for  
the opinion of the Court

BETWEEN

ALLAN JAMES RIGBY  
Applicant

AND:

SOLICITOR FOR THE NORTHERN  
TERRITORY  
Respondent

CORAM: ANGEL J

REASONS FOR JUDGMENT

(Delivered 3 October 1991)

Reservation of question of law for opinion of the Court  
pursuant to s.19(1) of the Crimes Compensation Act.

The applicant was assaulted on 13 March 1991 by  
assailants unknown, as a result whereof he suffered personal

injury. On 3 September 1991, the applicant's application for compensation pursuant to the Act came on for hearing before his Worship, Mr Hook SM, sitting as a Local Court at Alice Springs.

The matters for assessment of compensation for the purposes of a compensation certificate issued under s.5 of the Act are contained in s.9 of the Act which provides:

"In assessing the amount of compensation to be specified in a compensation certificate, the Court may, subject to this Act, include an amount in respect of

- (a) expenses actually incurred as a result of the injury suffered by, or the death of, the victim;
- (b) pecuniary loss to the victim as a result of his total or partial incapacity for work;
- (c) pecuniary loss to the dependants of the victim as a result of his death;
- (d) any other pecuniary loss arising in consequence of injury suffered by, or the death of, the victim and any other expenses reasonably so incurred;
- (e) pain and suffering of the victim;
- (f) mental distress of the victim;
- (g) loss of the amenities of life by the victim;
- (h) loss of expectation of life by the victim;  
and
- (j) loss of, or damage to, the clothing or personal effects of the victim."

Before the learned Magistrate, the sum of \$3,833.80 was agreed by counsel to represent the pecuniary loss referred to in s.9 paragraphs (b) and (j). Section 9 paragraphs (e), (f), and (g), were discussed before the learned Magistrate. His Worship was referred to the much discussed High Court decision in Planet Fisheries Pty Ltd v La Rosa (1968) 119 C.L.R. 118. His Worship was thereupon prompted to reserve a question of law, namely:

"Whether a magistrate in assessing the amount of compensation to be specified in respect of s.9 of the Crimes Compensation Act may make the decision with the aid of available verdicts put to her or him by counsel?"

The principles of assessment of compensation for the purposes of the Act are well-known. It is for the court to assess what would be payable according to the principles applicable to an award of damages in a civil suit. The court is to assess the compensation as if it were an award of damages in the ordinary way. If the sum is less than the maximum award under s.13 - \$15,000 - the court should award that sum, and if it exceeds \$15,000 it should award \$15,000: see generally Davey v Haidukewicz (1980) 4 N.T.R. 40 at 41, the cases cited therein and R v Forsythe [1972] 2 N.S.W.L.R. 951, R v McDonald [1979] 1 N.S.W.L.R. 451. The task may be contrasted with the method of fixing the "proportion" under the Motor Accidents Act 1988 (NSW) s.79, see Southgate v Waterford (1990) 21 N.S.W.L.R. 427, particularly at 437,

438, 440, 441, and the approach to assigning a numerical value for the purposes of s.35a of the South Australian Wrongs Act, see Percario v Kordysz (1989) 54 S.A.S.R. 259.

Civil remedies are preserved under s.23 of the Act.

Counsel before me, like counsel in Packer v Cameron (1989) 54 S.A.S.R. 246, referred to "judicial statements that eschew tariffs and emphasise the need to fasten on the situation of the particular claimant and not the situation of other claimants in other actions.", see per Cox J at 250.

I was referred to Jag Singh v Toong Gong Omnibus Co Ltd (1964) 1 W.L.R. 1382 (PC); Planet Fisheries Pty Ltd v La Rosa, supra; Hirsch v Bennett (1969) S.A.S.R. 493 at 497-499 and Moran v McMahon (1985) 3 N.S.W.L.R. 700. I was referred to Professor Luntz's well-known work Assessment of Damages for Personal Injury and Death, Third Edition, Butterworths 1990. I have looked at the discussion in paragraphs 3.1.5, 3.1.10, 7.1.5, 11.7.9 and 11.7.11 of that work, and many of the cases referred to therein. I have noted that in Morrison v Groom (1979) 21 S.A.S.R. 153 (a case of criminal injuries compensation for the loss of a thumb), Legoe J referred to the summaries of cases from other jurisdictions to be found in the Australian Legal Monthly Digest.

Although it is dangerous and misleading to place reliance on other awards - see per Bray CJ in Rust v Needham (1974) 9 S.A.S.R. 510 at 526, some use can be made of them.

With respect I entirely agree with Cox J when he said in Packer v Cameron, supra, at pp 250-251:

"There is no obvious or natural relation, of course, between the experience of pain and a particular sum of money. There is no logical reason why a man's non-economic damages, for any given loss, should be assessed at \$10,000, say, rather than half of that amount, or double. In the end the foundation for any particular assessment is that it is reasonably proportionate to the damages that have been awarded in other cases that are more or less comparable with the plaintiff's, although the overall standard may be subject to periodic revisions to accord with the courts' appreciation of the general level of damages awards that the community, as represented by the insured motorists, can fairly be expected to accept. We were referred to the oft-quoted judicial statements that eschew tariffs and emphasise the need to fasten on the situation of the particular claimant and not the situation of other claimants in other actions. See, for example, Planet Fisheries Pty Ltd v La Rosa (1968) 119 C.L.R. 118. However, no-one has suggested that damages can sensibly be assessed by some kind of innate impulse. The court in Planet Fisheries (supra) acknowledged that 'a judge who is making an assessment will be aware of and give weight to current general ideas of fairness and moderation' (at 125), which must be an allusion to a general knowledge of other cases. That is why any new judge whose practice has not given him an insight into the notions of fairness and moderation that find their expression in damages awards in personal injury claims will acquire it as quickly as he can by rapidly scanning a sufficient number of published or digested awards. Certainly the High Court discountenanced any attempt to establish on appeal the correctness or otherwise of an award by comparing it with specific cases, but that is another matter: cf Hirsch v Bennett [1969] S.A.S.R. 493 at 497-499; and Moran v McMahon (1985) 3 N.S.W.L.R. 700."

Having referred to the High Court's reference in Planet Fisheries, supra, to "current general ideas of fairness and moderation", Bray CJ in Hirsch v Bennett, supra, at 494 said:

"The general experience to which their Honours refer is no doubt an experience which can be in part at least vicarious and derived from what the judge has read and heard of the cases in his own jurisdiction as well as from his knowledge of cases in which he has been personally concerned either at the bar or on the bench. I doubt whether we should attempt to range more widely than this in view of the Planet Fisheries case in spite of what was said in Singh v Toong Fong Omnibus Co. Ltd."

I, with respect, agree.

Subject to s.13 of the Act, pursuant to s.9(e) (f) and (g), an applicant may be awarded compensation for pain and suffering, mental distress and loss of amenities of life that he has sustained or will sustain. It is a figure that ought to strike the learned Magistrate as being fair in the light of the experience of the courts of the measure of damages that are currently being awarded in broadly comparable cases, Paul v Rendell (1981) 34 A.L.R. 569 at 580, per Lord Diplock; Roulstone v Ketley (1966) 2 N.S.W.R. 389n at 392, per Walsh J (dissenting), who was upheld by the High Court (1961) 34 A.L.J.R. 495.

Of course, justice requires treating like cases alike. However, it is to be recognised that no two cases are wholly alike and "they are only comparable when injuries have similar consequences for individuals": Bresatz v Przibilla (1962) 108 C.L.R. 541 at 548 per Windeyer J, and see Packer v Cameron, supra, at 257 per Duggan J. Munckman in the 5th edition of his book Damages for Personal Injuries and Death, Butterworths 1973 at 196 notes that the fact awards can be described as "high" or "low" or "out of all proportion" pre-supposes a standard even though it may be a vague one. Courts draw upon their knowledge of generally comparable awards in order to address what is customary and reasonable for the loss in question. Other awards are not used as precedents and Judges do not look at particular cases, but rather have regard to the general run of verdicts as a means of informing their judicial experience which has necessarily to be brought to bear to reach a figure that is reasonably proportionate to the non-economic loss established on the particular facts in the individual case.

I would answer the question of law reserved as follows: upon an application for compensation in respect of the matters referred to in s.9(e), (f) and (g) of the Crimes Compensation Act, the Local Court may pay the same limited regard to generally comparable verdicts as are paid in civil actions for non-economic loss.