

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

ROBERT GALLAGHER

:

:

VS.

: **KC 95-0705**

:

STATE OF RHODE ISLAND

:

DECISION

McAtee, Magistrate. This case is before the Court on plaintiff's claim for damages pursuant to the Criminal Injuries Compensation Act, R.I.G.L. 12-25-1 et seq. hereinafter referred to as The Act.

On October 9, 1994, plaintiff Robert Gallagher entered the American Legion Hall in the Town of East Greenwich to continue a birthday celebration that had commenced several hours previously. Shortly thereafter Raymond Picillo arrived.

During the course of the evening words were exchanged between Gallagher, Picillo and various friends. As a result, plaintiff approached Picillo for the purpose of, in plaintiff's story, achieving a reconciliation, or in Picillo's version, to confront him. What is agreed is that Gallagher ended up on the floor and injured. A friend drove plaintiff home and later to Kent County Hospital where he was diagnosed as suffering from a broken ankle.

Raymond Picillo, a former karate instructor, was charged with felony assault. A trial was held on January 23, 1997 in Kent County Superior Court. During that trial, plaintiff testified on behalf of the State of Rhode Island. Picillo was found not guilty on all counts in criminal information K2/94-0704.

There is no question that plaintiff and the intervener fought and that the plaintiff sustained serious injuries. However, the Court may consider, inter alia, the behavior of the victim which directly or indirectly contributed to the injury. Section 12-25-3(d) states in pertinent part:

In determining whether to render judgment for compensation or to issue an order approving a settlement as described above and the amount thereof the court and the treasurer may consider any circumstances it determines to be relevant, including the behavior of the victim which directly or indirectly contributed to his or her injury or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

In the instant case, plaintiff admitted at the hearing that he had spent a significant part of his day consuming alcohol. In fact, medical records submitted by the plaintiff show that at Kent County Hospital he was unable to describe what had happened during the evening because of his consumption of alcohol. In fact, those same records show plaintiff's alcohol level to be 0.265. Because of this, Kent County Medical staff determined that he was unable to make an informed decision as to medical treatment and, at his request, was allowed to go home until he was in a position to make an informed decision. (See Kent County Hospital Discharge Summary dated October 13, 1994).

In short, plaintiff was engaged in a barroom brawl that he easily could have avoided. Under the Criminal Injuries Compensation Act, a victim is a person "who is not there by choice or with knowledge of the risk they are incurring." Brown v. State of Rhode Island, 512 A.2d 875 (R.I. 1986). Here, plaintiff is seeking to make the State of Rhode Island an insurer in order to compensate him for injuries resulting from a series of poor decisions on his part. Such is not the purpose of The Act.

After careful consideration of the testimony and exhibits introduced at the hearing, this Court has no doubt that plaintiff was injured on the date in question. However, this Court is not satisfied, after

reviewing the evidence and testimony, that plaintiff has met his burden to prove that the injuries were a result of a criminal assault.

Therefore this Court cannot find that the plaintiff was a victim as contemplated under the Victim Injuries Compensation Act. The case is, therefore, dismissed without compensation being granted.

Counsel for the General Treasurer will prepare an order in accordance with this Decision.