

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**GENERAL LIST**

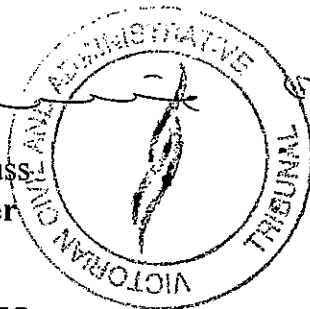
VCAT REFERENCE NO. G1270/2003

<b>APPLICANT</b>	John Heenan
<b>RESPONDENT</b>	Transport Accident Commission
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Jacqueline Preuss, Senior Member
<b>HEARING TYPE</b>	Hearing
<b>DATES OF HEARING</b>	23 and 24 June 2004
<b>DATE OF ORDER AND ORAL REASONS</b>	29 June 2004
<b>DATE OF WRITTEN REASONS</b>	22 July 2004

**ORDER**

- 1 Decision under review is set aside.
- 2 Costs reserved.

Jacqueline Preuss  
Senior Member



**APPEARANCES:**

For Applicant	Mr D Purcell of counsel instructed by Burt & Davies
For Respondent	Ms K Bourke of counsel instructed by TAC Law

## ORAL REASONS FOR DECISION

Note: These written reasons consist of an edited transcription of reasons given orally on 29 June 2004

- 1 By application for review filed with the Tribunal on 1 October 2003, the applicant sought to review a decision of the Transport Accident Commission (*TAC*) rejecting his claim for compensation arising from injuries he sustained on 27 April 2002.
- 2 The applicant claimed that on that date he was injured as a result of a transport accident. *TAC* rejected the claim on the basis that there was a lack of evidence that a motor vehicle was the cause of his injuries.
- 3 The applicant is aged 35 years. He was brought by ambulance to the Emergency Department of the Northern Hospital on 27 April 2002 at 04:24 hours following an incident in the vicinity of Grimshaw Street, Greensborough ("the incident"). He was found to have a fracture of the left talus with a tear of the medial ligament, a 9 cm skin wound and a comminuted fracture of the fibula and diastasis. Whilst the applicant was in hospital he became septicaemic and he developed significant complications. Unfortunately, ultimately, he required a below knee amputation.
- 4 He was discharged home from the Austin and Repatriation Medical Centre on 14 November 2002. Prior to the incident, he was employed as a casual shelf stacker.
- 5 The applicant lodged a claim for compensation under the Transport Accident Act 1986 (the Act) with *TAC* on 3 May 2002 in relation to the incident. Subsequently, *TAC* determined to deny the claim.
- 6 The applicant gave viva voce evidence and his written statement dated 12 May 2004 was tendered in evidence. In his written statement he described drinking alcohol with his housemate, Mr Darren Nash, and another person, Mr Bence Karasz, who was a friend of Mr Nash, on the evening of 26 April 2002. He said that Mr Nash and Mr Karasz left the house to go to the Ricochet pool hall, which was nearby.
- 7 He then said :

Shortly thereafter, Ben [Mr Karasz] arrived back at my house with a very noticeable black eye. When I asked him what had happened, he told me that he had been in a fight at Ricochet. My recollection of events after this time is fairly sketchy. I do not recall leaving the house. I have a vague recollection of being involved in a fight and being in the vicinity of a bus stop near the Ricochet pool hall. I can recall someone bashing my head into the concrete wall of the bus stop and can vaguely remember calling out 'Leave me alone' as I was being bashed. I then believe that I blacked out. I recall very few details of the scene of the accident after this time ...

I understand that the incident in which I was involved in actually occurred in the early hours of the morning of 27 April 2002 ...

- 8 The applicant then described the problems which occurred following the amputation of his leg in hospital. He said :

I started to become delirious and disoriented and suffered from concentration and memory problems. My delusions escalated and, at one point, I became very aggressive and suicidal. ...

Prior to this accident I had suffered from schizophrenia, however my schizophrenia was well controlled with medication to the extent that I was able to work and function normally. ...

- 9 During cross-examination, the applicant was questioned about the incident. He said that he did not remember anything except being involved in a fight and having his head bashed, and then sitting in the gutter holding his head by the bus stop. He agreed he was intoxicated.
- 10 He said he did not recall how many people were hitting him at the time of the incident but he thought it was only one person. He could remember the ambulance arriving and that he was sitting on the ground or on the footpath. He did not recall being on the road. He said his head was bashed whilst he was behind the bus stop and he staggered around to the front of the bus stop. He had no recollection of being hit by a car.
- 11 When asked when he first recalled having pain in his left leg, he said he was fairly sure it was after he was bashed. He said that after the fight he recalled that something was wrong with his leg, before he got into the ambulance. Later, in cross-examination, he did not recall being aware of problems with his leg when he was sitting in the gutter.
- 12 Mr Bence Karasz gave viva voce evidence. In addition, a statement by him to Senior Constable Neylan of Victoria Police of 30 April 2002 and a statement taken by Mr Armstrong on 17 April 2004 was tendered in evidence on behalf of the applicant. It appears (although this is not entirely clear from the material before me) that Mr Armstrong obtained the statement at the request of the applicant's solicitors.
- 13 In his statement of 30 April 2002, Mr Karasz said that after he had been drinking at the home of the applicant and Mr Nash on the night of the incident, he went to the Ricochet pool hall. He then described an incident in which he was assaulted and dragged from the hall by bouncers.
- 14 He described ringing the police from the applicant's house and returning to Grimshaw Street with the applicant and Mr Nash. He said that the police had told him to meet them there.
- 15 He said :

We walked up the side footpath next to Video Ezy and saw there was (sic) no police. These guys started to charge at Johnny (the applicant) and one male with a creamy coloured top came at me and started punching me again so I didn't know what happened to John. The

bloke that was laying into me ran off towards Ricochet and Darren (Mr Nash) ran past me to go home but I did not want to leave Johnny there. I went over to Johnny who was lying next to the bus shelter. The police and an ambulance had arrived. ...

At this time I am not sure what happened to Johnny but I heard he had a broken ankle. ...

- 16 In his statement of 17 April 2004 (some two years after the incident), he said :

I would just like to say at this point that my memory of events are (sic) not very clear due to the lapse of time ...

I cannot recall what time we got back to the Ricochet. John (the applicant) had had a few drinks prior to us leaving for Ricochet the second time but I could not describe him as being totally drunk. He knew exactly what he was doing, and he was in control of his senses.

John and I got to the front of the Video Ezy store which is elevated above the road level, and we were only there for a few seconds, when the group of about a dozen or so blokes and three or four females started to lay into me again. ...

While the fellows who were belting in to me, I remember John was standing near the front of the Video Ezy store, and some of the blokes in the group were also getting stuck into John.

I remember the group attacking John moving down the grass slope in front of the Video Ezy Store with John, toward the bus shelter on the nature strip. I could not see what was going on as I was being belted into by another group of blokes.

At some stage, I remember seeing Darren [Mr Nash] appear. I don't know where he came from but Darren did not hang around long. Darren appeared soon after we crossed the road but as soon as the group of attackers started to get into John and I, Darren disappeared again.

By the time the fight was on for young and old, John was down near the southern footpath of Grimshaw Street, and was being attacked by a number of other chaps. I cannot remember how many persons were attacking John but there was certainly more than two blokes; probably 3 or 4 blokes attacking John. I think there were one or two girls screaming as well and getting stuck into John.

By this time John was near the left hand turn lane in Grimshaw Street. The left hand turn lane I am talking about allows west bound traffic in Grimshaw Street to turn left into the shopping complex or shopping square.

It was around this time that I saw a set of headlights of a west bound vehicle. I could not tell what type of vehicle it was, how far it was from John's position, nor can I tell what speed it was travelling at. All I can say is that it was travelling west in the left hand west bound lane.

I was being belted at the time and I was trying to defend myself, but I can definitely remember seeing a set of west bound headlights.

There could have even been another set of headlights in the far right west bound lane. I have a vague recollection that there was a second set of headlights either in front on the rear of the first set of headlights travelling west in the left hand west bound lane. I would like to say again that I cannot remember how far the headlights were from where John was. I was trying to defend myself and the next thing I heard was a bang. I did not know the source of the (sic) of this noise nor did I see anything as I was too busy defending myself. As soon as I heard the bang, I heard some of the girls screaming out something like 'my God the car's hit him, let's get out of here. The cops will have to be here' or words to that effect, and with that everyone disappeared. I then looked around and saw John laying on the road some 5 metres or so east from the entrance to the shopping centre, and close to the centre of the left-hand turning lane and the left-hand westbound lane.

I cannot remember which way John's head faced. I have no recollection whether John lay on his side or on his face or back. John was unconscious but he was moaning. There were no vehicles in sight. I did not look for debris on the road and therefore I cannot say whether there was any broken parts of the car on the road at the time.

- 17 During the course of his viva voce evidence, Mr Karasz was questioned extensively by counsel for both parties as to the circumstances surrounding the incident. He described an assault on the applicant by several people on a ledge or raised area along one side of Video Ezy, and the applicant being dragged down a grass slope along another side of the video store, parallel to the road, towards the bus shelter.
- 18 Mr Karasz was shown photographs of the area in the vicinity of Grimshaw Street where the incident took place. He indicated on the photographs where the applicant was standing initially on the ledge when he was assaulted outside Video Ezy, and where he was dragged. He also indicated on one of the photographs the place where he saw the applicant lying on the ground after the assailants disappeared. The place he indicated was in the gutter of the left turning lane. He said that a portion of the applicant's body was on the nature strip beside the gutter. He said he was fairly sure his head was on the grass.
- 19 Mr Karasz said he was not a friend or acquaintance of the applicant before the accident although he was an acquaintance of Mr Nash. He has had no contact with the applicant since the night of the incident.
- 20 He said that when Senior Constable Neylan attended his house on the day of the incident to take a statement, it was only eight hours after the incident and he was not in *good shape* and he was *pretty stirred up*.
- 21 He was referred to a note taken by Senior Constable Neylan that he told the constable that *he went John and broke his ankle*. He said the reference to a broken ankle came about when he was being taken to hospital by police

after the incident. He asked after the applicant and he was told he had a broken ankle. Later, he said he did not think he told Senior Constable Neylan *he went John and broke his ankle*.

- 22 Mr Karasz was cross-examined very extensively by Ms Bourke. He agreed that Senior Constable Neylan correctly recorded what he had told him but he said he was *a bit fuzzled*. He agreed that the first time he mentioned a car was when he provided the statement to Mr Armstrong.
- 23 He was referred to p 5 of the statement he gave to Mr Armstrong in which he said that he heard a bang. He said that he did hear a bang and he saw headlights and that was when everyone disappeared. He did not see any vehicles. He was referred to the paragraph in his statement where he said he heard some of the girls screaming out something like *My God the car's hit him*. He said he had a vague recollection that there was a female voice saying that a car had hit him and it was getting serious but he would not swear by it. He was definite that he heard someone say ... *the cops were coming - it's not a joke anymore*.
- 24 He said that when the applicant was on the ledge of the side of Video Ezy, two men were attacking him. He was falling and getting up again. He said it wasn't a *soft bashing*. He said there was a lot of screaming and punching. He saw the applicant go down to his knees on the grassy slope, but he was pretty sure he got up again. Once the applicant got to the bus shelter, he could not recall clearly what happened. The last time he looked over to him, he was in front of the bus shelter or to the side.
- 25 Mr Karasz agreed he told Senior Constable Neylan that he saw the applicant lying on the grass next to the bus stop. He said that he did not tell him that the applicant was on the road as *we weren't investigating that*. He agreed that in his written statement to Senior Constable Neylan, he said that the applicant was lying next to the bus shelter. He said it was the approximate place where he was lying.
- 26 He agreed that in the statement to Mr Armstrong he said that the applicant lay on the road close to the centre of the left-hand turning lane and the left hand westbound lane. He said there *should have been mention that part of the applicant's body was on the road*. He said he was *pretty certain some part of him was in the gutter*.
- 27 He said he did not think Senior Constable Neylan asked him about the involvement of a car or he was pretty sure he would have mentioned something. He was more focussed on his own situation. He said that once he heard the applicant had his leg amputated, he started to try and remember things. Then he added the car headlights into the equation. The first time he realised the applicant was making a claim in relation to the incident was when Mr Armstrong contacted him (in 2004) to make the statement.

- 28 He denied that he was intoxicated at the time of the incident. He said he had only a couple of beers. He was questioned about his statement to Mr Armstrong in which he said he heard a bang. He said he was a mechanic and it sounded more like a guard denting. It was a loud bang. At the time he was involved in a fight with the other men and he looked around but he did not see anything. Then everyone disappeared. He said he definitely heard the bang before he saw the applicant on the ground. He agreed he did not see a car in the left hand lane.
- 29 A report from Mr Peter Moran, orthopaedic surgeon, to the applicant's solicitors dated 22 June 2004 was tendered in evidence on behalf of the applicant. In the report Mr Moran said :

At your request, I offer an opinion concerning your client's left ankle injury, and the mechanism of injury that is required to produce an injury of this type.

My opinion is based upon reviewing the initial and subsequent x-rays of the left ankle, and on copies of hospital notes from the Northern Hospital, pertaining to his admission on the 27<sup>th</sup> April 2002.

X-rays taken at the time of admission, on 27<sup>th</sup> April 2002, confirm a fracture subluxation of the left ankle, involving complete rupture of the medial collateral ligament, and a displaced Weber B fracture of the distal fibula, with significant lateral and posterior talar shift. I noted a minor, undisplaced rim fracture of the posterior malleolus. In addition, I noted an undisplaced fracture of the left talar neck. Hospital notes confirm that this was associated with extensive soft tissue damage, with compound wounds present over the medial and lateral surfaces of the joint. ... The hospital notes indicates the development of progressive soft tissue necrosis and sepsis involving the soft tissue planes and the ankle joint itself.

In your letter, you proposed four possible scenarios as to the cause of injury which I reproduce below.

- (a) That the injury arose as a result of an assault or direct blow to the ankle,
- (b) That the injury resulted from your client tripping over or falling down a gutter.
- (c) That the injury occurred as a result of your client being hit or clipped by a motor vehicle.
- (d) That the injury occurred as a result of a motor vehicle running over your client's leg.

Firstly, this is an unusual combination of injuries, which could only result from a particularly violent mechanism of injury.

A fracture dislocation of the ankle, in combination with a fracture of the neck of the Talus suggests a complex mechanism of injury that includes a violent rotational stress to the ankle, and in all probability, a crushing component, to explain the Talar neck fracture.

The presence of compound wounds on both sides of the ankle would not result from a simple rotational injury, but suggests that there has been a significant bursting component to the injury, or at least a partial degloving type injury to the ankle joint. This is supported by the degree of subsequent tissue necrosis and the development of severe sepsis.

Taking these factors into account, option (d) I believe is the most likely mechanism of injury of those proposed in your correspondence.

Option (a) would not cause an injury of this type, nor would option (b). Option (c) is possible, but option (d) is the most likely.

- 30 In his viva voce evidence he said he was a surgeon for ten years at the trauma unit at the Alfred Hospital. He said that the presence of a fractured dislocation of the ankle and talar leg fracture was extremely uncommon. He noted that a wound on the inner side of the ankle was not usually where one would expect to find it. A wound of that type was not typical of the usual type of wound seen in a simple ankle fracture. In addition, there was a wound on the outer ankle joint not explained by a simple fracture.
- 31 He was asked whether the fractures could be due to poor bone density. He said that he would expect a person of the applicant's age to have reasonable bone density. Young people could have poor bone density in circumstances where there was chronic alcoholism with malnutrition, long term steroid use or long term immobilization of a limb.
- 32 The most central issue was the pattern of soft tissue damage and the seriousness of it. The applicant had compound wounds on both sides of the ankle and extensive corollary damage. One of the reasons he had sepsis was the devitalisation of tissues, and poor circulation as a consequence.
- 33 Mr Moran was asked by counsel for the applicant, Mr Purcell, whether it was relevant that there was an absence of tyre marks on the applicant's body. He said that he could not recall ever seeing tyre marks in cases he had been involved with and there would be none if the victim was wearing clothing.
- 34 He was questioned about the effects of the applicant's medical condition prior to the incident on his bone density and to a note of 30 August 2002 in the Northern Hospital records which indicated poly substance and alcohol abuse, Hepatitis C and Diabetes Type 2. He said that whilst alcohol abuse associated with malnutrition may lead to diminished bone density, at age 33 (which was the applicant's age) he would not expect it to be a major issue. He said it had to be chronic, very high alcohol intake and poor nutrition and extreme alcohol abuse. He said he did not regard himself as an expert in bone density and he was speaking from experience and not from training.
- 35 Mr Moran conceded during cross-examination that he had been mistaken in stating in his report there were wounds present over the medial and lateral surfaces of the joint. He accepted there was no mention of soft tissue injury to the lateral side of the joint. He said that he had (mistakenly) relied on an



operation report some two weeks after the incident. He was asked whether his opinion was affected by taking the lateral wound from the picture. He said it took away one of the points he relied on, that is, the fact that a wound on both sides of the joint was not consistent with a fall.

- 36 He said that the applicant had suffered a violent rotation injury and that stomping on the applicant's leg or hitting him with a baseball bat would not give such an injury. He said he could not imagine a situation where kicking someone would break an ankle. A number of other scenarios which would produce such an injury were provided to Mr Moran by Ms Bourke. Mr Moran however, reiterated his view that he thought there had been a crushing injury. He said that the scenarios put forward by Ms Bourke could not be dismissed but they were getting to the edge of credibility.
- 37 Detective Senior Constable Neylan was called by TAC to give viva voce evidence. In his viva voce evidence he said that he attended Mr Karasz's house on 27 April 2002. Before he went there he was aware from police material that there had been a fight outside the Ricochet pool hall. The patrol duty sheets indicated conjecture as to how the incident (in which the applicant received injuries) occurred. During the course of the interview Mr Karasz described being attacked by bouncers and some females. He recorded that Mr Karasz told him :

These kids say you pushed me girlfriend and he tried to hit me again but didn't really go me. He went John and broke his ankle. Three or four hit into him but they weren't bouncers. This was in front of Video Ezy. He tried to get away. I was down the road and heard a conversation between two girls and bikies .... saw two police cars. Went back and John was lying on grass next to bus stop ...

- 38 He said the words *he went John and broke his ankle* were words used by Mr Karasz.
- 39 Senior Constable Neylan was asked by Ms Bourke whether there had been any mention by Mr Karasz of the involvement of a motor vehicle. He said he believed he would have asked Mr Karasz whether a motor vehicle had been involved as he had written questions on the side of the day sheet querying a car hitting him. To his recollection there were no references to the involvement of a car in the statement he took from Mr Karasz.
- 40 On 28 April 2002 he went to the hospital to visit the applicant. His notes indicated that the applicant told him -

Mate got in a fight. We went back up there. Girl going off her head ... I think we retaliated. Ankle - Darren reckons I got run over by a car but I don't know. I think I tried to run away.

### Legal Issues

- 41 Pursuant to s.35 of the Act a person who is injured as a result of a transport accident is entitled to compensation in accordance with subs.1 of the Act.
- 42 A transport accident is defined in s.3 of the Act as meaning ...

an incident directly caused by the driving of a motor car or motor vehicle, a railway train or a tram.

- 43 Section 76(2) imposes an onus of proof upon the applicant to establish his or her entitlement.
- 44 Mr Purcell referred me to an unreported decision of Deputy President Macnamara in *Campbell v Transport Accident Commission* (1996/47256). At p 9 of the decision, Mr Macnamara made the following observations in relation to s 76(2) :

Proof upon the balance of probabilities requires no more than the acceptance of a particular hypothesis as being more likely than not the explanation of the events which occurred, it does not entail proof beyond reasonable doubt nor the acceptance of a hypothesis which in a conclusive and satisfying way explains every feature of the events and every item of evidence.

I respectfully adopt Deputy President Macnamara's observations.

- 45 Ms Bourke, in her final submission, pointed to the fact that the applicant's recollection of the incident was very vague and he had no memory of the involvement of a car. She submitted that Mr Karasz's evidence was equally vague. At its highest, his evidence was that he saw car headlights travelling in a westerly direction. He could not say how far away the lights were from the applicant when he saw them. She submitted that as a matter of logic, if a car had hit the applicant, Mr Karasz would have seen or heard it and a car would have gone past and turned left into the area where Mr Karasz was involved in a brawl. She contended that whilst Mr Karasz said he heard a bang, he did not know what was the cause of the bang. He had simply tried to fit it all together after the event.
- 46 Ms Bourke referred to the fact that in Mr Karasz's initial statement to Senior Constable Neylan on the day of the incident and three days later there was no mention of a car. She submitted that the Tribunal could not find that the applicant was involved in a transport accident because it would involve ignoring the factual evidence and accepting Mr Moran's evidence in isolation.
- 47 Ms Bourke argued that Mr Moran could not say that an assault would not cause the injuries suffered by the applicant. She argued that Mr Karasz's oral evidence indicated that at one point when the applicant was being assaulted, he was on a ledge. She referred to the fact that Mr Moran based his opinion on the fact that there had been compound wounds to the lateral surface of the joint when he later agreed that he was wrong. Further, he was not prepared to commit himself to the applicant's pre-incident medical condition. This left the situation where he was doing the best he could. She argued that there were other forces such as falling from a height that had not been suggested to Mr Moran as a cause of the injury. She said there was ample explanation that the applicant suffered injury as a result of an

assault. She referred to the fact that Mr Karasz agreed that he had thought initially the applicant had broken his ankle in the assault.

- 48 Mr Purcell conceded that I should accept that the only reasonable hypothesis was that the injuries sustained by the applicant were caused by a transport accident. He referred to the fact that Mr Moran was the only medical witness called. I should accept his opinion that the most likely mechanism of injury was that a motor vehicle had run over the applicant's leg.
- 49 It is not in issue that the applicant's recall of the incident was very vague. He did his best to recollect the events surrounding the incident but he did not know how he was injured.
- 50 I turn to the evidence of Mr Karasz. There were discrepancies between his initial statement to Senior Constable Neylan, and his statement to Mr Armstrong, some two years later. There were also some discrepancies between his statement to Mr Armstrong and his viva voce evidence. Nonetheless, I found him to be an honest witness and I am satisfied that in giving his evidence before the Tribunal he did his best to recollect the events surrounding the incident, and that some aspects of the events surrounding the incident were clearly recalled by him.
- 51 In my view, his failure to mention to Senior Constable Neylan that he saw the headlights of a car and the applicant lying on the road, and that he heard a bang, are explicable given his condition at the time of the interview, and the fact that at that time he was not necessarily focussing on the applicant's injuries, but the circumstances surrounding the assault generally and more particularly, the assault on him. It will be recalled that earlier on that evening he had returned home to call police after he had been assaulted at the Ricochet pool hall.
- 52 In relation to the discrepancy between the applicant's statement to Mr Armstrong that he saw the applicant lying on the road, and his viva voce evidence that he saw him lying partly in the gutter, I again formed the view that in giving his viva voce evidence Mr Karasz was doing his best to recall what he saw, given that at the same time he was the subject of an assault.
- 53 I am satisfied from the evidence of Mr Karasz that on the night in question, he and the applicant were assaulted by several men. I am also satisfied that during the assault, Mr Karasz saw a set of westbound headlights in the left hand lane of Grimshaw Street, he heard a bang and he saw the applicant lying partly in the gutter of the left hand westbound lane.
- 54 I have considered the ambulance report which was tendered in evidence. It indicates in part as follows :

Pt found by friends and placed on his R side. Ambulance called. ... Pt in R lateral position on nature strip ...

It is apparent from the report that the ambulance officer found the applicant on the nature strip. It is possible, as suggested in the report, that he may

have been placed on the nature strip by friends. In my view, this is not necessarily inconsistent with Mr Karasz's evidence that he saw him at one point in time lying in the gutter.

- 55 I have had no regard for the purpose of making my findings to the reference in Mr Karasz's statement to Mr Armstrong that some of the girls screamed out something like *My God the car's hit him*. Ultimately, Mr Karasz, during cross-examination, was not prepared to swear that he had heard those words and, in any event, the evidence is of a hearsay nature.
- 56 In relation to Mr Moran's evidence, I found him to be a persuasive witness. Notwithstanding that he was subjected to extensive cross-examination he maintained his view that the applicant was injured as a result of being run over, or hit or clipped by a motor vehicle. I am satisfied from his evidence that the most likely cause of the injury to the applicant's leg was motor vehicle running over his leg or hitting or clipping him. I am not persuaded that the probable cause of injury was an assault on the applicant.
- 57 I accept that it was not put to Mr Moran that the applicant suffered the injury falling from a height (for example falling from the ledge outside Video Ezy). However, Mr Karasz did not see the applicant fall from the ledge, and in the later part of the assault on the applicant, he was on the grass slope in front of the store without there being any clear indication that at that stage he had a broken ankle. Further, from my inspection of the photographs, the ledge does not appear to be at a great height above ground level.
- 58 The evidence of Mr Karasz just referred together with Mr Moran's evidence, persuades me that on the balance of probabilities the applicant suffered his injuries as a result of a transport accident. In view of my findings, I set aside the decision under review. I reserve the question of costs.

Jacqueline Preuss  
Senior Member

