

Northern Ireland Unreported Judgments

**Annesley v Secretary of State for Northern Ireland**

**COURT OF APPEAL (CIVIL DIVISION)**

**MACDERMOTT J**

**25 OCTOBER 1984**

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**MACDERMOTT J**

Joseph Annesley (the Applicant) claimed compensation under the provisions of The Criminal Injuries (Compensation) Northern Ireland Order 1977 in respect of injuries received in an incident which occurred on 22nd June 1980 at the Donegall Celtic Club, Suffolk, Belfast.

The matter came before the Recorder of Belfast on appeal under Article 14 of the order and he dismissed the claim on 22nd November 1983. It is from that "dismiss on the merits" that this matter came before me.

The background facts can be stated shortly. On 22nd June 1980 the Applicant after drinking elsewhere arrived at the club about 10.00 pm. He was with friends, drinking and listening to a band in the dance hall of the club. After a short time a number of hooded persons, probably about 8 in number, entered the hall. One took to the stage and announced "This is the Provisional IRA we're having a security check." Members of the group circulated among the tables and at the Applicant's table a friend, Patrick McCann, was pointed out. He was being removed across the hall when one of the gang, a girl, indicated that McCann was not the person being sought and he returned to his table.

Shortly after this two men came back to the table and this time the Applicant was called out. He was escorted to the lobby outside the hall, told to lean against a wall and was shot once through the back of each leg. The injuries and their sequelae were serious and are fully dealt with in the various medical reports placed before me.

I have no doubt that the Applicant sustained a criminal injury as that expression is defined in the order. Why then should he not receive compensation? It would appear that the learned Recorder took the view that in this type of situation, especially where the injury may be self inflicted or possibly collusive, the Applicant's evidence should be corroborated. There is no statutory requirement for corroboration in the technical sense or even in the wider sense of supportive evidence. The Tribunal of fact is nevertheless entitled to insist that it be satisfied that the event occurs as described - and it is to this end that the Secretary of State, who first deals with the claim, must receive from the applicant, a notice of intention to apply for compensation containing full and true disclosure of all facts within his knowledge or belief material to the determination of the application - see article 3(2)(d)(ii). The predecessor to that article was section 1(3)e of the Criminal Injuries to Persons Act (Northern Ireland) 1968 which was considered by McGonigal LJ in *Moore v Secretary of State* [1977] NI 14, [1976] 8 NIJB and at p 16f of the former report said:

"It is to be noted that this second requirement is of full and true disclosure of all the facts within his knowledge and the Statute provides that the court shall not make an order for compensation unless this requirement is satisfied or the applicant satisfies the court that there was reasonable cause for not so doing. These, in my opinion, are important provisions. They are necessary in order to enable the facts of the incident and the bona fides of the claim to be investigated at the earliest possible opportunity. They are also important for another reason. These claims are based on injuries received as a result of a criminal act by some person or persons. It is not only in the interests of justice that the guilty party should be made amenable for the offence committed against the applicant but while it may rarely happen, under section 7 of the Act, the Secretary of State may recover from a person convicted of the criminal offence, the whole or part of any compensation paid the injured party. This section puts a duty on the injured party who chooses to exercise his right to apply for compensation to report the criminal act and injury at a very early date and to make full and true disclosure as a condition of any award being made to him."

In the present case the applicant's notice under article 3(2)(d)(ii) was not before me and he was not cross-examined to suggest that it was inaccurate, vague or otherwise failed to comply with the requirement to make "full and true disclosure". Nevertheless Mr Weir argued that the Recorder was right in deciding as he did and that I should do likewise. He pointed to inconsistencies between the evidence of the applicant and McCann and a Mr Brennan who came to the aid of the applicant as he lay in the lobby after being shot. There is no doubt that discrepancies do exist but they relate in the main to detail. The witnesses do however confirm the substance of the applicant's account and fully corroborate his claim that he sustained a criminal injury in the lobby of the club by being shot by hooded persons who were probably members of the Provisional IRA. In these circumstances and bearing in mind that none of the other disentitling provisions in the Order were relied upon by the Respondent I can see no answer to the Applicant's claim. Also the observations of Lord Lowry LCJ in *Cahill v Secretary of State* [1977] NI 53, [1977] 2 NIJB in relation to claims under the 1968 Order apply equally to claims under the 1977 Order. At p 55c he said:

"I agree with the view stated in the judgment of Gibson LJ, and accepted by the respondent, that there is no inherent jurisdiction to refuse compensation on grounds which are not set out in the Act. I also accept the proposition that, once the victim has established a prima facie entitlement to compensation, the respondent must accept the burden under section 1(2) of the Act of showing that the victim is not entitled to recover."

I have had the benefit of hearing more evidence than did the Recorder. On the bald evidence of the Applicant, who was a far from persuasive witness, the Recorder could easily have come to the conclusion which he did because a Judge, like the Secretary of State shall in determining whether compensation shall be paid have regard to all such circumstances as are relevant - see article 5(2). As to the meaning of relevant the Lord Chief Justice adopted the words of Gibson LJ who had heard Cahill's appeal - he said, page 57 of the report:

"Any circumstance which logically or reasonably bears on the question whether the applicant ought to receive or be denied compensation is relevant and ought to be taken into account and given such weight as it merits."

On this basis and having regard to the paucity of the evidence before him the learned Recorder could easily and properly have reached his conclusion. However, as I have said, the Applicant's case before me was presented in a much clearer manner and I am satisfied that the Applicant is entitled to compensation.

#### Compensation

The Applicant is aged 30. His occupation is primarily that of roof tiler - but at times he had described himself as a house repairer or labourer. He accepted that he last worked as a roofer in 1977 or 1978. No work pattern was established which is not surprising as he has an appalling criminal record and since 1977 he has been in and out of prison with monotonous regularity. He is presently serving a 3 year sentence for burglary im-

posed at Ballymena on 23rd March 1984. Against this background Mr McNulty understandably does not claim any sum for lost earnings or future loss save to claim that as part of his general damages allowance should be made for his impaired earning capacity. I bear this in mind while noting that his incapacity has not curtailed his criminal activity.

His injuries are detailed in the full reports of Mr George Johnston FRCS and Mr Paul Osterberg FRCS. The bullet through the region of the right knee did not disturb the knee mechanism and the only material features are the entrance and exit scars.

The left leg was much more seriously damaged. Though movement of the left knee appears satisfactory both the popliteal artery and the lateral popliteal nerve were severed. Surgical repair was carried out but loss of sensation especially in the foot and foot drop remain. Mr Johnston in October 1983 concluded that there would be some sensory deficit of the left leg but that hyperaesthesia of the foot would improve. The Applicant complains of difficulty in walking without shoes but in his last report (January) 1983 Mr Osterberg reports that in general he gets about well and he could see no reason why the applicant should not be able to do work at ground level where climbing or marred agility is not required.

In all the circumstances I consider that £7,000 is a fair sum to award as compensation.

*Order accordingly*