

Northern Ireland Unreported Judgments

## **Bellew v Secretary of State for Northern Ireland**

**COURT OF APPEAL (CIVIL DIVISION)**

**HUTTON J**

**12 JUNE 1985**

**12 June 1985**

**HUTTON J**

This is an appeal from a decision by his Honour Judge Rowland QC refusing an application for compensation under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977.

In September 1980 the appellant was a schoolboy aged 15 years. He lived on the family farm at 19 Drummond Road, Cullyhanna, in County Armagh, which is close to the Border, and each day he cycled to school in Crossmaglen. Some days prior to 10th September 1980 a police constable had been kidnapped by terrorists in the area in which the appellant lived and since the kidnapping there had been no trace of that constable, and the appellant was aware of this kidnapping. On the morning of 10th September 1980 the appellant left home at about 8.15 am to cycle to school. As he cycled along the Drummond Road he saw at the side of the road what appeared to him to be a body and he immediately believed that the body was that of the kidnapped constable. He immediately realised that he must notify the police of what he had seen, so he cycled to the home of a neighbour, Mr James McNulty, and asked him to telephone the police to tell them of the body at the side of the road. Mr McNulty rang the police and gave them this information, and the appellant continued on his way to school.

When the appellant was returning from school on the afternoon of that day he saw members of the security forces searching the Drummond Road, although the road itself was not sealed off. The appellant began to cycle along the Drummond Road and then realised that he could not bring himself to pass the spot where he had seen the body, so he asked a neighbour for a lift home in the neighbour's car and was given a lift home in the car. When the appellant arrived home he found that he was shaking and was very nervous and felt very confused. His mother then took him to see the family doctor who diagnosed delayed shock and gave him an injection and also prescribed sleeping tablets. There is no doubt that the appellant was suffering from severe nervous shock as a result of what he had seen lying at the side of the road and he was unable to go to school for a month.

As a result of the search of the Drummond Road carried out by the security forces following the report of what the appellant had seen, it was found that the appellant had not seen an actual body lying at the side of the road but that he had seen a dummy made of straw wearing boots, trousers, and with a jacket over the head. The security forces continued carrying out a search in the area of the Drummond Road and were still searching in that area on the next morning, 11th September, when a bomb exploded on the Drummond Road about 80 yards from where the dummy had been lying and on the same side of the road. No members of the security forces were injured by this explosion and the appellant heard the explosion, being wakened from sleep by it. The police constable who had been kidnapped prior to 10th September 1980 was murdered

by terrorists and his body was found on 12th September 1980 about 2 miles from the place where the dummy had been lying at the side of the road.

There is no doubt that the plaintiff suffered nervous shock (which constitutes an "injury" within the meaning of the 1977 Order) as a result of seeing the dummy, which he believed to be the body of the kidnapped constable, lying at the side of the road, and his nervous shock was exacerbated by hearing the explosion the next morning. Article 2(1) of the 1977 Order provides:

"criminal injury" means an injury (including an injury which results in death) directly attributable to -

(a) a violent offence;

'violent offence' means -

(c) any offence under the Explosive Substances Act 1883;

(g) a related offence.

'related offence' means -

(a) aiding, abetting, counselling, procuring or inciting the commission of a violent offence."

Having regard to the location of the incident in county Armagh close to the Border and to the fact that a police constable had been kidnapped a short time before, I am satisfied as a matter of inference that the dummy had been placed in the position where the appellant saw it by terrorists in order to lure members of the security forces to the Drummond Road, and that the explosive substance which caused the explosion on the Drummond Road on 11th September 1980 had been placed there by the same group of terrorists with the intention of killing or wounding members of the security forces lured to the Drummond Road by the presence of the dummy at the side of the road.

Therefore I am satisfied that the explosion in the Drummond Road on 11th September constituted an offence under section 2 of the Explosive Substances Act 1883 which provides:

"Any person who unlawfully and maliciously causes by explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be guilty of felony, and on conviction shall be liable to penal servitude for life, or for any less term (not less than the minimum term allowed by law), or to imprisonment . . . for a term not exceeding two years."

As I have stated, I am also satisfied that the dummy was placed at the side of the road for the purpose of luring members of the security forces to the location of the explosive substance so that they would be killed or injured when the explosive substance detonated. Therefore the placing of the dummy at the side of the road constituted the offence of counselling the substantive offence of causing the explosion, because as Lowry CJ stated in *R v Maxwell* [1978] NI 42, [1978] 1 NIJB at 53:

". . . a counsellor is one who before the commission of the crime . . . conspires to commit it . . . or knowingly gives assistance to one or more of the principals."

Therefore the nervous shock was directly attributable to a "related offence" (ie related to the offence under the Explosive Substances Act 1883), which related offence is a "violent offence" within the meaning of Article 2(1) of the 1977 Order. Accordingly the applicant is entitled to compensation.

In deference to the careful judgment of the learned county Court Judge I should say that the reasoning on which I have based my decision was not advanced in argument before him. Article 3(2) of the 1977 Order provides:-

"No compensation shall be paid -

(d) unless the victim -

(ii) serves on the Secretary of State within twenty-eight days from the commission of the criminal injury, 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;

or does so within such periods as the Secretary of State considers reasonable having regard to all the circumstances."

In the appellant's notice of intention to apply for compensation where the form states:-

"Give precise details of circumstances in which the injuries were sustained"

the details were stated as follows:-

"The applicant was going to school and noticed an object which looked like a body. The object had clothes on and a jacket over its head. The body of Wallace Allen was found a short distance (away) the following day."

Counsel for the respondent made the point that in the notice no reference was made to the explosion on the following day. However the explosion was, of course, known to the police and the respondent was in no way taken by surprise or put at a disadvantage on the hearing of the appeal by the appellant's reliance on the explosion. Therefore I consider that it would be unjust to refuse the appellant compensation on the ground that his notice of application, which gave a reasonably full summary of the circumstances, omitted to mention that on the next day there was an explosion, of which the police were fully aware. Therefore I award the appellant compensation.

It is clear from the medical reports and from the report of his headmaster that the appellant suffered severe nervous shock and resultant depression for a period of about two years after the incident. He felt unable to attend school for about a month and when he did return to school his interest in school work and in doing his homework appears to have been substantially diminished. He suffered from inability to get to sleep and from nightmares for a considerable period and did not wish to be left alone in the house. Before the incident he was a normal happy young man but after the incident he appears to have lost his zest for life for a period of about two years. Having regard to the symptoms from which he suffered and to their duration I consider that the appropriate compensation is £3,500 and therefore I award that sum.

*Appeal allowed; appellant awarded £3,500 compensation*