

N.I.

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CAHILL v. SECRETARY OF STATE ¹

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Criminal injury to persons—Personal injuries by shooting—Requirement that court “have regard to all such circumstances as it considers relevant”—Whether “such circumstances” must relate to the offence to which the injury was attributable—Applicant an adherent of an illegal organisation—Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 (c. 9), s. 1 (2).

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The applicant sustained personal injuries as the result of a shooting incident while he was engaged in a milk round. He was awarded £20,000 compensation in the county court under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968.

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The respondent appealed to the High Court where it was found that the applicant was an adherent to or a member of the provisional wing of the Irish Republican Army, and that the shooting incident occurred during a feud between the official and provisional wings of the Irish Republican Army. The High Court held that these facts were circumstances relevant to the question whether compensation to the applicant should be refused under section 1 (2) of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968. The appeal was allowed and the applicant requested that a case be stated asking whether it was correct in law to hold that on the proper construction of section 1 (2) of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 the court can take into consideration circumstances other than circumstances which contributed to the criminal injury or which related to the criminal offence to which the criminal injury was attributable.

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Held, that in section 1 (2) of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 “all such circumstances as it considers relevant” has a wider meaning than the words “any provocative or negligent behaviour of the victim which it is satisfied contributed directly or indirectly to his injury or death” and need not relate to the criminal offence to which the injury is attributable nor to the conduct of the victim in relation to that offence, but can relate to circumstances other than the activities which the applicant was involved in at the time of sustaining his injuries.

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Per Lowry L.C.J. Once a prima facie entitlement to compensation under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 has been shown then there is no inherent jurisdiction to refuse compensation to the applicant on grounds which are not set out in the Act; and the respondent must accept the burden under section 1 (2) of showing that the applicant is not entitled to recover on one of the grounds set out in the Act.

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The following cases are referred to in the judgment:

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G. H. Chambers (Northern Farms) Ltd. v. Watmough [1956] 3 All E.R. 485.
McDaid v. Ministry of Home Affairs [1973] N.I.J.B. May.

¹ In the Court of Appeal before Lowry L.C.J., Jones L.J. and O'Donnell J.: March 28, 30, 1977.

Moore v. Secretary of State [1977] N.I. 14.

Tomkins v. Tomkins [1948] P. 170.

A

CASE STATED by Gibson L.J. The facts appear sufficiently in the judgment of Lowry L.C.J.

J. A. Creaney Q.C. and *P. J. Cush* for the applicant.

J. B. E. Hutton Q.C., *W. A. Campbell Q.C.* and *F. C. Elliot* for the respondent.

B

Cur. adv. vult.

LOWRY L.C.J. On 9 March, 1971, Thomas Cahill (hereinafter called "the applicant") was a self-employed milk roundsman who made deliveries mainly to private houses over a wide area of Belfast which he covered in a van driven by himself without a helper. While so employed and also collecting money due, he was, when in his van at Dermot Hill Road, a republican area, shot twice and seriously injured.

C

On a criminal injury application under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 (hereinafter called "the Act") the learned deputy recorder awarded compensation of £20,000. From this award the Secretary of State for Northern Ireland (hereinafter called "the respondent") appealed to the High Court and Gibson L.J., having heard the evidence (which differed in some material respects from that given in the court below), in a reserved judgment allowed the appeal and dismissed the application.

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The applicant, being dissatisfied with the decision of Gibson L.J. as being erroneous in point of law applied to him to state a case for the opinion of the Court of Appeal.

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The learned judge then stated a case and has set out the questions for the opinion of this court as follows:

"Was I correct in law in holding:

1. That on the proper construction of section 1 (2) of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 the court is not confined to consideration of circumstances which contributed to the criminal injury or which relate to the criminal offence to which the criminal injury is attributable.
2. That relevant circumstances which entitled me to refuse to make an order for the payment of compensation to the applicant in the exercise of my discretion under section 1 (2) of the said Act were that the applicant was an active member of or adherent to the provisional wing of the I.R.A. and was shot by reason of his affiliations with the provisional wing of the I.R.A. and as a consequence of a feud between the official and provisional wings of the I.R.A.?"

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The case stated set out the following facts which Gibson L.J. found proved at the hearing:

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"(a) On 9 March 1971 the applicant sustained personal injuries by

- A shooting which were directly attributable to a criminal offence and were a criminal injury within the meaning of the 1968 Act.
- (b) Immediately before the applicant was shot a violent feud had broken out between the official and provisional wings of the I.R.A.
- (c) At the time the applicant was shot he was an active member of or adherent to the provisional I.R.A.
- B (d) The applicant was shot because of his affiliations with the provisional I.R.A. and as a consequence of the feud."

He further stated that it was agreed between the parties that the sum of compensation attributable to the criminal injury was £20,000 if he was entitled to be fully compensated.

- C I agree with the view stated in the judgment of Gibson L.J., 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. The question whether the applicant is entitled to compensation depends on the meaning of that sub-section and its application to the facts. It reads as follows:
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"In determining whether to make an order under this section, the court shall, without prejudice to section 4 (6) (a), have regard to all such circumstances as it considers relevant and, in particular, to any provocative or negligent behaviour of the victim which it is satisfied contributed, directly or indirectly, to his injury or death."

- E I note also that section 4 (6) (a) provides:

"The court in determining the amount of compensation, if any, to be awarded under this section, shall:

- (a) make such deduction as in the circumstances it may think fit in respect of any provocative or negligent behaviour of the victim which the court is satisfied contributed, directly or indirectly, to the criminal injury."
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- Upon the hearing of the appeal in this court Mr. Creaney, for the appellant (whose assistance and clear exposition of every argument which could properly be advanced I am glad to acknowledge), abandoned, wisely in my view, the contention, which had been unsuccessfully made before Gibson L.J., that in section 1 (2) the words "which it is satisfied contributed, directly or indirectly, to his injury or death" qualified the words "all such circumstances as it considers relevant." I say wisely because I agree entirely with the learned Lord Justice's view of the grammatical construction of section 1 (2) and adopt his reasoning. The syntactical flow of the sentence, the double use of the word "to" and the wording of section 4 (6) (a) combine to make an irrefutable case for his preferred interpretation. I would add only one observation. If the applicant's interpretation before Gibson L.J. were correct, the court would have to have regard to "all such circumstances as it considers relevant... which it is satisfied contributed, directly or indirectly, to (the victim's) injury or
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death." But this would mean that the statute, so construed, contemplated that there might be circumstances which contributed, directly or indirectly, to the victim's injury or death but which nevertheless the court did *not* consider relevant. Such an interpretation borders on absurdity. This is not, however, tantamount to saying that the circumstances considered by the judge in this particular case did *not* contribute to the applicant's injury.

Mr. Creaney did not, however, in other respects abandon question 1 in the case stated: he contended that, to be relevant, the "circumstances" must relate to the criminal offence to which the injury is attributable and must be linked with the conduct of the victim in relation to that offence. This was the "second argument" referred to by Gibson L.J. at p. 5 of his judgment. To support this proposition counsel called in aid two decisions of McGonigal L.J. in *McDaid v. Ministry of Home Affairs* [1973] N.I.J.B. May and *Moore v. Secretary of State* [1977] N.I. 14 where the learned Lord Justice had had regard to the circumstances which were in each case closely linked to the conduct of the applicant in relation to the offence of which he had been a victim. In *Moore's* case the Lord Justice said:

"But in determining whether to make an award at all the Court is to have—*shall have*—regard to all such circumstances as it considers relevant including provocative or negligent behaviour. There are, therefore, certain circumstances other than provocative or negligent behaviour which could operate on the mind of the Court so as to lead it in its discretion to an outright refusal, and there are occasions also when provocative or negligent behaviour could have that effect. Once however the Court decides to award compensation the only circumstance relevant to decide if there should be a deduction is provocative or negligent behaviour.

What are such other circumstances? There is nothing in the Act itself to limit the nature of such except that they must be circumstances which the Court considers relevant. That, in my opinion, means circumstances related to the conduct of the applicant, circumstances in the events leading up to and subsequent to the injury, his conduct in relation to the injury after it had been received, his conduct in relation to those who inflicted the injury and who are guilty of the criminal offence and his conduct in pursuing the claim. All these matters may be relevant to a greater or less degree depending on the facts of the particular case."

In reliance on this passage Mr. Creaney, pointing out that the applicant herein was innocently engaged in a milk round at the time he was shot, submitted that entitlement to compensation ought to depend on what an applicant was involved in *at the time of sustaining his injuries*.

In my opinion such a construction of the words "all such circumstances as (the court) considers relevant" is much too narrow and is not supported by the judgment of McGonigal L.J. in *Moore's* case or by the extract therefrom which I have cited and which Gibson L.J. adopted in the judgment now under appeal. In neither *McDaid's* case nor *Moore's* case did the learned Lord Justice reject the consideration of any circum-

A stances on the ground that they were not sufficiently closely related to the occurrence in which the injury was sustained. The judgments cannot therefore be seen to limit the meaning of relevant circumstances in the manner contended for.

B The words of section 1 (2) show that circumstances which may be considered relevant must have a more general meaning than the words "any provocative or negligent behaviour of the victim which the court is satisfied contributed, directly or indirectly, to his injury or death," since this is something to which, "in particular," the court must have regard in determining whether to make an order. The word "all" promotes a wide interpretation and the words "as it considers relevant" tend to confer a clear discretion on the court to decide what is relevant.

C Mr. Creaney helpfully reminded us of the words of Lord Greene M.R. in *Tomkins v. Tomkins* [1948] P.170, 175.

"When I say 'relevant' I mean this, so nearly touching the matter in issue as to be such that a judicial mind ought to regard it as a proper thing to be taken into consideration."

D One may also refer to the observation of Vaisey J. in *G. H. Chambers (Northern Farms) Ltd. v. Watmough* [1956] 3 All E.R. 485 where, in considering the phrase "Having regard to all the relevant circumstances of the case," he said (at p. 487D):

"'Having regard to all the circumstances of the case' is about as wide an expression as it is possible to imagine."

E In considering the meaning of "relevant," it is necessary to ask the question "relevant to what issue?" The answer must be "the issue whether to make an order for compensation." As Gibson L.J. put it in his judgment (at p. 5):

"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."

F I would answer in the affirmative the first question in the case stated. Before proceeding I would observe that one question canvassed in the court below was whether the mere fact that an applicant is a member or supporter of an organisation such as the I.R.A. can by itself be a relevant circumstance disentitling that applicant to compensation. The matter was not fully developed and, as events turned out, became immaterial to the decision, as it is now to the questions posed for our opinion.

G As for the second question in the case stated, the circumstances therein set forth are in my opinion clearly relevant. If that is right, it must follow that they are *capable of being considered* relevant under section 1 (2). Put shortly, the applicant was at least an adherent of the Provisional I.R.A. and because of this fact he was shot. The use of the words "in particular" shows that provocative or negligent behaviour of the victim which contributed directly or indirectly to the injury is relevant. Therefore (without prejudice to giving to the word "relevant" an even wider meaning), other circumstances discreditable to the victim which,

like provocative or negligent behaviour, render him more likely to suffer injury or death from attack are certainly capable of being considered relevant by the court. Parliament by its language has contemplated that, as well as provocative or negligent behaviour, there are other circumstances which the court may consider relevant and which may cause the court to withhold compensation altogether. Nor are these circumstances those listed in section 1 (3), since the latter not only are relevant but constitute absolute bars against the recovery of compensation.

After reviewing the evidence the learned Lord Justice concluded his judgment:

“The evidence before me overwhelmingly points to the conclusion that the applicant was shot because of his connections with the Provisional I.R.A. In this regard there is a clear distinction between the case as presented before me and that before Judge Higgins.

As I hold that the applicant was shot because of his affiliations with the Provisional I.R.A., I regard that connection as a relevant circumstance to be considered in deciding whether to award compensation. Admittedly the applicant was not physically engaged in gun warfare when shot—though he was carrying ammunition—but he was actively supporting a body which had for years been attempting to achieve its political objects by every violent means against both life and property. All who joined in that conspiracy must have known not only of the criminality of their association but that they were putting their liberty and possibly also their lives at risk to advance its ends. The applicant was injured as a direct result of that connection and I cannot think that Parliament ever contemplated or that I should countenance the idea that such enemies of society should be awarded compensation out of public funds for injuries received because of their criminal associations directed towards the destruction of the State itself.”

I cannot improve on this exposition of the circumstances which the learned Lord Justice considered to be relevant and having regard to which he dismissed the applicant's claim.

I would answer in the affirmative both questions in the case stated and would dismiss the appeal.

JONES L.J. I entirely concur with the judgment which has just been delivered and have nothing to add.

O'DONNELL J. I also concur and have nothing to add.

Order accordingly.

Solicitor for the applicant: *P. J. McGrory.*

Solicitor for the respondent: *Crown Solicitor.*

W. B. S. S.