CURRY v SECRETARY OF STATE FOR NORTHERN IRELAND

In the Court of Appeal before Hutton LCJ and MacDermott LJ; 23 May 1991, 19 November 1991.

Criminal injury – Refusal by Secretary of State to pay compensation – Nervous shock – Applicant nursed police oficers wounded in terrorist incident – Whether conpensation payable to those not present when the act arising out of which compensation claimed committed – Criminal Injuries (Compensation) (Northern Ireland) Order 1988 (SI No 793, NI 4), Art 5(12).

The appellant lived in a rural area in County Fermanagh. The appellant's home was at the end of a lane, approximately twenty yards from the public road. In October 1988, two police officers were driving a police car on the public road close to the appellant's house, when they were ambushed and shot by terrorists. As a result of this attack, both police officers were severely injured and their car crashed into the hedge opposite the lane leading to the appellant's house. At the time of the attack, the appellant heard a bang like a car crash. She was immediately told by one of her sons that there had been a lot of shooting, although she herself did not hear any shooting. The appellant's husband and sons ran out of the house and came upon the crashed car. The appellant followed her husband and sons towards the car and her husband told her to telephone for an ambulance. The appellant could hear screaming. She telephoned for an ambulance and went to the police car and got into it. In the police car were the two police officers; one was unconscious and still alive and the other was conscious but terrified of a further attack and was screaming. The appellant nursed the unconscious police officer, who was bleeding profusely, in her arms until he died. The appellant remained nursing him and talking to the other police officer until the arrival of the ambulance approximately half an hour after she had got into the car. The appellant suffered considerable nervous shock after nursing and comforting the two police officers in such circumstances. The appellant made application for compensation under the Criminal Injuries (Compensation) (Northern Ireland) Order 1988. The County Court judge considered that he was obliged to dismiss the appeal by the appellant against the decision of the Secretary of State refusing her claim as the appellant was not present within the meaning of Article 5(12)(b) of the 1988 Order when the officers were ambushed. The appellant appealed by way of case stated to the Court of Appeal.

Held, dismissing the appeal, that –

(1) By approving Article 12(5) of the Criminal Injuries (Compensation) (Northern Ireland) Order 1988 Parliament intended to change the law and to take away the right to recover compensation for nervous shock from those who were not present when the act arising out of which the application was made was committed (see page 284A).

(2) The word "present" was an ordinary English word and it could not be said that the county court judge erred in holding that the appellant was not present when the act was committed. The act to which Article 12(5) of the 1988 Order referred was the firing by the terrorists at the police officers and this act had terminated before the appellant came out of her house (see page 284G, 285C).

The following cases are referred to in the judgment:

A *Cozens v Brutus* [1973 AC 854; [1972] 3 WLR 521; [1972] 2 All ER 1297
Martin v Ministry of Home Affairs [1979] NI 172
O'Dowd v Secretary of State for Northern Ireland [1980] 10 NIJB; [1982] 9 NIJB

APPEAL by Mary Catherine Curry from the decision of the County Court judge for the Division of Fermanagh and Tyrone, dismissing the appeal of
B the appellant against the decision of the Secretary of State for Northern Ireland refusing her compensation for criminal injury under the Criminal Injuries (Compensation) (Northern Ireland) Order 1988. The facts appear sufficiently in the judgment.

JO McNulty QC and *T Montague* (instructed by *Murphy & McManus*) for the appellant.
C *BF Kerr QC* and *JC Gillespie* (instructed by the *Crown Solicitor*) for the respondent.

Cur adv vult

HUTTON LCJ. The judgment which I am about to deliver is the judgment of
D the court.

This is an appeal by case stated by Mrs Mary Catherine Curry, from a decision of His Honour Judge Babington QC sitting in the County Court for the Division of Fermanagh and Tyrone, whereby he dismissed the appeal of the appellant against the decision of the respondent, the Secretary of State, that no compensation was payable to her in respect of her claim for compensation for a criminal injury under the Criminal Injuries
E (Compensation) (Northern Ireland) Order 1988.

The facts giving rise to the appellant's claim are set out in the case stated and can be summarised as follows.

The appellant is a married lady who lives with her husband and two sons in a house at Crocknacrieve, which is a rural area in County Fermanagh. The appellant's home is at the end of a lane approximately 20 yards from the
F public road. At approximately 7.00 pm on 26 October 1988 two police officers were driving in a police car on the public road close to the appellant's home when they were ambushed and shot by terrorists. As a result of this attack both police officers were severely wounded and their car crashed into the hedge on the far side of the road opposite the lane leading to the appellant's home.

At the time of the attack on the police officers the appellant was sitting
G with her husband watching television in a room in the middle of the house. To the rear of this room there was a kitchen and to the front of this room there was another living room, and the appellant's two sons were in this front room. At the time of the attack the appellant heard a bang like a car crash. The appellant did not hear any shooting, but immediately one of her sons came into the middle room and said there had been a lot of shooting.

The appellant's husband and sons then went out through the front door
H and found the police car crashed into the hedge on the opposite side of the road. As the appellant followed her husband and sons towards the car her

husband told her to ring for an ambulance. The appellant could hear screaming. She telephoned for an ambulance and then went to the police car and got into it.

In the police car were the two police officers. One was unconscious but still alive, and the other was conscious but terrified of a further attack and was screaming. The appellant acted in a way which deserves the highest praise. She nursed the unconscious police officer in her arms. He was bleeding profusely and in nursing him the appellant, herself, became covered in his blood. At the same time the appellant tried to calm the police officer who was conscious by talking to him. The police officer whom the appellant was nursing died in her arms, but she remained nursing him and talking to the other police officer until the arrival of the ambulance approximately half an hour after she had got into the car.

Very understandably the appellant suffered considerable nervous shock after nursing and comforting the two police officers in such harrowing circumstances, and her condition was described in the medical report of the consultant psychiatrist, Dr Alec Lyons.

The learned county court judge considered that he was obliged to dismiss the appeal by Mrs Curry against the decision of the Secretary of State, refusing her claim for criminal injury compensation, by reason of Article 5(12) of the Criminal Injuries (Compensation)(Northern Ireland) Order 1988 which provides:

> "No compensation shall be paid to any person by virtue of Article 3(2)(a)(iv) in respect of any injury which is caused by his mental reaction to the act arising out of which the application for compensation is made, or to the consequences of that act, unless –
>
> (a) the injury amounts to a serious and disabling mental disorder;
>
> (b) he sustained the injury by virtue of being present when that act was committed; and
>
> (c) the amount of compensation which, but for this sub-paragraph, would be payable by virtue of Article 3(2)(a)(iv) in respect of that injury is at least £1,000."

The 1988 Order came into operation on 1 July 1988 and repealed the Criminal Injuries (Compensation)(Northern Ireland) Order 1977, which in its turn had repealed the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968. Under both the 1968 Act and the 1977 Order the test whether compensation was payable for nervous shock was whether the nervous shock was "directly attributable to" a criminal or violent offence. Section 11(1) of the 1968 Act provided:

> "In this Act –
>
> 'criminal injury' means an injury (including an injury which results in death) directly attributable to –
>
> (a) a criminal offence;
>
> 'Injury' means actual bodily harm and includes pregnancy and mental or nervous shock;"

Article 2(2) of the 1977 Order provided:

A "In this Order –

'criminal injury' means an injury (including an injury which results in death) directly attributable to –

(a) a violent offence;

'Injury' includes any disease, any impairment of a person's physical or
B mental condition and pregnancy;"

The law as to the circumstances in which compensation could be recovered by a person suffering nervous shock as a consequence of a criminal or violent offence was laid down by the Court of Appeal in *O'Dowd v Secretary of State* [1982] 9 NIJB. In that case a number of persons were shot dead in a house and their relatives, who were not present at the time of the shooting,
C suffered nervous shock as a result of being told of the shooting and going to the scene of the shooting and seeing the terrible sight in the house.

In the High Court, [1980] 10 NIJB, Gibson LJ held that the relatives were not entitled to recover compensation for nervous shock and stated at page 16:

"However much one may be anxious to help those who have suffered, I
D can see no real alternative to the conclusion that the class of those whose injuries are directly attributable to a crime ought to be construed as confined to those injured by the criminal act, that is to say, those who being present at the scene of the crime, at the time of the crime, are directly injured by the crime, either physically or mentally or emotionally by personal perception of the crime."

E This decision was reversed by the Court of Appeal on a case stated and the Court of Appeal answered "No" to the following question:

"Whether under the provisions of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 an injury can only be considered as directly attributed to a criminal offence if the applicant for compensation was present at the scene of the crime at the time of the
F commission of the crime and was directly injured physically or was injured mentally or emotionally by personal perception of the crime;"

It is relevant to note that in delivering his judgment in the Court of Appeal Lord Lowry LCJ stated at page 7:

"I come back now to Mr Carswell's invitation to limit the ambit of compensatability. This seems to me to involve treating a *causa causans*
G as if it were not one, contrary to both logic and to the binding authority of *Martin v Ministry of Home Affairs* supra. And, even if we could do this, I can discover from the language of the legislation no criterion by which to decide what is the limit to be imposed on the meaning of the words "directly attributable". If a limit is to be prescribed, it must therefore be devised by Parliament and not guessed at by the Court."

H We are of opinion that the present appellant would have been entitled to recover compensation for the nervous shock which she suffered under

both the 1968 Act and 1977 Order. But we consider it to be clear that by approving Article 12(5) of the 1988 Order Parliament intended to change the law in respect of compensation for nervous shock as contained in the 1968 Act and the 1977 Order and as interpreted by the Court of Appeal in *O'Dowd v Secretary of State*, and to take away the right to recover compensation for nervous shock from those who were not present when the act arising out of which the application for compensation is made was committed.

In his judgment the learned county court judge said:

> "Having considered the matter carefully I have come to the conclusion that the act referred to in the Article is the firing of the shots in the ambush and that the appellant therefore was not present when they were fired and the policemen received their injuries as at that time she was in the living room of her house watching television.
>
> It seems to me that before an applicant can succeed under the 'being present' paragraph he must prove that he was at the scene and knew generally of what was going on. I therefore dismiss the appeal. I do so with some regret as I consider that the appellant's behaviour in staying with the two injured men for upwards of half-an-hour until the ambulance arrived was of the highest order. And I am also satisfied that it has caused her since and still causes her considerable mental anguish."

The case stated sets out two questions of law for the opinion of this court:

> "1. Whether I was correct in law in holding that the appellant was not present within the meaning of Article 5(12)(b) of the Criminal Injuries (Compensation)(Northern Ireland) Order 1988 when two police officers were ambushed.
>
> 2. Whether I was correct in law in holding that 'being present' required that the appellant was at the scene and knew generally of what was going on when the act arising out of which the application for compensation is made, was committed."

We consider that in this case the "act" to which Article 5(12) refers was the firing by the terrorists at the police officers. Mr McNulty for the appellant argued that the "act" was still continuing when the police officers were bleeding from their wounds in the motor car whilst the appellant was present with them and that her nervous shock was caused by a mental reaction to the officers' condition in the car. We do not accept that submission. We consider that the "act" arising out of which the application for compensation was made had terminated before the appellant came out of her house.

The word "present" in Article 5(12)(b) is an ordinary English word. In *Cozens v Brutus* [1973] AC 854 at 861C Lord Reid stated:

> "The meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense the court will determine in other words what that unusual sense is. But here there is in

my opinion no question of the word 'insulting' being used in any unusual sense. It appears to me, for reasons which I shall give later, to be intended to have its ordinary meaning. It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved. If it is alleged that the tribunal has reached a wrong decision then there can be a question of law but only of a limited character. The question would normally be whether their decision was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision."

Following this approach it is clear that the learned county court judge cannot be said to have erred in holding that the appellant was not present when the act was committed. She was inside a room in her house when the shots were fired at the constables on the road and it was entirely reasonable for the judge to hold that she was not present when the act was committed. Therefore we answer the first question "yes".

Mr McNulty advanced a number of interesting hypothetical situations which might give rise to the question whether or not a person was present when an act was committed, but we consider that the discussion by this court of such hypothetical situations would not assist the county court judges in applying Article 5(12)(b) to the cases which will come before them. Each case will have to be decided in a commonsense way on its own particular facts giving the word "present" its ordinary meaning.

As we are satisfied that the judge did not err in holding that the appellant was not "present" when the act was committed, it is unnecessary to answer the second question and we do not propose to do so for the reason we have stated in the preceding paragraph.

Order accordingly
PSG