

# Dolan v Secretary of State for Northern Ireland

QUEEN'S BENCH DIVISION

CAMPBELL J

21 JANUARY, 11 MARCH 1994

*Compensation – Criminal injuries – Entitlement to compensation – Injury directly attributable to violent offence – Mental injury – Lorry driver driving lorry to work and leaving it there while carrying out other duties away from work premises – Driver returning to work in evening but unable to drive lorry home as work gates closed – Police informing driver on his arrival at work next morning that suspect device in lorry – Driver remaining at scene and assisting police with information about lorry – Police defusing device – Police later informing lorry driver that planting of device in lorry attempt on his life – Driver suffering post-traumatic stress disorder and receiving compensation under criminal injuries compensation scheme – Whether driver should have been awarded compensation – Whether driver's injury 'directly attributable' to violent offence – Whether driver sustaining injury by virtue of being present when violent act committed – Criminal Injuries (Compensation) (Northern Ireland) Order 1988, SI 1988/793, arts 2(2), 5(12)(b).*

*J M McDonnell* (instructed by *John Fahy & Co*) for the driver.

*T Montague* (instructed by the *Crown Solicitor's Office*) for the Secretary of State.

*Cur adv vult*

11 March 1994. The following judgment was delivered.

**CAMPBELL J.** This is an appeal by the Secretary of State against an award of £3,000 compensation to Daniel Dolan under the Criminal Injuries (Compensation) (Northern Ireland) Order 1988 (the Order).

Mr Dolan is thirty-nine years of age and in February 1990 he was a lorry driver with Thomas Kane and Sons of Newtownstewart, County Tyrone. He began working full-time in October 1988 for Messrs Kane, who have a sand and gravel business, and during the six months prior to February 1990 he drove a Mercedes Benz lorry, belonging to the firm, with the registration number VIA 3829.

He took his lorry home with him each night, unless it was under repair, and on Monday 19 February 1990 he left his home as usual about 6 a m to begin work. Having completed a number of journeys during the morning he parked the lorry outside his employers' offices at 11.30 a m, leaving the keys in a pocket above the driver's seat.

He then drove another lorry, which required repairs, to a garage in Belfast where he was collected by Mr John Kane the firm's production manager and they returned together to Newtownstewart in a van. When they reached their employers' premises at about 7.45 p m they found the gates closed and as the

Mercedes Benz lorry was inside it was decided that Mr Dolan would take the van home and leave Mr Kane off at his house en route.

On the following morning Mr Dolan left for work in the van at 7.30 am and he collected Mr Kane before driving to the firm's premises in Newtownstewart. On their arrival there they were told by the police that there was a suspect device in the Mercedes Benz lorry VIA 3829. They remained at the yard gate some 25 metres from the place where the lorry was parked so that Mr Dolan could assist the ammunition technical officer by providing him with information about the state that the lorry was in when he parked it on the previous day. They remained there until the device was made safe between 2.30 p m and 3.00 p m.

Later Mr Dolan was told by the police that a warning telephone call had been received in which his name was given and the registration number of his lorry. After the device had been defused he was advised by the police that as this had been an attempt on his life, he should pack his bags and leave home. He said that he could not follow this advice as he has a wife and four children though as a result of his concern for his safety he gave up his job and he has not been in employment since then.

On 11 June 1991 Christopher Charles Folliard pleaded guilty at Belfast Crown Court to a count of conspiracy to murder arising out of this incident and a number of other crimes, and he was sentenced to a total of fourteen years imprisonment.

Folliard was a fellow employee of Mr Dolan and he had alerted other terrorists to the fact that the lorry which was usually driven by Mr Dolan was parked in the firm's yard and that there was an opportunity to place a device in it. On the following morning when he discovered that Mr Dolan had not taken his lorry home that night he made the warning telephone call to the Samaritans.

The Secretary of State does not challenge the fact that Mr Dolan suffered from a post traumatic stress disorder as a result of this experience and subject to the issue of liability the amount of the award is not in dispute.

To award compensation under the Order the court must be satisfied that the impairment of Mr Dolan's mental condition was 'directly attributable' to a violent offence, (art 2(2)), and he is not entitled to an award of compensation for any injury caused by his mental reaction to the act arising out of which his application for compensation is made, or to the consequences of that act, unless he sustained the injury by virtue of being present when that act was committed, (art 5(12)(b)).

To place a device in a vehicle for the purpose of killing the driver or causing personal injury to him, is to commit a 'violent offence' within the meaning of the Order. The words 'directly attributable' occurred in the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 (the 1968 Act) and were considered by the Court of Appeal in *Martin v The Ministry of Home Affairs* (1970) NIJB where Lord MacDermott LCJ accepted the proposition that 'directly attributable' and *causa causans* have a similar significance, a view shared by Jones J the other member of the court. These words in the 1968 Act were considered by the Court of Appeal in *O'Dowd v Secretary of State* [1982] NI 210 where Lord Lowry LCJ said at page 214—

'... it is safe to say that an act can be an effective cause (*causa causans*) of damage, even if it is preceded, accompanied or followed by another act

(whether negligent or not) of the injured party or a third party: whether the act complained of is a causa causans is a question of fact and degree. There will, admittedly, be a few occasions on which there is only one reasonable answer to that question, one way or the other.’

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In order to decide whether the traumatic stress disorder that Mr Dolan suffered was *directly* attributable to this attempt on his life it is appropriate to consider the common law guidelines on proximity. I find support for doing so in an article by Professor Greer (Vol 43 No 4 of NILQ at pages 398-399) where he observed that there is ‘much to be said for this approach at a practical level—and there is some justification in principle, given that ‘proximity’ may be regarded as a synonym for ‘directness’. In *Alcock v Chief Constable of S Yorkshire* [1992] 1 AC 310 at page 416 Lord Oliver of Aylmerton said:

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‘In my opinion, the necessary proximity cannot be said to exist where the elements of immediacy, closeness of time and space, and direct visual or aural perception are absent’.

In the circumstances of this application Mr Dolan’s condition was caused by what he was told by the police and not by anything that he heard or saw subsequently. Therefore applying the test of proximity it cannot be said that it was *directly* attributable to a violent offence.

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If it is incorrect to apply the common law guidelines, as I have done, and the injury was ‘directly attributable’, compensation is still to be denied to a victim by reason of art 5(12)(b) of the Order unless ... ‘he sustained the injury by virtue of being present when that act was committed ...’. Assuming that the act was a continuing one, Mr Dolan has been unable to show that his injury was caused by reason of his presence at the scene during the time that the device was being rendered harmless.

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For these reasons the appeal will be allowed.

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*Appeal allowed.*