

Northern Ireland Unreported Judgments

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

**QUEEN'S BENCH DIVISION**

**MCGONIGAL LJ**

**27 APRIL 1979**

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This is an appeal by the Secretary of State for Northern Ireland against an award of £9,250.00 made on 10 May, 1978, by His Honour Judge Doyle for compensation under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 Sec 1. The Respondent who has cross-appealed against the amount is described as Mrs Anne Keyes as a widow though she remarried in January 1977 to Mr Brian Martin Taylor.

On 12 October, 1973, the Respondent was in the Bus Station in Great Victoria Street, Belfast, when a bomb exploded nearby. She was taken to the Royal Victoria Hospital where it was noted on admission at 15.25 hours that she was shocked and hysterical, that there were no obvious injuries and that she could hear well. She was admitted for observation and at 18.30 hours it was noted that she then suffered from deafness of both ears and that she was psychologically upset. She herself has suggested at various medical examinations held for the purpose of this claim that she had been unconscious for a short time following the explosion and had also lost her sight until the morning following her admission to hospital. These claims are not borne out by the hospital notes and I do not accept them.

The deafness in both ears was, however, said to be complete and to persist up to the date of hearing of this appeal. The Respondent gave evidence before me and purported to be unable to hear anything. According to her even at that time deafness was complete.

A number of specialists gave evidence, some having examined her on her own behalf and some on behalf of the Appellant. With one exception, that being Dr McCallum, all were of opinion that she was completely deaf in both ears, that this was functional following the explosion and not organic, and that there was a possibility, subject to some risk, that this deafness could clear up after the claim had been disposed of. Dr McCallum, due to certain reactions by her in the course of his examination, was of opinion that while she had an hysterical reaction immediately following the explosion she was malingering when he examined her on 26 January, 1979.

The allegation of complete deafness requires of course that there should be an inability to hear at all at all times and it was not suggested that the degree of deafness from which she was said to suffer could fluctuate from time to time.

When the learned County court Judge heard this case there was no evidence to suggest that the Respondent was not completely deaf, as Dr McCallum had not then examined her, and the only medical evidence supported the Respondent's claim.

Subsequent to that hearing in May 1978 and subsequent indeed to Dr McCallum's examination, possibly as a consequence of it, two members of Messrs Gilbert & Co, Private Investigators, Mr Smyth and Mr Gordon, were instructed by the Appellant to visit the Respondent. She was then living in Skerries in the South of Ireland. They called on her accompanied by a member of the Gardai at the address where she was living.

Until this visit the Respondent had held herself out as a widow and there was no suggestion before His Honour Judge Doyle that she was not, nor indeed was there any such suggestion on the hearing of this Appeal until the case was more than half over. The two investigators found that the Respondent was living at the address they went to with a husband. It was eventually admitted before me that in January 1977 she had married Brian Martin Taylor whom she had met in September 1976 and that they were living together as man and wife at the address in Skerries.

When the investigators arrived with the Gardai Officer the Respondent was not told why they were there but the Gardai Officer asked her about her husband who was not in the house at the time. It is clear to me that she believed the visit was in connection with her husband and she had no idea it was to check on her own state of deafness. In the result she had no difficulty in hearing questions asked even in a low tone and was able to answer verbal questions and carry on a normal conversation.

I accept the evidence of Mr Smyth and Mr Gordon as to what happened. I am satisfied that the Respondent, despite her continued complaints of deafness to the medical specialists and the charade she put on before me of being unable to hear any question asked when she was called as a witness, is able to hear without any difficulty. In my opinion she has been able to hear without any difficulty for some time. Her concealment of her friendship since September 1976 with and her subsequent marriage to her present husband was a necessary part of the deception she has successfully carried on for a number of years and made it unnecessary for her to complicate her story by explaining how as a totally deaf person she had met, gone out with, and married her present husband.

I am satisfied beyond any doubt that the Respondent is a malingerer and has been for a number of years. That conclusion on the facts means that I am also satisfied that she has successfully deceived the medical specialists who have examined her for the purpose of this case and who have accepted that she was suffering from a total functional deafness. I cannot, therefore, place any reliance on their evidence since it is clear that they have been deceived and that their conclusions are based on that successful deception.

I have, therefore, to consider the Respondent's claim unassisted by that specialist evidence. I do, however, have regard to the evidence of Dr McCallum who did detect the deception and, without knowing as he could not have done of the result of the private investigators' visit to the Respondent, was of opinion that she was malingering. He did say, however, that immediately following the explosion the Respondent in his opinion had an hysterical reaction. The question for me, therefore, is how long that persisted and when a deliberate conscious malingering took over. In my opinion it was some time prior to September 1976 when the Respondent met her present husband and since I do not believe it was a miraculous recovery on meeting him it must have occurred some considerable time prior to it. The onus is, however, on the Respondent to prove her claim and it is for her to satisfy me not only that she has suffered from functional deafness as a result of the explosion but also the duration during which she so suffered. It is not for me to speculate and in the absence of evidence I cannot do other than act on what acceptable evidence there is.

I, therefore, find as fact that following the explosion the Respondent was shocked and hysterical and that after admission to the Royal Victoria Hospital for observation she suffered from a functional deafness.

I have read the medical reports put before me to see if they can assist me in arriving at any conclusion as to the length of time during which the functional deafness persisted. Read with the knowledge of the Respond-

ent's ability to deceive as to her hearing ability and to concealing material facts such as her remarriage the reports emphasise the extent and success of her deception. I cannot find anything in the reports nor in the evidence to suggest that true functional deafness existed for any length of time and I cannot accept the contrary opinions and conclusions contained in the reports. If the deception could be carried on successfully right into the hearing of this appeal, I can place little reliance on reports by the deceived at earlier states.

I therefore limit my finding on functional deafness to what I consider to be a reasonable and indeed to what is on the evidence a generous period of one year. I understand that the award of the learned County Court Judge included a sum for loss of wages. I have no evidence as to how that is made up, nor what the loss of wages for one year following the explosion would amount to. What is it? I assess general damages at £1,000.00 and to this is to be added whatever figure is agreed for loss of wages for that year.

The Respondent has already received interim payments of £3,000.00 made up of three payments of £1,000.00 each. She has therefore received probably more than the final amount awarded. The effect of this and the action if any to be taken is not however a matter for me.

I allow the Respondent costs of the lower Court but I give the Appellant the costs of this appeal, such costs to be taxed and set off one against the other.

*Order accordingly*