

Northern Ireland Unreported Judgments

McClarvey v Secretary of State for Northern Ireland

COURT OF APPEAL (CIVIL DIVISION)

MCGONIGAL LJ

17 JANUARY 1978

17 January 1978

McGONIGAL LJ

This is an appeal against an order of the learned County Court Judge for Tyrone dismissing a claim by the appellant for compensation under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 in respect of injuries alleged to have been sustained by her as a result of a bomb blast.

The initial claim was for nervous shock but on 17th November 1977 when the appeal came on for hearing the claim was amended to include a claim for compensation for damages to the appellant's hearing. This had not been relied on earlier. I heard evidence in relation to that claim including her own doctor's and specialist's reports. I am satisfied having considered the relevant evidence on this head of damage that whatever hearing deficiency there may be it is not referable to the bomb incident. I therefore consider this appeal with reference solely to the original allegation of nervous shock.

The facts as I find them to be are, on 15th November 1975 the appellant was returning by car from Sixmilecross to her home farm which had been set on fire. Before she reached the farm she turned off the road into a side road to allow her sister who lived there to get out of the car. After her sister had left and before she herself got back into the car to drive off she heard an explosion coming from the road, back in the direction of Sixmilecross. It was a loud explosion and the appellant fell to the ground when she heard it. She then with her husband who had walked up and joined her went back on foot to the scene of the explosion. It had been caused by approximately 400 lbs of home-made explosive in a culvert being detonated as a Royal Ulster Constabulary land-rover was going over it. The land-rover had ended up in the bottom of the culvert and the Royal Ulster Constabulary personnel in it had been badly injured. The appellant and her husband with others including the Fire Brigade helped the injured police until they were taken away by ambulance. She and her husband then went back to the farm.

She felt shocked and nervous and was crying. That night she was not able to sleep "with the thought of it all".

On 28th November 1975 the appellant was seen by Doctor Mannion Consultant Psychiatrist at the Tyrone and Fermanagh Hospital and his report dated 8th December 1975 was put in evidence before me. In his report he sets out her symptoms, his findings on examination and his conclusions, and he states his opinion that her condition "was precipitated by this unfortunate episode regarding the murder of the policeman". In an earlier part of his report detailing the events as he was told them he stated "the patient is very anxious because of the loss of life of the policeman and also they have lost their barn and their hay and they have to sell their cattle".

It is clear that her condition was not due to any direct effect caused by bomb blast from the explosion. In so far as it is referable it is due to what she saw when she went back to the scene and to what she heard later, plus the effect the fire at the farm had had on their farming activities.

Her complaints to Dr Mannion are not related to what she saw at the scene but to the death of the policeman which as I understand it from the evidence must have occurred subsequent to his being taken away in the ambulance or at least not known to the appellants when she was at the scene.

The question for me is whether nervous shock suffered by a person not on the scene at the time of the explosion but coming on the scene later and seeing people injured by the explosion can be said to be an injury "directly attributable to the criminal offence". For that to be so the criminal offence must be the causa causans of the injury not merely causa sine qua non; see *Martin v Ministry of Home Affairs* Blue Book October 1970 and the judgments of Lord MacDermott LCJ and Jones LJ in that case. It does not appear to me that that question is determined by any relationship between the person injured by the explosion and the person coming on the scene. A severely mutilated body could as easily cause nervous shock to a stranger as to a relative though the emotional aspect in the latter might be greater. The test in my opinion is not based on any relationship but on the factual question of whether the shock was directly attributable to the explosion or to some other factor. If the cause of shock is attributable to the sight of the injured and not due to involvement in the explosion itself it cannot be said to be directly attributable to the explosion. If it was otherwise every person coming in contact with the mutilated body of a victim and suffering shock as a result could claim and that would be so whether it happened at the scene of the crime or in a hospital or at any other stage when the sight of the body of the victim had that effect.

In my opinion the nervous shock in this case was not directly attributable to the criminal offence and accordingly the appeal must be dismissed and the order of the lower Court affirmed.

Appeal dismissed