

Northern Ireland Unreported Judgments

McGuinness v Secretary of State for Northern Ireland

QUEEN'S BENCH DIVISION

LORD LOWRY CJ

15 JANUARY 1987

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LORD LOWRY CJ

John McGuinness of 87 Bleach Green Avenue, Whiteabbey ("the applicant") who was born on 17th April, 1961 and is an unemployed labourer, sustained a criminal injury at about 7.45 pm on 26th January, 1984 when at the Divis complex, Belfast, he was set upon by a group of men and robbed of £12 and a gold ring worth £124. The incident was reported on 27th January (the next day) at Hastings Street RUC Station by his brother of 36 Abbeyville Park, Whiteabbey.

The applicant's evidence satisfies me that he sustained a criminal injury, as alleged, and is therefore entitled to have his compensation assessed.

The respondent, however, relied on article 6(3)(b) of the Criminal Injuries (Compensation) (Northern Ireland) Order 1977 which so far as material provides:

". . . Compensation shall not be payable in respect of a criminal injury to any person

(b) who has been engaged in the commission, preparation or instigation of acts of terrorism at any time whatsoever, or is so engaged."

Terrorism is defined in article 2(2) of the Order:

"'Terrorism' means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear."

The primary evidence relied on in support of this defence is that on 1st July, 1981, the applicant was convicted on his plea of guilty at Belfast Magistrates' Court of the offence of riotous behaviour for which he was fined £20.

In his direct evidence before me the applicant was taken through his criminal record consisting of a conviction for theft on 30th November, 1978, attempted burglary and disorderly behaviour on 25th January, 1979, and disorderly behaviour on 16th October, 1979 (these are the dates of conviction). He said that on 5th May, 1981, being the date of the offence for which he was convicted on 1st July, 1981, he had been drinking with his brother. They obtained a carry out at an off-licence on the Falls Road and were to go to a friend's house

near the Royal Victoria Hospital. Rioting occasioned by the hunger strikes was in progress and "young kids were throwing stones". The applicant said that he stayed at the house until 1.30 am and that he was drunk and needed to get home. He was "dandering down the Falls Road" and noticed a fire with firemen trying to put it out. This was a building and the applicant was looking at the fire. His brother in the meantime went away. The applicant ended up in a dead-end street and then went back looking for his brother. Press reporters were there and they went closer to the fire. Soldiers were telling the reporters to get back and the applicant also went back but was grabbed by soldiers. He said that he was not involved in the rioting but admitted riotous behaviour at court. He had a solicitor and had told her the circumstances and she had advised him to plead guilty lest he be sent to prison. In the result he was fined £20. He further said that he had not belonged to any paramilitary or other organisation and had no political motivation. His was a mixed marriage and he kept clear of that kind of thing. He had got married in 1979.

In cross-examination about this incident the applicant said that he was arrested in the Falls Road area but could not understand why. Stones were being thrown but not, according to the applicant, by him. In particular he denied that he was throwing stones at the fire-bridade. He agreed that he was aware of the disturbances about the hunger-strikers and said that he just went along on an impulse.

Constable Sloan gave evidence for the respondent and described the disorder as a political protest by large numbers of supporters of the hunger-strikers. Rioting had been going on for two months. The witness was on mobile patrol with a land-rover which was stoned and petrol bombed. The area was residential and youths of 17 were getting involved. There were some fires and the fire-bridade was called to deal with burning cars. They were stoned. Constable Sloan said that he did not witness anything in which the applicant was involved and further said that the applicant was not known to him in connection with either terrorism or other rioting. He interviewed the applicant who had been handed over to him by a soldier. There was nothing to suggest political motivation on the applicant's part. On 5th May tempers were very high and there were other members of the public in the street but mainly persons who were involved in the riots. Mrs McCann, who appeared for the respondent, referred me to the observations of Gibson LJ in *Houston v Secretary of State for Northern Ireland* (unreported) and the judgment of O'Donnell LJ in *Kinnear v Secretary of State* [1985] 6 NIJB 92 (in which two decisions of Macdermott J are mentioned). I may also refer to *Bellew v Secretary of State* [1985] 6 NIJB 86. I have considered the facts carefully in the light of these decisions. There is absolutely no evidence that the applicant used any violence for political ends but counsel relies mainly on "any use of violence for the purpose of putting the public or any section of the public in fear". The words "for the purpose" have to be given their full meaning and I can find absolutely no evidence which would in my opinion justify me in concluding that the applicant had used violence for the purpose alleged. I reserve my opinion on a point which is irrelevant in this case, namely, whether the second part of the definition in article 2(2) extends terrorism beyond the use of violence for political ends. This brings me to the assessment of the applicant's compensation.

He attended the Casualty Department of Whiteabbey Hospital at 9.35 am on 27th January, 1984, saying that he had been assaulted the previous night and kicked about the face. He complained of pain over the left side of his face which was bruised and swollen and had an abrasion on the left eyebrow. On x-ray a crack fracture of the wall of his left antrum and a fracture of the cheek bone were detected. These findings were confirmed by a further x-ray on 2nd February. By 6th February the facial swelling had subsided and revealed a deformity in the contour of the left side of the face with altered sensation of the left upper lip and over the left cheek. The applicant was then referred to the Ulster Hospital, Dundonald, where an operation was performed on 7th February to correct the cheek bone fracture. He spent three days in hospital and a further x-ray showed that the pin was not holding the fracture satisfactorily. He had a further operation on 17th February when the fracture was re-positioned.

The applicant was seen by Mr R Millar, FRCS, Consultant Plastic Surgeon, on 29th February, 1984 and 19th June, 1986. On the first occasion he complained of headaches once a day extending from the back of his head to his eyes and pain in the left upper eyelid and also occasionally down the left side of his nose. His cheek was still swollen and he complained of numbness on the left side of his nose and upper lip and on the

left cheek. In addition, the left upper front teeth were painful to touch. On the later occasion the applicant still had a tingling feeling of the left cheek and left side of his nose and upper lip and complained of headaches in warm weather and a sharp pain going down the top of his nose (which was of very brief duration when it happened).

The applicant is left with a brown scar at the outer end of the left upper eyelid which is quite obvious and which cannot be improved by plastic surgery. His left cheek bone is very slightly more prominent than the right but this is not noticeable. He has a slightly reduced left nasal airway. He has a residual area of numbness on his left cheek which is consistent with damage to the infra-orbital sensory nerve which will not now recover further. In Mr Millar's opinion this would be an annoying tingling feeling which would probably be more noticeable in the wind or when the skin or the cheek and upper lip is touched. The applicant himself gave evidence consistent with his complaints and the Consultant's observations.

Thus the applicant sustained what must have been a very painful injury which has left permanent residual effects both cosmetically and in the sense that he has a loss of sensation and discomfort which will now be permanent. He is a relatively young man and has therefore probably many years of life in front of him. I also have to take into account the frightening nature of the experience which he suffered when he was attacked. Therefore the compensation ought to exceed the damages which I would have awarded for the same injuries received in a motor accident by a person of average fortitude.

Taking all the points mentioned into consideration, I consider that a fair amount would be £6,500 and I award that sum accordingly with costs to the applicant here and below.

Judgment for the Applicant