

N.I.

A McNAMEE v. SECRETARY OF STATE¹

Criminal injury to persons—Disclosure—Appellant shot in leg—Notice of intention failed to state reasons for appellant's presence in area—Whether "full and true disclosure"—Appellant's evidence untruthful—Whether a relevant consideration—Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968, (c. 9), s. 1(2), 1(3)(e).

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The appellant received a gun shot wound to the leg. In his notice of intention to apply for compensation under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 the appellant stated in the portion of the notice designated for the giving of full and true disclosure of all facts material to the determination of the application:

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"Applicant was walking on the Springfield Road at Turf Lodge when he was approached by two men who shot him in the leg."

The application for compensation was refused and the applicant appealed to the High Court. In cross-examination the appellant gave a reason why he was in the area when he was shot.

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Held, (i) that, where an applicant claims compensation in respect of a wounding which has the marks of a punishment shooting, one of the facts material to the determination of the application is the reason why he was in the locality where he was shot. As the appellant had failed to state this in his notice of intention to apply for compensation, he had failed to make "full and true disclosure of all the facts within his knowledge or belief, material to the determination of the application" as required by section 1(3)(e)(ii) of the 1968 Act.²

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(ii) that it is a relevant circumstance within the meaning of section 1(2) of the 1968 Act² where the court is satisfied, as it is in this case, that the applicant has lied to the court as to the reason why he was in the area.

The following cases are referred to in the judgment:

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Cahill v. Secretary of State [1977] N.I. 53.

Chambers, G. H. (Northern Farms) Ltd. v. Watmough [1956] 1 W.L.R. 1483; [1956] 3 All E.R. 485.

Tomkins v. Tomkins [1948] P. 170; [1948] 1 All E.R. 237.

Moore v. Secretary of State [1977] N.I. 14.

APPEAL from an order of refusal by the learned Additional Recorder of Belfast on an application for compensation under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968.

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T. T. Ferriss for the appellant.

D. P. Fee for the respondent.

Cur. adv. vult.

HUTTON J. In his evidence in chief on the hearing of this appeal the appellant gave the following account of how he received a gun shot wound to the right leg. He lived in the Andersonstown district of Belfast and on the

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¹ In the High Court before Hutton J.: February 4, June 25, 1982.

² See below page 281.

evening of 23 March 1977 at about 8.30 p.m. he was in the Turf Lodge area of Belfast and was walking between two blocks of flats along a dark passage-way. A man wearing a parka jacket came up behind him and put his arm on him and told him to stand against the wall. This man had his hand in his pocket as if he was holding a gun. The appellant turned to face the wall and, as he did so, he looked over his shoulder and saw a second man, who was carrying a rifle. The second man immediately fired the rifle at him and he was struck in the right leg. He then fainted, and when he came round the two men had disappeared. Neither of these two men gave him a reason for shooting him. He was then taken to hospital where his wound was treated. This is the brief account which the appellant gave in his evidence in chief of how he was shot.

There is no doubt that the appellant was shot on the evening of 23 March 1977 because an agreed medical report from a surgeon at the Royal Victoria Hospital was put in evidence, which stated that the appellant attended the Casualty Department of the Royal Victoria Hospital at 9.25 p.m. on 23 March 1977 when, on examination, he was found to have a bullet wound through his right calf just below the knee.

The appellant made a report of the shooting to the police, and he made a statement to a police officer in the following terms:

"On 23 March 1977 at approximately 8.30 p.m. I was walking from the area of the Norglen Flats up onto the Springfield Road to get a taxi. It was then that I saw a youth wearing a parka jacket walk up behind me. He had his hand in his pocket and he stopped me with the other one and told me to get up against the wall and face it. He said something to me like 'this is no joke' or something like that. I was facing the wall for a matter of seconds when I looked over my right shoulder. I saw a man or the figure of a man wearing a hat. He had a rifle in his hands and was bringing it up in front of him. I saw two blue flashes and then I must have passed out. I was shot in the right leg. I was taken to the Royal Victoria Hospital by ambulance."

The evidence of the appellant and of his brother, Mr. Joseph McNamee, established that, unfortunately, the appellant's family are not strangers to acts of violence. The appellant's brother, Mr. Brendan McNamee, was shot dead outside the Hunting Lodge Bar in West Belfast in June 1975 and the appellant stated in cross-examination that he had heard that there had been a feud between the official I.R.A. and the I.R.S.P. and he had heard the suggestion that his brother had been a member of the I.R.S.P. and had been shot by the official I.R.A. Then in October 1975, when Mr. Joseph McNamee was working in the business of a cousin, Mr. Sean McNamee, in the Whiterock Industrial Estate, he heard shots in the office of the building, and when he went into the office he found a gunman carrying out a robbery. Mr. Joseph McNamee and the brother of Mr. Sean McNamee overpowered the gunman but, unfortunately in the struggle, Mr. Sean McNamee was shot dead. Later in January 1981 Mr. Joseph McNamee suffered what he described as a punishment shooting in the Hunting Lodge Bar when a man came up to him and shot him through the left leg.

In his evidence in chief the appellant had not stated why he was in the area of Turf Lodge on the evening of 23 March 1977. In cross-examination

the appellant was asked a number of questions as to why he was in the area.

- A In reply the appellant stated that some days previously he had met a girl in a bar on the Glen Road and had arranged to meet her at 8.00 p.m. on the evening of 23 March at the corner of the Norglen Road. He arrived at 7.55 p.m. at the corner and waited for the girl for 20 minutes but she did not arrive. He did not know where she lived and after waiting for 20 minutes he walked along the passage between the two blocks of flats as a short cut to get to the premises of a taxi company, where he was going to get a taxi to return to the Glen Road, and it was in this passage between the block of flats that he was stopped and shot.

- B Observing the appellant giving his evidence in the witness box I am satisfied that he was lying when he stated that he had gone to Turf Lodge in order to meet a girl, and I am satisfied that on the evening of 23 March he was in the Turf Lodge area for some other reason. The fact that the appellant lied as to why he was in the area gives rise to a strong inference that he was in the area for some reason which he wished to conceal from the court.

- C In cross-examination the appellant further stated that he could think of no reason why he had been shot, and he further stated that he had not recognized either of the two men who had shot him, and that he could not give any description of them other than that the first man was wearing a parka jacket and that the second man who shot him was wearing a hat.

- D There is no doubt that the appellant suffered a criminal injury, and the issue which arises in this case is whether the court should make an order for the payment of compensation to him, having regard to the fact that the court is satisfied that he was lying when he stated in evidence that he had gone to Turf Lodge to meet a girl.

- E Section 1(1) of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 provides:

- F “Subject to and in accordance with this Act, where any person sustains any criminal injury in Northern Ireland after the commencement of this Act, the county court having jurisdiction in the place where the criminal injury was sustained, or such other county court as may be prescribed by county court rules in respect of any class of cases, (in this Act referred to as ‘the court’) may, on application, make an order for the payment of compensation—
(a) to or for the benefit of the victim;”

Section 1(2) provides:

- G “In determining whether to make an order under this section, the court shall, without prejudice to section 4(6)(a), have regard to all such circumstances as it considers relevant and, in particular, to any provocative or negligent behaviour of the victim which it is satisfied contributed, directly or indirectly, to his injury or death.”

Section 1(3) provides:

- H “No order shall be made under this section—
(e) without prejudice to section 10(2), unless the victim, or, in the event of his death, one of his dependants, or, in either event, a representative of the victim or such dependant—

- (i) makes forthwith to a constable, or within forty-eight hours from the commission of the criminal injury to a police station in Northern Ireland, a report of the commission of such injury; and
- (ii) serves, within such time from the commission of the criminal injury and upon such persons and in such manner as may be prescribed by county court rules, a notice of intention to apply for compensation under this Act containing full and true disclosure of all the facts, within his knowledge or belief, material to the determination of the application; or satisfies the court that there was reasonable cause for not so doing."

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In my judgment there are two reasons why the appellant should not recover compensation in this case. The first reason is that I consider that the appellant has not complied with the requirement of section 1(3)(e)(ii) to make:

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"full and true disclosure of all the facts, within his knowledge or belief, material to the determination of the application."

In *Moore v. Secretary of State* [1977] N.I. 14 at page 16 McGonigal L. J. stated with reference to section 1(3)(e)(ii):

"It is to be noted that this second requirement is of full and true disclosure of all the facts within his knowledge and the Statute provides that the court shall not make an order for compensation unless this requirement is satisfied or the applicant satisfies the court that there was reasonable cause for not so doing. These, in my opinion, are important provisions. They are necessary in order to enable the facts of the incident and the bona fides of the claim to be investigated at the earliest possible opportunity."

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In his notice of intention to apply for compensation the appellant stated in the portion of the notice designated for the giving of full and true disclosure of all facts material to the determination of the application:

"Applicant was walking on the Springfield Road at Turf Lodge when he was approached by two men who shot him in the leg."

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But in a case such as the present one, where the applicant claims compensation in respect of a wounding which has the marks of a punishment shooting, I consider that one of the facts material to the determination of the application is the reason why he was in the locality where he was shot, and that this fact relates to the bona fides of the claim. It was held by the Court of Appeal in *Cahill v. Secretary of State* [1977] N.I. 53 that, where an applicant is shot because of his connection with a terrorist organisation, he should be refused compensation by the court in the exercise of its discretion under section 1(2).

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Where an applicant is shot in a punishment shooting one possibility which has to be investigated by the court is the possibility that he was shot by members of a terrorist organisation because he was a member of another terrorist organisation, or the possibility that he was shot because he had transgressed the rules of a terrorist organisation to which he belonged. And the reason why the applicant was in the place where he was shot is relevant to that investigation because a person shot by reason of his connection with a

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A terrorist organisation is sometimes lured to the place where he was shot or is sometimes ordered to go to that place. Therefore I consider that in failing to state in his notice of intention to apply for compensation the true reason why he was in area where he was shot, the applicant in this case failed in his notice to make “full and true disclosure of all the facts, within his knowledge or belief, material to the determination of the application.” Accordingly, as the applicant has not satisfied the court that there was reasonable cause for not so doing, section 1(3)(e)(ii) bars him from recovering compensation.

B “The facts . . . material to the determination of the application” will, of course, vary from case to case, and I am not holding that in every case the applicant must make disclosure in his notice of intention to apply for compensation of the reason why he was in the area where he was injured. In many cases the reason why an applicant was in the area will not be material; for example, when a woman is injured by a bomb planted in a shop, it would not be necessary for her to state in her notice of intention to apply for compensation that she was in the shop to make a purchase, or where a man is injured by a bomb planted in a train, it would not be necessary for him to state in his notice of intention to apply for compensation that he was travelling in the train to his work. But where an applicant is shot in a shooting which has the marks of a punishment shooting I consider, for the reasons which I have stated, that the reason why he was in the area is material to the determination of the application.

Secondly and in the alternative, I consider that the court should refuse to award the appellant compensation in the exercise of its discretion under section 1(2), because the court is satisfied that the appellant lied in the witness box when stating why he was in the area.

In *Moore v. Secretary of State* at page 17 McGonigal L.J. stated:

E “But in determining whether to make an award at all the court is to have—*shall have*—regard to all such circumstances as it considers relevant including provocative or negligent behaviour. There are, therefore, certain circumstances other than provocative or negligent behaviour which could operate on the mind of the court so as to lead it in its discretion to an outright refusal, and there are occasions also when provocative or negligent behaviour could have that effect. Once however the court decides to award compensation the only circumstance relevant to decide if there should be a deduction is provocative or negligent behaviour.

F What are such other circumstances? There is nothing in the Act itself to limit the nature of such except that they must be circumstances which the court considers relevant. That, in my opinion, means circumstances related to the conduct of the applicant, circumstances in the events leading up to and subsequent to the injury, his conduct in relation to the injury after it had been received, his conduct in relation to those who inflicted the injury and who are guilty of the criminal offence and his conduct in pursuing the claim. All these matters may be relevant to a greater or less degree depending on the facts of the particular case.”

H And in *Cahill v. Secretary of State* at page 55 the Lord Chief Justice stated:

“I agree with the view stated in the judgment of Gibson L.J., and accepted by the respondent, that there is no inherent jurisdiction to

refuse compensation on grounds which are not set out in the Act. I also accept the proposition that, once the victim has established a prima facie entitlement to compensation, the respondent must accept the burden under section 1(2) of the Act of showing that the victim is not entitled to recover.” A

And at page 57:

“The words of section 1(2) show that circumstances which may be considered relevant must have a more general meaning than the words ‘any provocative or negligent behaviour of the victim which the court is satisfied contributed directly, or indirectly, to his injury or death,’ since this is something to which, ‘in particular,’ the court must have regard in determining whether to make an order. The word ‘all’ promotes a wide interpretation and the words ‘as it considers relevant’ tend to confer a clear discretion on the court to decide what is relevant.” B C

Mr. Creaney helpfully reminded us of the words of Lord Greene M.R. in *Tomkins v. Tomkins* [1948] P. 170, 175.

‘When I say “relevant” I mean this, so nearly touching the matter in issue as to be such that a judicial mind ought to regard it as a proper thing to be taken into consideration.’

One may also refer to the observation of Vaisey J. in *G. H. Chambers (Northern Farms) Ltd. v. Watmough* [1956] 3 All E.R. 485 where, in considering the phrase ‘Having regard to all the relevant circumstances of the case’ he said (at page 487D): D

‘ “Having regard to all the circumstances of the case” is about as wide an expression as it is possible to imagine.

In considering the meaning of “relevant” it is necessary to ask the question “relevant to what issue?” The answer must be “the issue whether to make an order for compensation.” As Gibson L.J. put it in his judgment (at page 5): E

‘Any circumstance which logically or reasonably bears on the question whether the applicant ought to receive or be denied compensation is relevant and ought to be taken into account and given such weight as it merits.’ F

As I have already stated, I consider in a case such as the present one that it is important for the court to know why the applicant was in the locality where he was shot. Moreover the fact that the applicant has lied to the court on an important and material point is a consideration which should weigh particularly heavily against him in a criminal injury claim because, unlike a claim against a defendant for damages in tort or contract, where the defendant will be aware of the surrounding facts out of which the claim arises and will be able adequately to defend the claim, the respondent in a criminal injury claim will usually have no knowledge of the surrounding facts other than from the information which the applicant chooses to give. Therefore, I consider that it is a circumstance relevant to the question whether the applicant ought to receive or be denied compensation that the Secretary of State has proved, in discharge of his burden under section 1(2), that the applicant has lied to the court as to the reason why he was in the area. G H

A Accordingly, as the appellant has lied in the witness box on the important matter as to why he was in the area, I consider that in the exercise of its discretion under section 1(2) the court should refuse to make an award of compensation.

Appeal dismissed.

Solicitor for the appellant: *Robert Ross*

Solicitor for the respondent: *Crown Solicitor*

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