

MOORE v. SECRETARY OF STATE ¹

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Criminal injury to persons—Failure of claimant to give information to the police about his assailants—No “full and true disclosure” of relevant facts—Whether compensation payable—Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 (c. 9) s. 1 (3) (e).

The applicant was beaten up by several men in an Ulster Defence Association Club in East Belfast and then shot in the leg. The next day the applicant made a statement to the police which was inaccurate and incomplete. The applicant did not volunteer any further information to the police, and in his evidence to the court, while admitting that he recognised his assailants, the applicant claimed that he did not know their names.

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Held, that the report to the police of the commission of an injury, required by section 1 (3) (e) of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968, must be a full and true disclosure of all the relevant circumstances and not a bare report of the injury. A full and truthful report is a pre-requisite of an award of compensation, unless there was reasonable cause for not making a report of this kind.

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In this case such a report was not made and the fear of reprisals is not a reasonable cause for failing to make the necessary disclosure and so the applicant is not entitled to compensation.

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No cases are referred to in the judgment.

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

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T. V. Cahill Q.C. and *A. T. G. White* for the applicant.
B. F. Kerr for the respondent.

Cur. adv. vult.

MCGONIGAL L.J. This is an 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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On 3 March 1974 the appellant was admitted to Royal Victoria Hospital with a gunshot wound to the right leg and with multiple bruises consistent with his having received a severe beating. On the day following his admission he was seen in hospital by Detective Constable McCormick to whom he made a signed statement describing how he received the injuries. The account contained in that statement and the account given by him in evidence in this court do not agree in many material particulars. I cannot accept that either represents the full truth, though it appears to me that the account given in court is probably nearer the truth than what he said in his statement. I believe that his statement was deliberately untruthful and concealed material facts and information which he had in

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¹ In the High Court before McGonigal L.J.: October 7, 15, 1976.

A his possession in order to prevent the police successfully investigating the occurrence and bringing charges against anyone in respect of it.

That attitude of mind has persisted because, although he was told by Detective Constable McCormick when and how to get in touch with him and invited to do so if he had anything further to tell him, he has never attempted to contact the police, or give to them the information which I am satisfied he possesses.

B Put shortly, his evidence before me was that on the night of 3 March 1974, he was told by his mother, whom he met on the street, that two or three men had called at her house and asked if he would go to the U.D.A. Club in Lord Street. His mother's evidence does not agree with this last, and it is not clear how he came to know that he was to go to the Lord Street club. I do not believe that his knowledge of the club and his association with para-military organisations was as negative as he said it was. He went to the club and was let in by a man and he found three other men sitting at a table in the hall inside. There he was questioned about "breakings and enterings" and was severely beaten and kicked by the man who had let him in. Eventually that man and one of the three at the table took him out to an entry off Thorndyke Street, and having told him not to tell the law or he and his family would have more trouble, D shot him through the right leg and left him there.

At first he said he did not know who the men involved were, but that he could recognise them; but he also said that he would not identify anyone even now as he was still in fear of reprisals against himself or his family, and that his parent's house had been visited by four armed men the night he was shot and they were warned that nothing should be said about his shooting.

E Later in cross-examination he admitted that he recognised the man who opened the door of the club although he did not know his name; that he recognised the three men at the table who were all local men, that one of these three, who had approached him on two or three previous occasions to join the U.D.A., lived in the district, in one of the estates on the Castlereagh Road, and that he had seen all three of them since, F usually standing at the junction of Kenbaan Street, Beersbridge Road and Castlereagh Street; that the man at the table who had spoken to him on two or three occasions previously was one of the two men who had taken him out to the entry where he was shot and that he was the man who had picked up the gun in the club before they left, and that the man at the door was the second man who had taken him out and was G also the one who had given him the beating in the club.

All this information is most material and if given to the police must have led to a successful investigation of the offence committed against him. But not only did he not give the police this information he gave them false information and despite the invitation of Detective Constable McCormick to get in touch with him, he has never attempted to do so and even at this date he stated in court that he would not identify anyone even H now.

The appellant therefore comes into court prepared to give such evidence as he thinks sufficient to enable him to obtain compensation for the injuries

inflicted on him, but not prepared to give any information or make any complaint against the men whom I have no doubt he knows and whom he could identify and locate for the purpose of making them amenable for the offence committed against him.

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This claim for compensation is brought under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 which I shall refer to as "the 1968 Act." By section 1 (1):

"... where any person sustains any criminal injury in Northern Ireland ... the County Court ... may, on application, make an order for payment of compensation ..."

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The Act therefore gives a qualified right to compensation for a criminal injury in that the person must take the initiative to apply for compensation and that, of course, is a free choice on his part, and secondly that the court then has a discretion which may be limited by the terms of the Act itself whether to grant or refuse. It is not sufficient for a person to come into the court and say that he has suffered a criminal injury and is thereby ipso facto entitled to compensation for it.

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Before the court can make an order the applicant, under section 1 (3) (e) has:

- (i) to make a report to a constable within 48 hours of the commission of the criminal injury. In my opinion such a report is not a bare report of the injury, but is a report of all the relevant circumstances pointing to the commission of a criminal offence and of an injury resulting therefrom. It is such a report as a complainant would normally make to a police officer concerning the commission of a criminal offence
- (ii) to serve within the time prescribed by the relevant rules, a notice of intention to apply for compensation "containing full and true disclosure of all the facts within this knowledge or belief, material to the determination of the application."

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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. They are also important for another reason. These claims are based on injuries received as a result of a criminal act by some person or persons. It is not only in the interests of justice that the guilty party should be made amenable for the offence committed against the applicant but while it may rarely happen, under section 7 of the Act, the Secretary of State may recover from a person convicted of the criminal offence, the whole or part of any compensation paid the injured party. This section puts a duty on the injured party who chooses to exercise his right to apply for compensation to report the criminal act and injury at a very early date and to make full and true disclosure as a condition of any award being made to him.

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A That duty is no greater and no less than the duty imposed on other persons under the Criminal Law Act (Northern Ireland) 1967, section 5. The only difference is that under the 1968 Act the applicant who does not comply is not entitled to compensation, whereas under the 1967 Act a person who fails to give information in his possession to a constable without reasonable excuse is guilty of an offence. It appears to me reading the two Acts together that a person who applies for compensation and fails without reasonable cause to give to the police all the relevant information in his possession is in breach of the requirement which is a necessary prerequisite to the grant of an award, and is also guilty of an offence in relation to the criminal act which he relies on as the basis of his claim.

B Section 1 (3) (e) of the Act therefore provides a bar to any award if not complied with. Even if it is complied with the court has to exercise its own discretion under section 3 (2) of the Act. That provides that on the hearing of an application in determining whether to make an Order under the section :

“The court shall . . . 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. . . .”

D It was argued by Mr. Cahill for the appellant that the words “all such circumstances” are to be read ejusdem generis with the words “provocative or negligent behaviour.” I cannot see any application of the ejusdem generis rule to the wording of this subsection. Provocative and negligent behaviour are merely two particular instances of circumstances which the court is to have regard to and are specifically referred to because they are also relevant under a subsequent section if an award is made and the question of deduction arises. They do not, however, form a class or limit the wide meaning of the main words of the subsection.

E This subsection is dealing with the question of grant or refusal and the court’s discretion, considered in the light of all such circumstances as it considers relevant, is a discretion to grant or refuse. There is no power under this section to make a reduced award. That power is contained in section 4 (6) which provides that if compensation is to be awarded the court, in determining the amount :

“ . . . shall make such deduction as in the circumstances it may think fit in respect of any provocative or negligent behaviour of the victim which the court is satisfied contributed directly or indirectly to the criminal injury.”

G There is, therefore, a difference in wording and effect between section 1 (2) and section 4 (6). A deduction is only to be made in respect of provocative or negligent behaviour. 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. A

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. B

In this case the appellant has not made full and true disclosure of all the facts within his knowledge either to the Investigating Officer, or in the Notice of Intention to apply for compensation, nor even in the course of his sworn evidence. He has in fact stated that not only would he not do so in this case but would not do so in the event of criminal proceedings being brought against those who criminally injured him. Unless he has reasonable cause for not giving the material information he is in breach of section 1 (3) (e) of the Act and he is moreover guilty of an offence under section 5 of the 1967 Criminal Law Act. C D

It is said that his fear of reprisal is sufficient justification for his action. I accept that he may well have grounds for such fears and that his fears may be real. That does not mean, however, that it amounts to reasonable cause for not making full and true disclosure as required by section 1 (3) (e). He has himself elected to make and prosecute this claim for compensation. He is under no obligation to do so and need not have done so. In that event whatever his position under the 1967 Act no duty would arise under section 1 (3) (e). The duty, under section 1 (3) (e) only arises because he is claiming a right but that right gives rise to a corresponding duty, and in my opinion if he wishes to exercise the right he must equally accept the duty. Fear of reprisal is not a reasonable excuse; if it were a claimant need only say that he was injured but refuse to give any other information on the ground that he was afraid and the court would then have to award compensation in the dark, without the police having any opportunity to investigate the occurrence relied on or the bona fides of the complaint and unable to give the court any assistance on relevant circumstances and even on the question of provocative or negligent behaviour, which might lead to a deduction in the amount of the award. E F G

This, as I said earlier, is a qualified right. It carries with it the duty of full and true disclosure. Those who claim the right must accept the duty. If they do not the court cannot make an award. It appears to me that in this case the failure of the appellant to make full and true disclosure and his determination not to do so at any time precludes the court from making an order in his favour. H

There is also the effect of section 1 (2). In this case the applicant is claiming compensation while refusing to give information which he has that is likely to lead to—certainly likely to be of material assistance in securing—

N.I.

Moore v. Secretary of State (H.C.)

McGonigal L.J.

- A the arrest, prosecution and conviction of those responsible for the offence committed against him and which he relies on to ground his claim. I do not find that his reasons for doing so amount to a reasonable excuse and prima facie it appears to me that he is in breach of his duty under section 7 of the 1967 Act. That, in my opinion, is relevant to the claim he is making and is a circumstance which I am required to give consideration to in determining whether to make an award. He seeks compensation for an injury sustained as a result of a criminal offence while he, himself, is prima facie guilty of an offence in relation to it. He cannot seek the right while refusing to comply with the duty. That right and the duty both relate to the same criminal act, the one that caused his injury. In my opinion he cannot claim the one and disregard the other.
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On this ground also I would refuse the application.

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*Appeal dismissed*Solicitor for the applicant: *Trevor Smyth.*Solicitor for the respondent: *Crown Solicitor.*

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