

**O'HARE v. SECRETARY OF STATE
FOR NORTHERN IRELAND¹**

Criminal injuries—Death of wife and mother—Husband and children not "dependants"—Whether husband entitled to expenses in respect of cost of domestic assistance—Whether restricted to expenses incurred prior to county court hearing—Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 (c. 9) ss. 1, 4, 11. 5

The appellant's wife died as a result of an explosion in 1972. She had not been in employment prior to her death, but had performed the ordinary duties of a housewife with respect to the appellant and their seven children. As a consequence of his wife's death, the appellant had to engage domestic assistance, and claimed, under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968, for the cost of such assistance, both up to the date of the hearing and in the future. 10 15

The county court judge held that the appellant was not a dependant of the deceased within the meaning of the Act, and was only entitled to recover the cost of domestic assistance up to the date of the hearing as expenses incurred as a result of the deceased's death. A case was stated to the Court of Appeal. 20

Held, that as the appellant was not a dependant of the deceased, he is only entitled to "expenses incurred as a result of the victim's death." Such expenses do not include the cost of domestic assistance in the future.

Quære as to whether the appellant is entitled to recover the cost of domestic assistance up to the date of the hearing. 25

The following case was cited in argument:—

Berry v. Humm [1915] 1 K.B. 627.

CASE STATED by the additional County Court Judge for Belfast.

The following is an extract from the case stated: 30

"3. At the hearing the following facts were agreed or proved:

- (a) Margaret Mary O'Hare, wife of the applicant, was killed in a bomb explosion on the Cavehill Road, Belfast on 21 July 1972.

¹ In the Court of Appeal before Lowry L.C.J., Curran and Jones L.JJ.: April 25, July 3, 1974.

(b) The death was a criminal injury directly attributable to a criminal offence.

5 (c) The applicant and the deceased had at the date of death seven minor children aged between two years and twelve years. Prior to her death the deceased resided with the applicant and their children. She had no gainful employment. She performed the ordinary duties of a housewife with respect to the applicant and the household.

10 (d) Since her death the applicant has resided with his children in the family home. He has been obliged to engage paid help to replace some of the services provided by his deceased wife and will be so obliged in the future. From the deceased's death until the hearing his expenses for such paid help amounted to £1,775.55. These expenses
15 will continue indefinitely.

6. I held that (a) neither the applicant nor any of the said children was a dependant of the deceased within the meaning of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968, and (b) the
20 applicant was only entitled to recover the said sum of £1,775.55 in respect of expenses incurred as a result of the deceased's death and that he was not entitled to recover compensation for any future expenditure on services, which in her lifetime had been performed by
25 the deceased.

8. The questions for the Court of Appeal are:

Was I correct in law in holding that under the 1968 Act:

30 (1) Neither the applicant nor any of his children was a dependant of the deceased.

(2) The power to award compensation is restricted to expenses already incurred as a result of the deceased's death and does not include future expenses and accordingly the applicant's claim for
35 expenses, which he will incur as a result of the deceased's death, must be disallowed?"

J. K. Pringle Q.C. and E. A. Comerton for the appellant.

W. A. Campbell for the respondent.

Cur. adv. vult.

LOWRY L.C.J.: I agree with the judgment about to be delivered by Jones L.J. Accordingly I would answer both questions in the case stated in the affirmative and would dismiss the appeal. 5

CURRAN L.J.: I concur and have nothing to add.

JONES L.J.: The point which arises here is a very nett one. Substantially it is as to whether or not the appellant or any child of his was a dependant of the deceased within the meaning of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 (hereinafter called "the 1968 Act"), but to that question a second question is added as to whether the power to award compensation is restricted to expenses already incurred (that is incurred as at the date of the hearing in the county court) as a result of the deceased's death and so does not include future expenses which would be incurred subsequent to the hearing. 10 15

Mr. Pringle in opening the case for the appellant accepted that neither the appellant nor any of his children were dependants of the deceased within the definition of "dependants" as given in section 11(1) of the 1968 Act because they were not dependent on the income of the victim (the deceased) at the time of her death. But while accepting that situation, which incidentally involves an acceptance of the first finding of the learned county court judge, Mr. Pringle sought to get round that, and so bring his client within the right to compensation for the cost of domestic assistance, by traversing the following path. He said that his client fell within the provisions of section 1(1)(c)² of the 1968 Act because the death of the victim had resulted from the injury; there were no dependants within the meaning of the Act; and the compensation sought 20 25 30

² Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968, s. 1: "(1) . . . where any person sustains any criminal injury . . . the county court . . . may, on application, make an order for the payment of compensation . . . (c) where the death of the victim has resulted—(i) to or for the benefit of the victim's dependants or any one or more of them, or (ii) if there are no such dependants and the compensation is in respect of expenses incurred as a result of the victim's death, to the person who incurred those expenses."

was in respect of expenses incurred or to be incurred as a result of the victim's death. Therefore, said Mr. Pringle, this is a case in which compensation is payable. But then Mr. Pringle went further and called in aid section 1(1)(b) of the 1968 Act and argued that

5 the appellant was responsible for the maintenance of the victim during her life and that accordingly his client was entitled to compensation in respect of pecuniary loss suffered or expenses incurred as a result of the victim's injury which, contended Mr. Pringle, would include payments for domestic assistance, which the

10 appellant would have to make to replace the services of his wife. And then Mr. Pringle proceeded to section 4 of the 1968 Act³ and submitted that the compensation for which he was contending could come within the provisions of clauses (a) or (e) of sub-section 1 of that fourth section; in the case of clause (e) because

15 it was not limited to non-fatal cases but applied also to cases in which the victim had been killed. And he further submitted that it would be quite wrong to say that the appellant's entitlement depended on when the case was brought, as that would be an encouragement to delay, and finally he contended that even if the

20 appellant was tied to section 1(1)(c)(ii) alone, yet the word "expenses" was wide enough to cover payments, and even future payments, for domestic assistance which might, according to Mr. Pringle, be contracted for in one arrangement over any number of years to come.

25 Mr. Campbell, for the respondent, submitted that the 1968 Act drew a distinction, in regard to compensation, between non-fatal and fatal injuries. He pursued that into a consideration of section 1(1), clauses (a) and (b) of which dealt with non-fatal injuries while clause (c) dealt with the position when the injury results in death

30 and, leaving clause (a) aside as it is not relevant, he said that clause (b) of section 1(1) dealt with the position of a person responsible for the maintenance of a live person. So far as section 4 goes, Mr. Campbell submitted that fatal and non-fatal injuries were therein clearly distinguished and that clause (e) of section 4(1)

³ Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968, s. 4: "(1) . . . compensation may be awarded under this Act in respect of any one or more of the following matters only—(a) expenses actually and reasonably incurred as a result of the victim's injury or death; . . . (e) any other expenses resulting directly from the victim's injury which, for special reasons stated by the court, it is, in the opinion of the court, reasonable and proper to make good to the victim or his dependants out of public funds;"

dealt with the latter though he accepted that clause (e) presented a difficulty due to the use therein of the word “dependants” unless it was used in other than its defined meaning, though it is correct to point out that the definition section, section 11, does not exhaustively define the word “dependants” but merely says that, in respect of a deceased victim, it shall have the meaning given. And, in answer to Mr. Pringle’s suggested anomaly that the view taken by the county court judge would result in the amount of compensation depending on when the case might come to trial (see section 1(1)(c)(ii) and the use therein of the word “incurred”), he pointed out that the scheme of the Act was that claims should be disposed of expeditiously, though he accepted that delays could occur through the non-availability of witnesses or for other reasons within reasonable contemplation.

Now when one turns to section 1(1) one finds the persons to, or for whose benefit, compensation may be awarded. And it appears to me that clauses (a) and (b) of that subsection relate to injury cases in which the victim is still living. That is certainly the position under clause (a) and it seems to me that the position is the same under clause (b) because in my view the words “by any person responsible for the maintenance of the victim” must relate to post-injury rather than pre-injury maintenance, and the fact that clause (c) commences with the words “where the death of the victim has resulted” appears strongly to confirm that conclusion. Therefore in the present case it is clause (c) to which we must turn. But clause (c)(i) cannot apply because if one turns to the definition of dependants in a “death case” (see section 11) it is plain that as the deceased had no income she had no dependants within the meaning of the Act. Accordingly it is necessary to proceed to clause (c)(ii) and that, we find, is a provision dealing with the case in which there are no dependants, in which case compensation is payable, in respect of expenses incurred as a result of the victim’s death, to the person who incurred those expenses. That disposes of Mr. Pringle’s contention under section 1, and I do not consider that section 4 takes him any further because, of the two clauses thereunder on which he relies, clause (a) goes no further than section 1(1)(c)(ii), and clause (e) appears to relate to non-fatal cases, or to the non-fatal element of a case, but if, as Mr. Pringle contended, it covers the “fatal case” as well, it only provides that the expenses therein mentioned may be made good to the victim, which does not apply to the present case, or to his (or her) dependants, of

which, by reason of the definition in section 11, there are none in this case.

Accordingly the result is that the appellant is entitled to be compensated under section 1(1)(c)(ii) in respect of expenses incurred as a result of his wife's death. There is no doubt that her funeral expenses are covered by those words. But what about the cost of domestic assistance? As regards the future, that is, subsequent to the hearing in the county court, I cannot regard the cost of domestic assistance which may be then incurred as "expenses" within the terms of the relevant sub-clause. Such cost smacks much more of general damages in a common law action for damages and could only be an estimate or forecast as the family circumstances might at any time alter so as to obviate the necessity for incurring any such cost, for example should the appellant re-marry. Nor do I consider Mr. Pringle's ingenious argument as to a possible contract covering all future domestic assistance as a realistic or convincing proposition which would turn such cost into "expenses incurred." As regards the cost of domestic assistance already incurred as at the date of the hearing in the county court no question arises in this case because that award was not challenged in this court and Mr. Campbell stated that his clients will in fact pay the amount awarded in respect thereof. But in such circumstances it must not be taken that this court is adjudicating on, or necessarily accepting the validity of, that part of the award, and indeed, if all the cost of domestic assistance, as from the date of its first engagement, should be said to stand on the same footing, such a view would remove any question of an anomaly which might otherwise be created by the amount of such a claim being affected by the expedition, or tardiness, with which the claim was brought to trial.

Accordingly, and for the above reasons, I would answer the questions put by the learned county court judge in the affirmative, with the caveat referred to above in relation to the validity of any part of the claim for the cost of domestic assistance upon which, for the reasons given above, I express no view.

Order accordingly.

Solicitor for the appellant: *Gerard McClure.*

Solicitor for the respondent: *Crown Solicitor.*

S.M.M.