Roddy v Secretary of State for Northern Ireland

QUEEN'S BENCH DIVISION

CARSWELL J

8, 15 JANUARY 1993

Compensation – Criminal injuries – Entitlement to compensation – Victim injured in sectarian attack – Victim initially declining to assist in prosecution of offenders, but then deciding to offer assistance – Victim incorrectly informed that she was too late to assist in any prosecution – Whether victim entitled to compensation for injuries – Whether victim complying with police request for information and assistance – Criminal Injuries (Compensation) (Northern Ireland) Order 1988, SI 1988/793, art 5(8).

On 25 June 1989 the appellant sustained a painful injury to her foot when hit by a stone thrown by one of a group of youths who had been shouting sectarian abuse at her. Although she contacted the police that day and identified the offenders from a car, she declined to assist in the prosecution of the offenders by making a written statement either that day or the following day, because of fear of the consequences to her family. However, a week or two later, the appellant decided that she would assist in the prosecution and attempted to contact the constable involved in the investigation. Unfortunately she was misinformed by his colleague that the matter was closed and that she was too late to assist in any prosecution. The appellant thereafter took no further steps to contact the constable. When she subsequently applied for compensation in respect of her injuries, her claim was refused by both the Secretary of State and the county court on the ground that she had failed to comply with the police in prosecuting the youths contrary to art 5(8) of the Criminal Injuries (Compensation) (Northern Ireland) Order 1988, SI 1988/793. The appellant appealed.

Held – For the purposes of art 5(8) of the 1988 Order the act relied upon as constituting compliance with requests for information and assistance by the police had to be done at a time when it would be effective for the purpose of assisting in the identification, apprehension, prosecution or conviction of the offender. Accordingly, where an applicant had decided to give information at such a late stage that it would no longer be effective to assist the police in achieving their objectives, that assistance would not constitute compliance. In the instant case, by making the telephone call a week or two after the incident and attempting to establish contact with the constable, the appellant had complied with his request for information and assistance. Moreover, since the appellant could not have known that she had been given incorrect information by the other constable in respect of the investigation, her failure to take further steps to contact the constable did not constitute a failure to comply with his request. It followed that the appellant had complied with the requirements of art 5(8) of the Order and there were therefore no grounds on

which to refuse compensation. The appeal would be accordingly be allowed and the sum of £3,000 would be awarded as compensation.

Case referred to in judgment
Barry v Secretary of State [1984] NI 39, CA.

Appeal
Bridget Mary Roddy appealed from the decision of the county court dismissing her appeal from the decision of the respondent, the Secretary of State for Northern Ireland, whereby he refused the appellant's claim for compensation in respect of personal injuries sustained in a sectarian attack on the grounds that she had failed to assist the police in the prosecution of the offenders contrary to art 5(8) of the Criminal Injuries (Compensation) (Northern Ireland) Order 1988, SI 1988/793. The facts are set out in the judgment of the court.

M Duffy (instructed by *Murphy Kerr & Co*) for the appellant.
C D Morgan (instructed by *H A Nelson*) for the respondent.

Cur adv vult

15 January 1993. The following judgment of the court was delivered.

CARSWELL J. The appellant is a lady of 56 years, who on 25 June 1989 sustained a painful injury to her foot when hit by a stone thrown by one of a group of youths who had been shouting sectarian abuse at her. Although she went with the police that day and identified the youths from a car, she declined to make a statement to the police either that day or the next day, because of fear of the consequences to her family. A week or two later, she attempted to contact the police, having decided to make a statement and assist them with the prosecution of the offenders, but was informed that the matter was now closed. When she claimed criminal injury compensation, her claim was rejected by the Secretary of State and by the county court on the ground that the case came within art 5(8) of the Criminal Injuries (Compensation) (Northern Ireland) Order 1988, SI 1988/793 (the 1988 Order). She has appealed to this court against the dismissal of her claim.

The appellant, who is a Roman Catholic, resides with her family on the Upper Newtownards Road, Belfast. The family had been the target of a number of previous incidents of a sectarian nature, which had caused them to seek police protection. Slogans had been painted on the wall of their house and their sons had been attacked by other youths between home and school. On Sunday 25 June 1989 in the early afternoon, the appellant was closing her front gate when some youths on the far side of the road shouted sectarian abuse at her and threw beer cans from which they had been drinking. She was then hit on the foot by a stone and fell to the ground. In the process she went over heavily on her ankle and sustained a fracture of the fifth metatarsal bone of her left foot. She suffered a good deal of pain and discomfort in consequence: the ankle was strapped for about five weeks and she used crutches for three weeks after the incident.

The appellant rang the police, and Constable Hobson came to her house. At the request of the police she went in a police vehicle and identified the group of youths outside the gates of Stormont Estate. She then returned to

her house, where Constable Hobson indicated that he would like her assistance in prosecuting the offenders, and explained that that would involve her making a written statement, following which he would submit the matter to his authorities for decision. The appellant was in pain and shocked and upset at the time, and told the constable that she was not prepared to give a statement or assist with prosecution until she had talked to her husband.

The appellant attended the Ulster Hospital that afternoon, and between then and the next day discussed the matter with her husband. She felt concern about the possibility of retaliation against her sons and, at that time, was unwilling to go ahead with assisting the police. Constable Hobson returned to see the appellant the next day, when she told him that she was not willing because of her fears to make a statement or assist in prosecuting the offenders. Constable Hobson accepted that, and left his name and telephone number with her, asking her to telephone him if she changed her mind.

Some little time later, which the appellant put between one and two weeks, the appellant decided that she would assist the police and telephoned the number which Constable Hobson had left with her. She was aware that the police required her co-operation if the offenders were to be prosecuted, and her sons had encouraged her to give assistance. Constable Hobson was not available when she telephoned, and unfortunately the officer to whom she spoke said that the matter was closed and indicated something to the effect that it was then too late to proceed. Constable Hobson was not informed by that other officer that the appellant had telephoned, and not surprisingly the appellant did not make any further attempt to contact him. There the matter remained, and the youths have not been prosecuted. It is no doubt much too late to commence proceedings against them now.

The applicant commenced proceedings for compensation for criminal injury, but the Secretary of State issued a determination refusing the claim, in reliance on the provisions of art 5(8) of the 1988 Order, which provides:

> 'No compensation shall be paid unless the victim or, in the event of his death, one of his relatives, or, in either event, a representative of the victim or such a relative complies with all reasonable requests for information and assistance which might lead to the identification, apprehension, prosecution and conviction of the offender.'

It may be observed that this provision, which appeared for the first time in the 1988 Order, differs markedly from the terms of art 6(10) of the Criminal Injuries (Compensation) (Northern Ireland) Order 1977, SI 1977/1248 (the 1977 Order, under which the Secretary of State had power to withhold payment of compensation until the applicant complied with all reasonable request for information and assistance which might lead to the identification and apprehension of the offender. The previous case law, such as *Barry v Secretary of State* [1984] NI 39, in which the requirements of art 6(10) were carefully analysed, is now of limited assistance.

The nature and intendment of the provision are now quite different from that contained in the 1977 Order. It is no longer a withholding power, but constitutes a condition with which the applicant must comply before he or she is entitled to be awarded compensation. It is inherent in the wording that more than one request for information or assistance may be made, and that it is the applicant's duty to comply with all of them. There does not now

appear to be any reason to conclude that any such request must come from the Secretary of State (as to which see *Barry v Secretary of State* [1984] NI 39 at 44 per Lord Lowry LCJ). The information or assistance required must be such as might lead to the identification, apprehension, prosecution and conviction of the offender. It is suggested in Greer and Mitchell *Criminal Injuries Compensation* (1991) p 139, n 65, that the word 'and' is used here in a disjunctive sense. This would appear to be correct, and it follows that an applicant may be faced with a succession of requests to continue co-operating at different stages before the final conviction of the offender, and has to comply with them all so long as they are reasonable. Professor Greer also expresses the view (at p 140) that the change in the wording of the provision has removed the discretion of the court to take into account such factors as intimidation or fear of consequences such as retaliation. I do not, however, have to decide this point in the present case, since the appellant very creditably decided to give the police the assistance requested notwithstanding her natural worries about the safety of herself and her family.

The issue in the present case is whether it may be said that in the circumstances of the case she complied with Constable Hobson's request for information and assistance. It is clear that at first she did not comply, but within a matter of a fortnight she changed her mind and telephoned the police in order to indicate her willingness to give the necessary information and assistance. On the facts of the case I do not regard her as having been at fault in failing to make further efforts to contact Constable Hobson in order to tell him of her change of intention.

It is not in dispute that the requests made by Constable Hobson on 25 and 26 June 1989 for information and assistance were reasonable. Nor is it in dispute that that information and assistance was such as might lead to the identification, apprehension, prosecution and conviction of the offenders. The sole issue is whether the appellant complied with the requests.

In my opinion, the question of compliance is a matter for the court to determine on the facts of the case. I do not propose to attempt to lay down definitive rules about what may constitute compliance, for the circumstances may vary quite considerably. The most that I would say is that the act relied upon as constituting compliance must be done at a time when it will be effective for the purpose of assisting in the identification, apprehension, prosecution or conviction of the offender. If the applicant decides to give assistance at such a late stage that it will no longer be effective to assist the police in achieving their objects, for example, if it is by then out of time to prosecute the offender, then it cannot be said that that assistance might lead to the achievement of the statutory objectives, and this would not in my view constitute compliance with requests for information and assistance.

I consider that the appellant in the present case did comply with Constable Hobson's request for information and assistance by making the telephone call a week or two after the incident and attempting to establish contact with him. She was not to know that she was given incorrect information by the other constable, and therefore I do not think that her failure to take further steps to contact Constable Hobson constitutes a failure to comply with his request. I think that the appellant acted with a proper and courageous display of public spirit, and I have no hesitation in holding that she satisfied the requirements of art 5(8) and that there is no sufficient ground for refusing compensation.

In my view the proper level of compensation would be represented by the
a figure of £3,000, and I give a decree in the appellant's favour for that sum.

Appeal allowed.