

N.I.

A ROLSTON v. SECRETARY OF STATE FOR NORTHERN IRELAND¹

Criminal injury—Compensation—Death of policeman as a result of terrorist action—Widow in receipt of “augmented” police pension—Whether whole amount of pension to be deducted in assessing compensation for pecuniary loss to dependants—Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 (c. 9), s. 4 (6) (c).

B Section 4 (6) (c) of the Criminal Injuries to Persons (Compensation Act (N.I.) 1968 requires that in assessing compensation payable under the section, the court shall take into account any right to “pension, gratuity or statutory benefit” payable “consequent on the criminal injury or on death resulting therefrom.”

C A policeman was killed by terrorist attack and his widow became entitled, under the Royal Ulster Constabulary Pensions Regulations 1973, to an “augmented” pension by reason of the circumstances of her husband’s death. The ordinary pension payable to a policeman’s widow is on a lower scale and is calculated on a different basis.

D The widow claimed compensation for criminal injury and, on appeal from the county court, McGonigal L.J. held that only that amount of the “augmented” pension which was in excess of the ordinary pension should be taken into account by way of deduction in assessing the compensation payable. The respondent appealed to the Court of Appeal.

E *Held*, that on the true construction of section 4 (6) (c) of the Criminal Injuries to Persons (Compensation) Act (N.I.) 1968, the words “consequent on” must bear the normal meaning of “as a result or consequence of,” and that once death has resulted from a criminal injury, all pensions which are payable to dependants as a result of that death must be wholly taken into account.

Per curiam, the legislation has the unfair result that an innocent victim of civil unrest has to suffer deductions from compensation which would not be required to be made in the case of a claim for damages under the Fatal Accidents Act.

F The following case is referred to in the judgment:

Ministry of Home Affairs v. Guiney [1970] N.I. 231.

CASE STATED by McGonigal L.J. on appeal from an award of compensation made by the County Court Judge for the County of Down.

G The deceased was killed on 11 December 1973 when he got into his car outside his house and a bomb attached to the car exploded when he started the engine. He left a widow and three children. He had joined the Royal Ulster Constabulary in 1956, and his pension rights or, in the event of his death, the rights of his dependants were regulated by the Royal Ulster Constabulary Pensions Regulations 1973 (S.R. & O. 1973, No. 317). In accordance with regulation 26 of the Regulations, his widow became entitled to a gratuity and a pension (described as a “Widow’s Augmented Award”),

H ¹ In the Court of Appeal before Gibson L.J. and Kelly and MacDermott JJ.: 23 September, 17 October 1975.

both of which are assessed at a higher rate than in other cases in which a widow may qualify for benefit under the Regulations.

The widow claimed compensation under the Criminal Injuries to Persons (Compensation) Act (N.I.) 1968 in respect of the death of her husband and was awarded £9,000 in the county court. She appealed against the amount of the award, and McGonigal L.J. increased it to £17,500 plus the amount of an ordinary widow's pension under the R.U.C. Pensions Regulations 1973, capitalised at 14 years' purchase. His reasons were set out in a written judgment. Dealing with section 4 (6) (c) he said:

"The important words in my view are 'consequent on the criminal injury or on death resulting therefrom.' For the subsection to take effect it is necessary then for the payment of the pension, gratuity or benefit to be dependent on injury or death following from criminal injury and a criminal injury is the sine qua non which brings that subsection into operation.

This follows the principle that one cannot benefit twice over and, in an Act which deals with compensation for criminal injury, provides a balancing of benefits already received in respect of that injury. The benefits to be balanced if they are to come within the principle must however be a benefit payable consequent on the injury. If it is not such a benefit it should not be taken into account.

The difference can clearly be seen when one considers regulations 24, 25 and 26 of the R.U.C. Pensions Regulations 1973. Regulations 24 and 25 provide for benefits payable on death irrespective of a criminal injury. Such benefits are in no way related to criminal injury or consequent on such. Regulation 26 deals with a payment which only becomes payable for injury or death if it is caused by criminal injury and it is in my opinion clearly a benefit consequent on such.

The only question is whether in deciding what benefit is consequent on a criminal injury one should take into account only the net increase of the augmented pension over the special award [under regulation 25] or only over the ordinary pension [under regulation 24] or whether one should take the whole award into account. The special award is only payable in certain circumstances which may never apply. An ordinary pension is however a pension that becomes payable on natural death and is one which any widow of a serving officer with three years' service is entitled to as a right. It is payable on death from any cause and the circumstances surrounding or causing death are immaterial. It is not consequent on death. Death is the event determining the time at which it is payable, and unlike regulation 26 for which criminal injury is a sine qua non payment of a pension under regulation 24 is irrespective of the cause of death.

In my opinion, in making a deduction under section 6 (4) (c) the amount of the ordinary pension should be deducted from the augmented award before that augmented award is deducted from the annual loss. A widow receives no gratuity under regulation 24 and there is therefore no deduction to be made from the gratuity payable under regulation 26 which must be deducted in full from any award under the Act.

The same position applies in so far as Industrial Death Benefit is

N.I.

Rolston v. Secretary of State (C.A.)

- A concerned. It is payable as the result of injury whether the death be accident in the ordinary sense or due to criminal injury. If paid as a result of death from criminal injury it is payable consequent on such as an accident and is deductible."

Both parties appealed by way of case stated against the decision, but at the hearing the applicant abandoned her appeal, with the result that of the various questions raised in the case stated only the following are relevant:

- B " (1) When assessing compensation under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 in respect of the death of a member of the Royal Ulster Constabulary killed in circumstances in which regulation 26 of the Royal Ulster Constabulary Pensions Regulations 1973 applies, whether there should be taken into account—
- C (a) the right of his dependants to a pension payable under the said regulation 26?
 (b) [not relevant]
 (c) [not relevant]
- (2) If the answer to Question 1 (a) is Yes, whether the proportion of the said pension the right to which is to be taken into account is—
- D (a) the whole thereof; or
 (b) that part thereof which represents the extent by which that pension exceeds the pension which would be payable under regulation 24 of the 1973 Regulations if that regulation applied:
 or
 (c) some other, and if so what, part thereof? "
- E *R. D. Carswell Q.C., J. B. E. Hutton Q.C. and F. C. Elliott* for the appellant (the Secretary of State for Northern Ireland).
J. K. Pringle Q.C. and A. Coghlan for the respondent (applicant).

Cur. adv. vult.

- F GIBSON L.J. (delivering the judgment of the court):
- The questions raised by the case stated in this matter involve the interpretation of section 4 (6) (c) of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 ["the Act"], and the consequent amount of compensation payable to the dependants of Detective Constable George Rolston deceased.
- G On 11 December 1971, the deceased was murdered by a person or persons unknown who had attached a bomb to the car of the deceased which exploded when he started the engine. As a member of the Royal Ulster Constabulary his pension rights or, in the event of his death, the rights of the dependants are regulated by the Royal Ulster Constabulary Pensions Regulations 1973 (S.R. & O. 1973 No. 317). Before examining these, however, I would turn to the provisions regulating the right to compensation which are contained in the Act.
- H Compensation is payable under the Act where any person sustains any criminal injury whether or not he is killed. The method of assessing that

compensation is set out in section 4. Selecting the provisions which are directly relevant, one finds that the general standard of compensation stated in section 4 (1) (c) is the pecuniary loss to dependants as a result of the victim's death. This provision, however, is expressly made subject to the succeeding provisions of the section. These include subsection (6) (c) which states:

"(6) The Court in determining the amount of compensation, if any, to be awarded under the section shall:

- (c) take into account any right to pension, gratuity or statutory benefit payable to or for the benefit of the victim or any of his dependants which the Court is satisfied has been or will be paid consequent on the criminal injury or on death resulting therefrom."

"Statutory benefit" is defined by subsection (7) as meaning any benefit under the National Insurance Acts or the National Insurance (Industrial Injuries) Acts and any payments by a friendly society or trade union for the relief or maintenance of a member's dependants.

Following the death of the deceased the applicant as his widow received a pension and a gratuity under regulation 26 of the R.U.C. Pensions Regulations 1973 and a pension by way of death benefit under the National Insurance (Industrial Injuries) Acts. McGonigal L.J. before whom the claim came on appeal from the county court held that in assessing compensation the gratuity and the industrial death benefit should be deducted in full but that there should only be a partial reduction in respect of the pension under the 1973 Regulations. Each party appealed by way of case stated from this decision. The applicant claimed that there should be no deduction from the compensation in respect of the death benefit or the gratuity and the Secretary of State has sought to have it established that the whole of the pension under the Regulations should be taken into account. The applicant on the hearing of the case stated abandoned her appeal, so that the only issue remaining is whether all or only part of the police pension is deductible. This requires a consideration of the Regulations.

Regulation 24 includes any case where a member with 3 years' pensionable service dies while serving, leaving a widow. She then becomes entitled to what is called an ordinary pension which is equal to one half of the husband's pension or notional pension which he would have received if he had served till pensionable age.

Regulation 25 applies where a member has died without his own default as a result of an injury received in the execution of his duty. In that event his widow is entitled to a larger pension, which is called a special pension, and she is also entitled to a gratuity. The pension is at the rate of 45 per cent. of the husband's pensionable pay and the gratuity is an amount equal to 25 per cent. of the pensionable pay.

Lastly, Regulation 26 deals with the case of a member whose death is the result of an injury received without his own default in the execution of his duty where one of a number of conditions is satisfied. Of these it was agreed that the circumstances of the criminal injury resulting in the death of the deceased satisfied the first condition. The other conditions are not tied, or at least are not invariably tied, to death as the result of a

A criminal injury. The second deals with the case where the injury was received while attempting to effect an arrest or prevent an escape or rescue from legal custody. In those cases, while the injury might be caused by the person sought to be apprehended or detained or his accomplice, it might also, for instance, occur because the member was accidentally killed either by himself or another police officer, or he might have died as the result of a street accident while pursuing the offender. The third condition does not contemplate criminal injury at all but is the case where the member dies while trying to save the life of another. The last two conditions are where the Police Authority either think that one of these conditions may have been satisfied, or if they are otherwise of the opinion that it would be inequitable not to grant the benefits provided by the regulation. The augmented pension payable under regulation 26 is equal to 50 per cent. of the pensionable pay, and the gratuity is a sum representing twice the member's pensionable pay.

C The Act requires the court to "take into account" certain payments including pensions when calculating the amount of compensation payable. This means that if the payment is a lump sum it is to be deducted from what would otherwise be the compensation, and if it is a continuing or future payment an actuarial valuation of it has to be made and the value so assessed has to be deducted. This has already been determined by the D Court of Appeal in *Ministry of Home Affairs v. Guiney* [1970] N.I. 231.

The problem in this case is to determine upon the construction of section 4 (6) (c) of the Act what right to pension payable to the applicant as widow of the deceased has been or will be paid "consequent on" his death resulting from criminal injury. McGonigal L.J. has held that if, as in the present case, a widow is granted an augmented pension under E regulation 26 because the death of her husband was the result of a criminal injury, there should be deducted from her compensation only the difference between the value of the augmented pension and that of the ordinary pension, because it is only this surplus which, to quote section 4 (6) (c) of the Act, "will be paid consequent on the death resulting from criminal injury." He held that the applicant on the death of the deceased had an absolute right to the ordinary pension under regulation 24 regardless of how it should F be established that the deceased may have died, whether from natural causes, accident or criminal injury, and that upon proof that the cause was a criminal injury which attracted the augmented pension it could only be said that the amount by which the augmented pension exceeds the ordinary pension is "consequent on" the death resulting from criminal injury, and therefore only this part of the pension is to be taken into account. The alternative G view advanced by the Crown is that there is only one pension which is payable and which has been or will be paid, namely the augmented pension, and that this is payable consequent on death by criminal injury pursuant to regulation 26 (1) (a) and so it must be taken into account in its entirety.

H Certainly the description of the pension as an "augmented pension" would suggest that it is a pension supplementary or additional to the "ordinary pension" payable under regulation 24, but a consideration of the circumstances in which it becomes payable and the make up of the pension show that this is not its true nature. The special pension under

regulation 25 is payable in a sector of the cases falling within regulation 24, and the augmented pension under regulation 26 is payable in a subsector of those cases; but there is nothing to suggest that the higher pensions are supplementary to the ordinary pension. Each of the regulations is expressed as a separate and independent provision, and whereas the ordinary pension is calculated by reference to the deceased husband's pension or pension rights, the augmented pension is calculated from a different base, namely the pay of the deceased. Mr. Hutton on behalf of the Secretary of State submitted that McGonigal L.J. had held that the pension now payable to the applicant was in part the ordinary pension under regulation 24 and only as to the excess was it an augmented pension under regulation 26. I have re-read the judgment and I do not consider that it can be so construed. It says no more than that that portion of the augmented pension which would be equal to the ordinary pension should not be taken into account for the purpose of deduction.

It is not the applicant's case that a pension is only to be taken into account to the extent that it can be shown both that the death resulted from the criminal injury and that had death resulted from another cause the amount of pension would have been less by that amount. Were this the test, then in so far as the augmented pension could, as I have already pointed out, be paid in certain circumstances where there has been no criminal injury no part of the pension would be taken into account. Alternatively it would follow that the amount to be taken into account would be the excess of the augmented pension over the special pension and not over the ordinary pension. Neither of these views finds support either in the judgment of McGonigal L.J. or in the argument advanced to us. As I understand the applicant's submission it is that a pension will only be taken into account in reduction of compensation upon proof that death resulted from criminal injury and that because it was so caused the pension is greater than it would have been without proof of any special circumstances surrounding death, and that it will then only be taken into account to the extent that the pension payable exceeds the pension which would normally be payable. This is a submission which is both intelligible and reasonable, and moreover appears to me to be not inconsistent with the phrase "consequent on" in the subsection; but I have rejected it as not compatible with the context of the phrase within section 4 (6) (c). In section 4 (6) (c) a pension is put on a par with what is inaptly called a "statutory benefit." Such benefits are defined as benefits under the National Insurance Acts and the National Insurance (Industrial Injuries) Acts and benefits paid by friendly societies and trade unions for the relief of dependants of members. None of the truly statutory benefits is paid or increased because death has resulted from a criminal injury and most are payable regardless of the circumstances of death, as, for instance, the widow's allowance and the widow's pension. Similarly payments made by friendly societies and trade unions to dependants of members are motivated by considerations of need and are not, I should imagine, increased because the deceased member may have been the victim of a criminal attack. If, therefore, one were to put the applicant's interpretation on the phrase "consequent on" it would mean that the entire provision that "statutory

- A benefits " should be taken into account would probably not only be largely incapable of application but it would render subsection (6) (c) and the definition of " statutory benefits " in subsection (7) mutually contradictory. I, therefore, consider that the words " consequent on " must bear the normal meaning of " as a result or consequence of," and that once death has resulted from a criminal injury all pensions which are payable to dependants as a consequence of that death (which resulted from the criminal injury) must be taken into account. This is clearly the interpretation
- B which the Court of Appeal put on the phrase in *Guiney's* case. There the statutory benefit taken into account was sickness benefit under the National Insurance Acts. Neither the right to receive the sickness benefit nor its amount was in any way dependent upon the fact that the claimant sustained a criminal injury as opposed to having suffered from any other disabling cause and yet the court held that it had to be deducted in its entirety from the amount of compensation otherwise payable for the
- C criminal injury. It is true that the claimant conceded that there must be some deduction for the sickness benefit, but the whole question of deduction was clearly one which occupied the attention of the court and the conclusion there reached accords with my own interpretation of the statute, namely that the whole amount of any pension or benefit may be paid consequent on a criminal injury even though that sum or a lesser
- D sum would have been payable had there been no criminal injury, provided it be first established that the injury or death in question resulted from a criminal injury and that the court is satisfied that the payment is made in consequence, that is to say, because of that injury or death and not for some collateral reason.

- E I am unable to draw any relevant distinction between normal national insurance benefits and the ordinary pension payable under regulation 24. In each case the qualification for benefit is employment for a specified period; to earn it there is a fixed compulsory deduction from wages and the benefit is granted as of right. In the case of death the widow's pension under the National Insurance Act is payable only if the widow is not less than a certain age at the date of her husband's death, but having attained that age she can upon the death of her husband if he is an insured person
- F claim that she is entitled to the pension regardless of the cause of death with the same certainty of entitlement as the applicant could in this case have claimed the ordinary pension under regulation 24. The widow's pension under the National Insurance Acts must be taken into account as a statutory benefit, and so logically must the ordinary police pension or that part of the augmented pension which is equivalent in amount to what
- G the ordinary pension would have been.

I would only add that this conclusion better accords with the general principle stated in section 4 (1) of the Act that the measure of compensation should be the measure of pecuniary loss and expenses incurred by the dependants than does the submission on behalf of the applicant which would tend to leave them better off.

- H I, therefore, would answer the questions upon which our opinion is sought as follows:

(1) (a) Yes.

- (b) Does not arise.
- (c) Does not arise.
- (2) (a) Yes.
- (b) No.

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Questions (3) and (4) do not arise.

Though this is my conclusion I am less than happy with the drafting and effect of the Act and in particular the deductions required to be taken into account. Why the type of benefits under consideration should not be taken into account in the case of the Fatal Accidents Acts but must be taken into account in case of a claim under the Act for criminal injury is less than clear. Why should an innocent victim of civil unrest be dealt with less generously than the innocent victim of a street accident? The only explanation that was suggested is that a claim under the Fatal Accidents Acts is against a wrongdoer, whereas under the Act it is against the State. Whatever weight this view may have largely disappears where it is the Motor Insurers' Bureau which is called upon to pay the compensation. If it is government policy to compensate the victims of criminal injuries and their dependants and if the professed standard of compensation both under the Act and the Fatal Accidents Acts is the measure of loss to the claimant, what is the basis for the difference? Even accepting the double standard, if one supposes a case where death has resulted from criminal injury and a claim has been pursued under the Fatal Accidents Acts and damages awarded on the basis that the benefits are not to be taken into account, but only a percentage of the damages is in fact recovered, and if a claim is then made under the Act to recoup the shortfall, it seems scarcely reasonable that the Government can under section 4 (6) (b) of the Act claim to deduct from the compensation awarded the whole of the moneys recovered under the Fatal Accidents Acts and so deprive the widow of the more favourable rights secured by the claim under those Acts as opposed to the criminal injuries code. Adverting to the facts of this case, I think I reflect the views of the court when I add that it seems particularly unfair that the deceased should have voluntarily suffered a deduction of an increased percentage of his pay in order to secure a greater pension for his widow and that the effect of the Act is to deprive his estate of the benefit of those contributions and to deduct from the compensation recoverable by the widow the amount of any increased pension thereby earned.

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It would seem that there is much to be said for a reconsideration of the provisions of the Act and perhaps for equating its provisions with those of the Fatal Accidents Acts.

I understand that the parties have reached an agreement as to the costs involved in these proceedings, and accordingly I think it appropriate that there should be no order as to costs.

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Appeal allowed.

Solicitor for the appellant: *Crown Solicitor*

Solicitors for the respondent: *J. G. Edwards & Co.*

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