

Judicial Communications Office

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COURT DISMISSES APPEAL AGAINST BLOODY SUNDAY DAMAGES

Summary of Judgment

The Court of Appeal¹ today dismissed an appeal by the Ministry of Justice against the award of £15,000 compensatory damages and aggravated damages to the widow of Bernard McGuigan who was shot dead on Bloody Sunday.

Factual Background

Bernard McGuigan (“the deceased”) was the last person to be shot dead on Bloody Sunday, 30 January 1972. He was one of several civilians kneeling or crouching beside a telephone kiosk and a gable wall of Rossville Flats, Londonderry, taking shelter from military fire. Other civilians were killed or wounded close by. Based on the Report of the Bloody Sunday Inquiry the deceased was trying to move away to seek better cover and/or to signal to soldiers that he and others posed no threat to anyone and was waving a piece of towelling. He was shot in the head by a soldier at a distance of 35 yards and died instantly. He was unarmed.

The deceased’s widow, Bridget McGuigan Gallagher (“the plaintiff”), initiated proceedings in 2014 claiming damages on behalf of the estate of her late husband under the Fatal Accidents (Northern Ireland) Order 1977. The plaintiff died before this action came on for hearing and it was continued in the name of the Executor of her estate. On 2 April 2019, Mr Justice McAlinden (“the trial judge”) determined that the plaintiff was entitled to compensatory damages and aggravated damages as the remedies for the assault and battery of the deceased and assessed these damages as amounting to £15,000². The Ministry of Defence (“the Ministry”) appealed against the award of these damages.

The Main Ground of Appeal

The main issue in the appeal was whether aggravated damages could as a matter of law be awarded in the circumstances in which Mr McGuigan’s death had occurred. An award of aggravated damages is legally permissible only where two conditions are satisfied:

- There must be exceptional or contumelious conduct or motive on the part of the tortfeasor in committing the wrong or subsequent to its commission; and
- The plaintiff must suffer mental distress as a result.

¹ The panel was Lord Justice McCloskey, Mr Justice Colton and Sir Richard McLaughlin. Lord Justice McCloskey delivered the judgment of the court.

² The final Order of the court awarded judgment for the plaintiff against the Ministry in the global sum of £264,985 together with costs. Enforcement of the judgment in respect of the discrete award of £15,000 was stayed pending the appeal.

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The Court said that it was necessary firstly to focus on the undisputed factual circumstances prevailing both prior to and at the time of the fatal shooting of the deceased. These undisputed facts were set out in paragraph [16] of its judgment. The Court said this combination of agreed facts and the trial judge's findings created a matrix which extended considerably beyond the fatal shooting of the deceased. This wider matrix clearly formed part of both the express findings of the trial judge and his ensuing conclusions on the issue of recoverable damages. Lord Justice McCloskey stated

"The judge rehearsed ... that the conduct of the soldiers in the period preceding the fatal shooting formed part of the trespass to the person of the deceased and was such as to cause significant injury to his feelings. The judge clearly found that the deceased was the victim of an assault perpetrated by agents of the Ministry during the period prior to the fatal shooting. We shall examine the sustainability in law of this finding".

The judgment continues:

"The Ministry is a corporate tortfeasor, an employer vicariously liable for the tortious conduct of its servants and agents in the course of their employment. In this case the offending conduct preceding the killing of the deceased included the killing and the wounding of other victims, the firing of other shots which did not result in killing or wounding and conduct which did not involve shooting, such as armed soldiers moving in various directions and taking up positions with their weapons available and pointed or other forms of overt aggression or threat. We consider that all of this conduct, graphically described in the Inquiry Report, was capable of generating in every person of normal mental fortitude in the area a reasonable apprehension of being shot or wounded. Whether it did so is a question of fact to be decided on a case by case basis."

The Court held that the risk of battery to the deceased was posed by every soldier who could potentially shoot him. The law does not require that this risk had to be posed by a specific, identifiable soldier. Nor does the law require that the deceased had to be singled out by either one of the soldiers or all of them as a shooting target. Furthermore there is no legal requirement of some kind of factual nexus between the deceased and the soldier who fired the fatal shot. In short, the necessary relationship, or connection, between the tortfeasor (the Ministry) and the deceased was forged by the presence and conduct of multiple soldiers in the area and the presence of the deceased at the locations traversed and occupied by him from the beginning of the event until its conclusion at the location ultimately occupied by the deceased at the moment of his shooting and death, namely the open, unprotected public area in the Rossville Street vicinity where he was shot dead by a soldier.

The Court said it was satisfied that as a matter of law the deceased was capable of being the victim of assault perpetrated by the Ministry's servants or agents throughout the entirety of the period under scrutiny. It further considered that the trial judge's self-direction on the law was unimpeachable.

The next question to be considered was one of fact, namely whether the deceased was such a victim or, alternatively phrased, whether the applicable legal test was satisfied. Noting that there was no direct evidence of the state of mind of the deceased, the exercise undertaken by the trial judge was one of ascertaining whether this could be established by reasonable inference from other evidence. The Court said it was clear that the other evidence considered by the trial judge was that contained in the Inquiry Report when he found that the deceased:

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“... would have been filled with fear and dread, coupled with a strong sense of indignation and hurt at being the innocent victim of a blatant, unprovoked and unjust attack by members of the army.”

The Court considered it clear that the “attack” to which the trial judge was referring was the threatening conduct of, and widespread shooting by, soldiers of multiple victims during the whole of the episode preceding the death of the deceased. This exposed the fallacy in the first of the grounds in the Notice of Appeal which contended that the trial judge erred in law in awarding aggravated damages “in circumstances where the death of the deceased was instantaneous”.

The Second Issue: The Quantum of Damages

The Ministry’s challenge to the award of damages was confined to comparing and contrasting the award of £15,000 in the present case with the award of damages for aggravated damages of £25,000 made by the same judge in *Quinn v Ministry of Defence* [2018] NIQB 82. Both *Quinn* and the present case belong to the same group of claims for damages arising out of personal injuries and deaths perpetrated by soldiers on Bloody Sunday.

The Court considered that a correct understanding of the trial judge’s award of £15,000 in this case is essential. Lord Justice McCloskey stated

“The key to this is the critical finding made by the judge and our analysis of this. The deceased was the victim of both assault and battery. The assault was committed by multiple acts perpetrated by soldiers. The battery was the single act of shooting him dead. The compensation recoverable for both the assault and the battery was compensatory damages and aggravated damages. The discrete award of £15,000 was the judge’s assessment of the compensatory damages and aggravated damages as the remedies for the assault and battery of the deceased. The judge was under no obligation to provide a breakdown. Rather his approach was clearly of the “stand back” variety, which this court would not criticise in a case of this nature.”

Adding:

“The judge’s award of £15,000 has a considerably greater reach. While this consideration of itself suffices to dispose of this ground of appeal, we add the following. The Ministry’s contention is that the award of £15,000 is manifestly excessive. The replying submission ... demonstrates the scope for a respectable view that the award could reasonably have been greater. In the narrow context of comparing and contrasting the award of £25,000 in *Quinn*, [Counsel for the plaintiff] pointed to certain facts and features in support of this submission. This court finds itself in the middle, adjudicating on these forceful competing contentions. We consider that it is precisely in this kind of situation that reticence on the part of an appellate court is appropriate.”

Conclusion

The Court dismissed the appeal and affirmed the award of £15,000 in respect of compensatory and aggravated damages for the assault and battery perpetrated by the Ministry’s servants and agents against the deceased.

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NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

ENDS

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