

# Judicial Communications Office

12 April 2021

## COURT AWARDS DAMAGES TO ESTATE OF WOMAN SHOT DURING BLOODY SUNDAY

### Summary of judgment

Mr Justice McAlinden, sitting today in the High Court, awarded damages of £250,000 to the estate of Margaret Deery who was shot in the leg during Bloody Sunday and who died in 1988 at the age of 54. He also awarded a further sum of £17,028 as special damages for the cost of care provided to Mrs Deery and a further sum in respect of the loss of her facility as a caregiver.

#### **Factual Background**

Margaret Deery (“the deceased”) had been recently widowed at the time of the shooting on 30 January 1972. Her husband died four months earlier after a long battle with cancer and she had been left caring for 14 children aged between 16 years and eight months. The deceased attended the civil rights march with her daughter Helen. She was shot in the left thigh by a high velocity round fired by a soldier (identified as Lance Corporal V at the Saville Inquiry). Lance Corporal V claimed he fired one shot aimed at a male petrol bomber and that he hit his intended target. The Saville Inquiry, however, rejected this account and concluded that Lance Corporal V had given knowingly false evidence to the Widgery Inquiry and that the deceased was an entirely innocent victim who, without justification, was shot by him. Margaret Deery was taken to a house at 33 Chamberlain Street after the shooting where she was given first aid. While there, soldiers entered the house and directed abusive comments towards her. The Saville Inquiry was satisfied that some soldiers directed foul language at the civilians sheltering in the house and that it was probable that abusive remarks were directed towards or about the deceased. The Inquiry concluded that it could find no excuse for the remarks.

The deceased suffered a severe injury to her left lower limb and on arrival at hospital was found to be suffering from hypovolaemic shock due to severe blood loss. She required resuscitation and blood transfusions. The blood, however, was incompatible and as a result the deceased developed kidney failure. She suffered a fracture of the femur, damage to her nerves in the thigh and her sciatic nerve. She underwent dialysis from 5 to 12 February 1972 and was very ill up to this date. The deceased also developed a significant wound infection and required further blood transfusions. She underwent a number of operations before being discharged home on 29 May 1972. For a significant period afterwards the deceased had no useful movement in her foot and ankle.

The deceased died long before the setting up of the Saville Inquiry or the publication of the report which completely exonerated her. The court commented:

“During her life, the cloud of imputed culpability would, at least to some extent, have cast intermittent shadow over her. There is absolutely no evidence to suggest that the deceased was actively suspected by the police of being involved in any wrongdoing on the day in question. It is clear she was a woman of good character, with no criminal convictions and no links to any political party or paramilitary organisation. It would appear that she attended the march with her daughter, only months after the death of

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her husband, in support of the idea that a society should be based upon fairness, justice and equality for all irrespective of background or creed and any claim that she was anything other than an innocent demonstrator was a fabrication constructed and perpetuated by the perpetrator or perpetrators of a wrong in an attempt to avoid personal or collective responsibility for any wrongdoing.”

## **Statement of Claim**

The claim was brought by the deceased’s son (“the plaintiff”). It was alleged that as a result of being shot by a high velocity bullet, the deceased was grossly physically disabled for the rest of her life. Her mobility was severely restricted and she was unable to care for herself or her children. She developed a significant depressive illness and this further compounded her functional impairment and isolation. Following the initial renal failure she went on to develop chronic kidney disease. It was claimed that this, in turn, materially contributed to the development of treatment resistant hypertension which, in turn, contributed in a material matter to the development of cardiac disease which resulted in her death in 1988. The plaintiff sought to establish a direct link between the shooting of the deceased on Bloody Sunday and her death.

## **Medical Evidence**

The court said it was clear that the deceased became significantly depressed after she returned home from hospital and was unable to look after her children or perform the heavier aspects of housework. Two of her daughters left school at 14 to help look after their mother and the younger children. The court noted that the deceased was left with what was, in effect, a useless left foot:

“She seems to have been vulnerable to the development of pressure ulceration in her left foot and ankle. These pressure sores required regular dressing and this task was performed by the older children. Her mobility was greatly impaired. Regardless of whether she used one crutch, two crutches or a stick, the deceased was left with a powerless and largely insensate left foot and required a calliper to mobilise. Her difficulties mobilising would have been increased by reason of the presence of pressure ulceration which required prolonged dressing. It really cannot be sensibly argued that the deceased’s mobility would have been anything other than greatly impaired.”

The court heard that the deceased was a heavy smoker, smoking 40 cigarettes a day. It accepted that her disability, depression and isolation could certainly have contributed to the development of a heavy smoking habit and said likelihood was that over years this would have taken its toll on her health and materially contributed to the cardiac condition that resulted in her fatal heart attack.

The plaintiff and defendant obtained reports from consultant psychiatrists and a number of medical and care experts. Both psychiatrists agreed that the nature and severity of the injury suffered by the deceased on Bloody Sunday and her subsequent complex, medical problems would have led to the development of a significant psychological injury. It had been suggested that the deceased may have been suffering from depression before Bloody Sunday but the court concluded there was no direct evidence and no compelling circumstantial evidence to support this opinion. Noting the absence of potentially relevant GP notes and records from the time, the court said that it was not able to state with any degree of confidence that the deceased would have suffered significant mental health injuries impairing her overall functioning and diminishing her quality of life in the years after her husband died even if she had not been caught up in the events of Bloody Sunday.

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The court was able to conclude, on the basis of all the evidence available to it, that as a consequence of the physical injuries sustained by the deceased on Bloody Sunday it was more likely than not that she suffered from a significant and disabling mental illness which persisted with fluctuating symptomology for the rest of her life. It said that the nature, severity and duration of this illness was, in all likelihood, materially influenced by the deceased's personal, familial and socio-economic circumstances and that the death of her 23 year old son Michael as a result of a violent assault in 1986 and her son Patrick in 1987 at the age of 31 would, inevitably, have negatively impacted on her fragile mental health.

The next discrete medical issue which the court had to adjudicate on was the acute kidney problems experienced by the deceased following the transfusion of incompatible blood products which it was claimed contributed to the development of treatment resistant hypertension which, in turn, contributed to the development of cardiac disease and the occurrence of the heart attack which caused her death. The court noted four matters:

- There was no record or diagnosis of chronic kidney disease nor any record of a diagnosis of hypertension;
- The court only had the opinion of the medical expert on behalf of the plaintiff which the defendant allowed to be adduced in evidence without the need for the author being required to give oral testimony or be subject to cross-examination;
- The deceased's heavy smoking habit over a long number of years; and
- The plaintiff had not made out that the heart attack was caused or materially contributed to by reason of the deceased's immobility, her depression and her smoking habit which all had their origins in the events of Bloody Sunday. There was no reference to her smoking habit. The court said, however, that it cannot and should not ignore direct and/or circumstantial evidence which may point to alternative chains of causation or different aetiological pathways.

The court said that in the context of "legacy" personal injuries litigation there must come a stage when the reliance upon speculative opinion evidence risks calling into question the integrity of the entire judicial process. It said there was no diagnosis of chronic kidney disease during the lifetime of the deceased and no extant documentation supporting a diagnosis of severe treatment resistant hypertension. The court said the conclusions of the expert urologist instructed by the plaintiff "fell well short" of persuading it that on the balance of probabilities the deceased's acute kidney injury or any complications flowing from it either caused or contributed to her death 16 years later. It said a more compelling explanation for her premature death was a prolonged history of heavy cigarette smoking and a prolonged history of reduced mobility.

## **Valuation of Injuries**

The court outline the general approach it takes when it comes to placing a value on the injuries suffered by the deceased in paragraphs [49] to [53] of its judgment. In paragraphs [55] to [58] it dealt with the issue of aggravated damages. The two basic preconditions for an award of aggravated damages are:

- exceptional or contumelious conduct or motive on the part of a defendant in committing the wrong, or, in certain circumstances, subsequent to the wrong; and
- mental distress sustained by the plaintiff as a result.

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The court said that in examining the events of Bloody Sunday it had no hesitation in finding that the wrongful actions of the servants or agents of the defendant gave rise to emotions of extreme fear if not terror in the mind of the deceased. It said it had hesitation in finding as a fact that the behaviour of the soldier who shot the deceased and the behaviour of the soldier who entered 33 Chamberlain Street was “imbued with a degree of malevolence and flagrancy which was truly exceptional.” In the circumstances, the court determined that the claim for injury to feelings for the events of Bloody Sunday and the immediate aftermath including the incident in 33 Chamberlain Street was clearly established in law and that the compensation to which the estate of the deceased is entitled should include aggravated damages and the appropriate level of award is the sum of £25,000:

“An award of aggravated damages is designed to provide compensation for mental distress actually suffered by the deceased which would otherwise not be the subject of an award of compensation. In this instance, as I am determined to award the estate of the deceased full and fair compensation for the psychological injury suffered by the deceased after Bloody Sunday, this will take into account the mental distress which she undoubtedly suffered by reason of the approach adopted by the defendant to those killed and injured during Bloody Sunday in the period between the end of January 1972 and the date of the deceased’s death on January 1988.”

The court then went on to consider the physical injuries. It concluded that the prolonged course of the deceased’s inpatient and out-patient management for her leg injury meant that discreet consideration must be afforded to these complications and that the sum of £130,000 would be appropriate. In relation to the psychiatric/psychological injury suffered by the deceased, this was described as a treatment resistant major depressive disorder which manifested itself in fluctuating symptomatology for the rest of the deceased’s life. The court determined that an award of £85,000 was appropriate for the psychological injury suffered in this case, including compensation for injury to the deceased’s feelings. In assessing the kidney injury the court noted that the deceased had suffered an acute injury which certainly predisposed her to the development of chronic kidney disease. It noted, however, that the evidence of the actual development of chronic kidney disease was somewhat speculative. Taking all relevant considerations into account, the court said the appropriate award for this primarily acute kidney injury would be £25,000.

Combining the four amounts gave a total potential award of damages for non-pecuniary loss of £265,000. The court said that taking a holistic overview of the entire case and paying full regard to the nature, extent and duration of the injuries suffered by the deceased including injury to her feelings, it was compelled to conclude that this sum would represent slightly more than 100% compensation and that the appropriate global figure in this case was £250,000 for general damages.

One issue to be determined was whether, in the context of a claim brought on behalf of the estate of a deceased victim, it was possible for the plaintiff to claim the cost of care which the deceased would have provided to others but was unable to do so by reason of injury. The court said that if the deceased had, at her own expense, engaged the services of a home help to perform the child care tasks that she was unable to perform because of her injuries then it was clear that the deceased during her lifetime could have sought to recover those costs and the plaintiff, on behalf of the estate of the deceased, would be entitled to seek to recover such costs actually incurred by the deceased during her lifetime.

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In paragraphs [66] to [73] the court outlined decisions of the Court of Appeal in England and Wales saying that while not strictly binding they should be regarded as highly persuasive. It also referred to section 9 of the Administration of Justice Act 1982 in Scotland which provides that no distinction is made between future loss, past actual loss or past notional loss. The court concluded that the plaintiff in this case can mount a claim in respect of the care which the deceased was unable to provide to her children but which was provided gratuitously by others. In assessing the amount, the court said it would be utterly inconsistent to allow the claim for the care provided gratuitously to the deceased during her lifetime to be assessed in money's worth and at the same time to hold that the nominal cost or value of the care provided by others on behalf of the deceased to the children of the deceased could not be assessed in money's worth and could only be reflected in general damages for loss of amenity. In order to avoid such inconsistency, the court held that, where possible, such a nominal loss should be assessed in money's worth, rather than being considered as some form of non-pecuniary loss. The care experts for the plaintiff and defendant agreed a figure of £17,028 for the hours and rates of care provided by family members as opposed to professional carers.

## Conclusion

The compensatory payment in this case for general damages for pain, suffering and loss of amenity including psychiatric injury and injury to feelings and aggravated damages for the increased and enduring injury to feelings suffered by the plaintiff was in the sum of £250,000. This sum shall attract interest from date of service of the writ (16<sup>th</sup> June 2014). The special damages award consists of £17,028 for the cost of care provided to the deceased plus the agreed calculation in respect of the loss of caregiver's facility.

## 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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