

## THE HIGH COURT

[2013 No. 663 SP]

## IN THE MATTER OF THE GARDA SIOCHANA (COMPENSATION) ACTS, 1941 AND 1945

BETWEEN

GILLIAN MacEOIN

APPLICANT

AND

THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM

RESPONDENT

## JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 24th of April 2015

1. The applicant was born on the 12th of June 1983. She is married with three children and resides at Killaha, Glenflesk, Killarney, Co. Kerry. She joined the force on the 14th of September 2004 and was stationed in Killarney. She brings these proceedings as a result of an incident which occurred at Upper Bridge Street, Killorglin, Co. Kerry on the 13th of August 2008 when she suffered a violent assault and battery. She was authorised by the respondent to bring these proceedings on the 24th of September 2013.

2. The assault and battery occurred whilst the applicant was in the course of attempting to effect an arrest on a male for a public order offence. She was very close to the local police station. She was on duty with another colleague. Two other individuals who were suspected of being involved in the public order disturbance fled the scene and they were followed by the applicant's colleague. Before attempting to effect the arrest the applicant had sought the cooperation of the assailant. He refused to cooperate or to answer any questions. She informed her assailant that she was arresting him. He was described as a large man and the applicant felt that she needed or might need some assistance in effecting the arrest. In this regard she called on a security officer, who was standing nearby, to render assistance. Having taken hold of the assailant he dropped to his knee and as he did so he grabbed the applicant in her genital area through her trousers and squeezed his hand tightly and tried to push his fingers up into her vaginal area. She tried to attempt to remove the assailant's hand and as she did so he squeezed his hand even tighter. Apart altogether from the excruciating pain experienced by the applicant, she was traumatised and shocked by what was happening to her and this was understandably accompanied by an overwhelming sense of embarrassment. The security officer who was assisting her attempted to pull the assailant free of the applicant but he refused to let go. In the process she was dragged and subsequently became wedged up against a door. At this stage the assailant released his grip but then grabbed the applicant's left wrist and began to squeeze that tight. The applicant was then dragged again and in the process the assailant's wife became involved assaulted the applicant repeatedly to her back and head. The applicant was extremely upset and distressed by what was happening to her. The arrest of the assailant was ultimately effected and he was subsequently charged with a number of offences including sexual assault.

3. Later on that evening, when the applicant arrived home, she was in a distressed state and told her husband what had happened to her. She decided that the best thing to do was to go to bed and in the course of undressing noted small traces of blood on her underwear. She was also aware of pain and stiffness developing in her shoulder and a soreness in both of her wrists.

4. She attended her GP, Doctor Maria Quille the following day. Clinical examination showed that the fourth and fifth MCP joints on her right hand were swollen and tender and that she had a small cut over the fourth MCP joint. Her left shoulder was stiff and swollen. The applicant's left wrist was particularly tender on the radial side and was also slightly swollen. The fingers of her right hand were also sore and the GP strapped her fingers. Her left hand was also strapped and wrists were bandaged for support; she was given a sling. She was prescribed Difene.

5. When seen by her GP the applicant was in a distressed and upset state due to the violent and intrusive nature of the assault and battery upon her. Her GP certified her unfit to work and referred her to a garda counsellor whom she attended on four occasions. Thereafter she was referred on to Doctor Martin Lucey consultant psychiatrist who, like the applicant's GP, prepared reports for the assistance of the court and which were admitted in evidence.

6. Dr. Lucey assessed the applicant on the 9th of October 2008. She attended Dr Lucey because the counsellor had formed the opinion that the applicant had suffered a post traumatic stress disorder with some moderate depressive symptoms secondary to the assault.

7. Whilst the physical injuries sustained by the applicant resolved over a number of weeks, the consequences of the sexual assault upon her had a significant and long lasting effect on her.

8. The applicant was only six weeks married at the time of the assault and in her evidence indicated that she had wanted to start a family early in her marriage. She was so traumatised by the effect of the assault that she could not countenance intimate relations with her husband. She continued to suffer from significant anxiety, upset and distress. She experienced recurring nightmares of the assault and would sometimes find herself awakening in the course of the night screaming. She had recurring intrusive thoughts and images of the assault and could not get the image of the assailant's face out of her mind. The assailant was well known to the gardai and she was terrified that on returning to work that she would encounter him.

9. It was clear from her demeanour in the giving of her evidence that the applicant remains psychologically traumatised to this day. Her belief is that the incident and its effects upon her psychologically will always remain with her. She described herself as a proud member of the force, coming from a family with a long line of service and duty. She loved her job. She had not countenanced the possibility of any other career. She described herself as an open and vivacious person who enjoyed interaction with the community with whom she was popular. All of that changed following the assault. She became withdrawn and developed a fear of being assigned duties in Killorglin. In fact she was only able to return to her duties upon the assurances of her superiors that she would not be

assigned duties which would take her into that area.

10. Following the assault, the plaintiff's mood became depressed with morning intensification of mood, no motivation to get out of bed in the morning, crying spells, irritability, loss of interest, lack of confidence and feelings of hopelessness. She became irritable towards her husband and clingy towards her own family. Although she had attended the counselling sessions she did not feel these to be of any great benefit. She had no previous psychiatric history. The optimism with which she lived her life prior to the incident evaporated. Even to this day, when performing her duties, she is affected by what had happened to her. She gave as an example her response to the reporting of sexual crimes, a function which she had found herself having to discharge on return to work as she was the senior female officer. While she admitted that she knew that she should encourage the victims of sexual assault to pursue prosecution because of her own experiences and, in particular, because of the acquittal of her assailant in a subsequent trial on the sexual assault charge, her personal inclination was to advise against such a course due to her own experience.

11. Dr Martin Lucey arranged for the applicant to undergo cognitive behavioural therapy in October and November 2008. This therapy enabled the applicant to ventilate her feelings in relation to the assault and ultimately she faced up to what was established avoidance behaviour. Her recurring nightmares and intrusive thoughts and images, together with her depressive symptoms, gradually abated.

12. Having received certain assurances from her superiors in connection with duty assignments, she felt herself able to return to work. Since the time of the assault the applicant has, happily, achieved her wish to have a family. She described her marital life as one which ultimately returned to normality and is happy in that life with her family. There are, however, instances and events which can still be the cause of considerable upset and distress to the applicant. She gave as an example one occasion when, during an election, she was canvassed by an individual who she immediately recognised to be a member of the family of the assailant. This event caused her great distress and fear.

13. While she had always felt safe in her own home she couldn't get it out of her head that the family of the assailant now knew where she lived and this had a profound effect on her feelings of safety.

14. When the applicant returned to work in March 2010 she was nineteen weeks pregnant. At that time she was still taking prozac daily but had ceased that medication due to her pregnancy.

15. The trial of the applicant's assailant took place in March 2011. She had been given assurances that all matters would go well and that everything was in order for the purposes of achieving a successful prosecution. Unfortunately that was not to be. She became anxious and distressed in the period leading up to the trial and this was doubly intensified as a result of her experiences in the course of giving evidence and particularly when doing so under cross examination. The not guilty verdict resulted in feelings of anger and disgust. She felt victimised by her experience in court and was evidently upset when giving evidence in relation to this aspect of matters. Although the applicant has returned to work the previous feelings that she had of loyalty and love for the job that she had possessed prior to the assault have evaporated.

16. Dr Martin Lucey expressed the opinion that the plaintiff suffered a post traumatic stress disorder with recurrent depressive disorder as a result of the violent sexual assault upon her. Whilst her symptoms of depression and the symptoms of the post traumatic stress disorder, apart from some avoidance behaviour, have now resolved, the applicant still continues to suffer emotionally in the form of an adjustment reaction.

17. She gave evidence that she was hopeful that the conclusion of this litigation would help to bring about some closure but that even if it did so she felt that she would never be the same person again as a result of the assault. It was never something that she was ever going to be able to get out of her mind. It had and continued to have a profound effect on her personality. She was not the person she once was. This, in my view, is to be distinguished from symptoms of post traumatic stress disorder and depression. Those illnesses have resolved but the effect of the assault on the applicant's personality remains.

18. Medical reports were also prepared on behalf of the respondent by the chief medical officer and by Dr Devitt, consultant psychiatrist. It is common case, when reading these reports that the applicant suffered from a post traumatic stress disorder. As far as Dr Devitt is concerned his diagnosis was of a post traumatic stress disorder of moderate severity. He recognised that the applicant was again emotionally unwell for a period of two months from March to May 2011 following the trial. From a psychiatric point of view in terms of psychiatric illness his opinion was that the long term prognosis is excellent. The impression of all of the physicians and, indeed, an impression which she conveyed in the course of her evidence, was that the plaintiff is a remarkably resilient individual. Her evidence that she realised that at the end of the day it was down to her to deal with what had happened and that she needed to rehabilitate herself for her own sake and that of her family. She is to be commended in this regard.

19. The assessment of general damages in a case such as this, as indeed with all cases involving the assessment of compensatory damages for civil wrongs, are concerned not only with actual pain and suffering of a physical and psychological nature but also with the interference with the applicant's enjoyment of life and the amenities which go with the living of it and which she undoubtedly possessed at the time when the assault upon her person took place.

20. I am quite satisfied on all of the medical evidence which has been admitted in this case, that whilst the applicant has recovered from her physical injuries and psychiatric illness, the events of the 13th of August 2008 have left what appears to me to be an indelible mark on her person which is likely to be permanent.

21. It was submitted that on behalf of the respondent that the consequences of the unsuccessful trial are not something for which the respondent should be found responsible in law. However, it seems to me that the very fact of having to go through a trial, irrespective of its result and which has had a lasting effect on her, was something which inevitably flowed from the assault although there was additionally an understandable anger experienced by the applicant and a feeling that she had been let down by the system as a result of a not guilty verdict. I am satisfied, however, that her post traumatic stress disorder and the impact on her personality arose as a direct result of what was a violent sexual assault upon her and not otherwise.

22. Having due regard to that and applying the appropriate principles of tort law to the assessment of compensatory damages the court will award the applicant the sum of €50,000 for pain and suffering to date and €35,000 for pain and suffering into the future added to which will be the sum of €444.13 in respect of agreed special damages, making in total the sum of €85,444.13 and the court will so order.