

THE HIGH COURT

[2004 No. 33CT]

**IN THE MATTER OF THE HEPATITIS C COMPENSATION TRIBUNAL ACT 1997 (AS AMENDED) AND
IN THE MATTER OF AN APPEAL PURSUANT TO THE PROVISIONS OF SECTION 5 (15) THEREOF****BETWEEN****P.B.****APPELLANT****AND****THE HEPATITIS C AND HIV COMPENSATION TRIBUNAL AND
THE MINISTER FOR HEALTH AND CHILDREN****RESPONDENTS****Judgment of O'Neill J. delivered the 2nd day of March, 2005.**

1. The appellant in this case is the widow of L.B. who died on 9th April, 2002. L.B. suffered from Hepatitis C and made a claim through the non-statutory Hepatitis C Tribunal and an award was made to him on 29th October, 1996. This award was appealed after L.B.'s death to this court and on 27th May, 2004. This court awarded a larger sum to P.B. into whose name the appeal had been reconstituted.
2. In my judgment in that appeal I determined that Hepatitis C was a significant contributory factor in the death of L.B.
3. Since then the appellant has made a claim to the Tribunal for compensation in respect of loss of consortium and for loss of society as provided for in the Hepatitis C Compensation Tribunal Act 2002 and for loss of dependency under the provisions of the Civil Liability Act 1961 (as amended).
4. The hearing of the application before the Tribunal has become stalled, the Tribunal having adjourned the applications sine die in the following circumstances.
5. The Tribunal requested a report from Dr. John Hegarty a hepatologist as to the cause or causes of death of L.B. and to what extent if any Hepatitis C was a factor in his death. In response to this the appellant took the position that the cause of death had been determined by the High Court and that the matter was *res judicata* and that the appellant/applicant was proceeding on the basis that she did not have to prove the cause of death or the extent to which Hepatitis C was a contributory factor, it having been determined by the High Court.
6. The Tribunal clearly were not in agreement with this and requested that Dr. Hegarty be called as a witness to which the applicant/appellant objected. When it was made clear to the Tribunal that the applicant/appellant would not be calling Dr. Hegarty as a witness the Tribunal then indicated that it proposed to appoint Dr. Hegarty for the purpose of assisting the Tribunal. The applicant/appellant responded to this by indicating that Dr. Hegarty did not have the authority of the applicant/appellant to assist the Tribunal in this way. The Tribunal replied to this by indicating that in their view, under the certificate of authority dated 30th June, 2004 signed by the applicant/appellant, that the Tribunal was entitled to seek a report from the Dr. Hegarty and they offered the view that such certificates of authority were irrevocable. In the light of this the Tribunal demanded that the applicant/appellant withdraw her denial of authority to Dr. Hegarty to make a report or evidence available to the Tribunal.
7. The matter came to finality in November, 2004 when the Tribunal indicated that it would not proceed with the applicant/appellant's application until it received a report from Dr. Hegarty, and in the meantime the claim would stand adjourned until the report was received.
8. The applicant/appellant responded to this by requesting the tribunal to sit for the purposes of hearing, as a preliminary issue whether or not the circumstances surrounding the death of L.B. and the causes of it were previously determined by the High Court. The Tribunal responded to this by way of a letter dated 15th November, 2004, indicating that it had already set down the basis upon which the applicant's claim would be heard.
9. The appellant now appeals against what she characterises as the refusal of the Tribunal to list for hearing as a preliminary issue the issue, as to whether the judgment of this court in the case of *L.B. v. the Minister for Health and Children* Record No. 1999/91 CT, determines that Hepatitis C was a significant contributory factor in the death of L.B. and therefore that this issue was *res judicata* insofar as the appellant's application for compensation is concerned.
10. In her notice of motion of appeal the appellant also seeks an order directing the Tribunal to hear and determine as a preliminary issue the matter as to whether the judgment of this court as referred to above in the case of *L.B. v. Minister for Health and Children* Record No. 1999/ 91 CT, determined that Hepatitis C was a significant contributory factor in the death of L.B. and that that issue was therefore *res judicata* in regard to the instant application. This relief was not pursued in this appeal.
11. For the applicant it was submitted that an appeal under s. 5 (15) of the Hepatitis C Compensation Tribunal Act 1997 (hereinafter referred to as the Act) was open to the appellant and was the appropriate form of relief to redress the impasse of which she complains. At the hearing Counsel for the appellant undertook to exercise a waiver in conformity with s. 5 (18) of the Act of 1997. It was submitted that even if this was not the appropriate form of relief that the matter should be treated as an application for a judicial review but that having regard to the appellant's desire for privacy which was available to her under the provisions of the Act, the process of judicial review was inappropriate to a dispute of this kind.
12. For the respondent and for the Tribunal it was submitted that an appeal under s. 5 (15) of the Act of 1997 was not available to deal with the situation which had arisen in this case and the fact that a waiver of common law rights was required under s. 5 (18) of the Act indicated the kind of matter that could be the subject matter of an appeal namely either an award of compensation or the refusal of the Tribunal to make an award. It was submitted that the scheme of the Act was such that before one was required to execute a waiver under s. 5 (18) an applicant would know either the amount of the award to be made or would be aware of the refusal of the Tribunal to make any award at all.
13. It was further submitted that s. 3 (11) of the Act of 1997 gave to the Tribunal a broad discretion in relation to its own procedures and that decisions on purely procedural matters were not a proper subject matter of appeal under s. 5 (15) and that this court should not interfere with purely procedural rulings of the Tribunal having regard to the remit of s. 3 (11).

Decision

14. I am satisfied that the position adopted by the Tribunal amounts to a decision which is a refusal to hear and determine an issue which is within their statutory competence, namely as to whether or not the question of whether Hepatitis C as a significant contributory factor in the death of L.B. is a matter which is *res judicata* or not. In adopting the position that they have chosen, what the Tribunal are in effect doing is forcing the applicant to abandon a legitimate contention namely the foregoing issue of *res judicata*, without hearing and determining that question.

15. In my view that is quite impermissible as it is manifestly a breach of the applicant's right to fair procedures. The applicant is entitled have that issue heard and determined by the Tribunal and she cannot be forced or compelled to abandon it unheard and undetermined.

16. The only issue remaining then is the appropriate procedure to be adopted by the applicant in order to litigate her complaint as set out above.

17. In my view an appeal under s. 5 (15) is not the appropriate procedure. The reason I have come to that conclusion is because the jurisdiction which this court has on appeals under s. 5 (15) is confined within the four walls of the statute itself and therefore is confined to the grant of such reliefs as are provided for in the Act itself as amended. Nowhere is there provision for an order by this court, of the kind sought by the appellant, directing the Tribunal to hear and determine the issue discussed above.

18. It could of course be said, that the court has an inherent jurisdiction to make such an order. In my view the court should not resort to its inherent jurisdiction in that regard, because of the availability of a more appropriate jurisdiction for the litigation of the dispute that is raised, namely, that of judicial review as provided for under Order 84 of the Rules of the Superior Courts.

19. Having regard to the foregoing it follows that this appeal fails for want of appropriate jurisdiction but it is quite clear from the facts deposed to on affidavit by the appellant, that leave should be granted to apply for judicial review and I would be disposed to grant such leave, if the appropriate application is made in that regard.