

THE HIGH COURT

[2004 No. 6CT]

IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 5 (15) OF THE HEPATITIS C COMPENSATION TRIBUNAL ACTS 1997 AND 2002

AND IN THE MATTER OF AN APPEAL OF CLAIMANTS,
R.C., J.C., B.C., S.C., T.C., E.B., J.C., A.C., T.C., S.C., M.C. AND T.C.

BETWEEN

R.C., J.C., B.C., S.C., T.C., E.B., J.C., A.C., T.C., S.C., M.C. AND T.C.

CLAIMANTS/APELLANTS

AND
THE MINISTER FOR HEALTH AND CHILDREN AND
THE HEPATITIS C AND HIV COMPENSATION TRIBUNAL

RESPONDENTS

AND
K.W. AND K.C. AND S.C.

NOTICE PARTIES

Judgment of O'Neill J. delivered the 17th day of December, 2004.

1. This appeal relates to certain dependency claims made by the claimants/appellants to the Hepatitis C and HIV Compensation Tribunal (hereinafter referred to as the "Tribunal"), arising out of the death of N.C. who died on 18th January, 1994 from both Hepatitis C and HIV, that were contracted by him as a result of having being administered contaminated blood products within the State.

2. The Notice Party K.W. is the widow of N.C. and K.C. is his daughter.

3. On 1st September, 2003 Messrs. Ivor Fitzpatrick and Company Solicitors applied to the tribunal on behalf of K.W. for compensation pursuant to s. 4(1)(e) of the Hepatitis C Compensation Tribunal (Amendment) Act 2002. The application was made by the use of Form II which is the form employed by the Tribunal in dependency claims. It was also accompanied by a letter of the same date. This form was signed by K.W. on 2nd July, 2003. The form enclosed a schedule of the names of the other dependents of the deceased N.C. The form stated at part H s. 3:

"Dependents will be making a claim for general damages and mental distress, post traumatic stress disorder – nervous shock, loss of society, care and companionship, loss of services and special damages. The dependent will also be making a claim for loss of consortium."

4. The accompanying letter dated 1st September, 2003 went on to state:

"For the purposes of clarity would advise that claims are made under the following headings:

- 1. A claim for general damages on behalf of the statutory dependents under s. 5(2A)(b) of the 2002 Act.*
- 2. A claim under s. 5(2A)(a) of the Hepatitis C Compensation Tribunal Amendment Act 2002 by the Statutory dependants for damages for mental stress as provided for under Part IV of the Civil Liability Act 1961.*
- 3. A claim for special damages pursuant to Part IV of the civil liability Act 1961.*
- 4. A claim for an award in respect of aggravated and/or exemplary damages to be determined and assessed by the Tribunal under the new s. 5(2A)(c) of the 2002 Act.*
- 5. A claim in respect of post traumatic stress disorder or nervous shock under s. 5(3A)(a) of the 2002 Act.*
- 6. A claim in respect of loss of society, companionship, care and affection under s. 5(3B)(b) of the 2002 Act.*
- 7. A claim for loss of consortium under s. 4(1)(h) of the Act. The above claims are deemed to be incorporated in the application form II signed by Mrs. K.W."*

5. In addition to the foregoing a Form II was also submitted on behalf of each of the statutory dependants by the solicitors acting for K.W. These forms were signed on different dates by the various dependants and certificates of authority were also completed by these.

6. Messrs. Ivor Fitzpatrick and Company Solicitors furnished a schedule for the hearings to the Tribunal on 7th November, 2003 in respect of these claims.

7. A hearing of these claims took place before the Tribunal on 11th and 12th November, 2003. This hearing was treated by the Tribunal as taking place in the applications of K.W. and K.C., the application of K.W. having been assigned the reference no. 2570/03 that of K.C. having been assigned the reference no. 2571/03.

8. In its ruling delivered on 17th September, 2003 the Tribunal assessed a sum in respect of general damages to which the deceased would have been entitled to recover, and apportioned that sum largely between K.W. and K.C. Apart from the parents of the deceased and S.C. who were given reasonably substantial sums the other siblings of the deceased were given what may be described as a token sum each.

9. In addition K.W. and K.C. received substantial damages for post traumatic stress and nervous shock and additionally substantial damages for loss of society. A substantial award was made to K.W. in respect of loss of consortium. Very substantial damages in respect of future loss of support was awarded to both. A small sum was awarded to the siblings and parents of the deceased as damages for mental distress.

10. On 5th January, 2004 the Tribunal wrote to Messrs. Ivor Fitzpatrick and Co. stating *inter alia* as follows:

"Dear Sirs,

I refer to the claim of the above named heard by the Tribunal on 12th November, 2003. The Tribunal has made a single lump sum award of compensation to the claimant in the sum of € together with any reasonable costs and expenses the claimant has incurred in taking her claim."

11. The award was proportioned by the Tribunal among the dependants of the deceased as follows:

"K.W. € K.C. € S.C. € R.C. € J.C. €

A.C. € E.B. € S.C. € B.C. € J.C. €

S.C. € T.C. € two dependants represented by Marcus Lynch..."

12. Mr. Ryan Secretary to the Tribunal went on to advise in this letter that the claimant i.e. K.W. had one month in which to either accept the award or reject the award or to appeal the award and he enclosed the relevant forms for either of these choices. He also informed Messrs. Fitzpatrick and Co. that the chairman of the Tribunal was of the view that the amount due from the reparation fund should be divided among the dependants in a similar ratio to the damages and the claimant was requested to convey her consent or otherwise to this.

13. K.W. accepted the single lump sum award on the 9th January, 2004 which acceptance was conveyed to the Tribunal by solicitors under cover of the letter dated 12th January, 2004. She furthermore made an application for payment from the reparation fund on the same day. The letter written on her behalf stated as follows:

"Please note that this acceptance from applies to Mrs. K. W. and K.C. where applicable only."

14. Correspondence took place in the month of January, 2004 between Messrs. Ivor Fitzpatrick and Company and the Tribunal in which it was urged that the statutory dependants had made individual claims to the Tribunal and each individual was entitled to either accept or reject or appeal the amount that was awarded to them individually by the Tribunal.

15. A letter dated 4th February, 2004 was sent by Marcus Lynch solicitors to the Tribunal advising the Tribunal that M.C. and T.C. wished to appeal the award. Also by letter dated 4th February, 2004 Messrs. Ivor Fitzpatrick and Company informed the Tribunal that twelve of the statutory dependants wished to appeal.

16. Also on 4th February, 2004 the appellants issued an originating notice of motion by way of appeal seeking *inter alia* the following relief:

"An award by way of an appeal pursuant to s. 5 (15) of the Hepatitis C Compensation Tribunal Acts 1997 and 2002, to the claimants, in such amount as this honourable court shall see fit by way of general damages and mental distress."

17. In the course of the aforementioned correspondence the Tribunal made it clear that in its view, there was only a single award to a single claimant i.e. K.W. and that the correct position legally was that only K.W. was required or indeed entitled to accept or reject or appeal the award pursuant to s. 5(9)(a) of the 1997 Act.

18. The issue which therefore arises for a decision, as a preliminary issue in this appeal is whether or not individual dependants who had been awarded sums by the Tribunal on foot of "dependency claims" are entitled to appeal the award of the Tribunal and is the acceptance by one of the dependants, who is treated as the claimant by the Tribunal a valid acceptance pursuant to s. 5(9)(a) of the 1997 Act, binding all of the dependants to whom sums were awarded and thus preventing an appeal by all the dependants except the one who is deemed to be the claimant. If a dependant is not prevented from appealing by an acceptance by the nominated claimant, is that dependant entitled to appeal against the entire award of the Tribunal or merely the apportionment of that award insofar as it affects that appellant.

19. At the hearing before me of this issue I had the benefit of written submissions from, the Tribunal, the Minister for Health and Children [hereinafter referred to as the "Minster",] for K.W. and K.C. together, and for S.C. Oral submissions were made by all of these parties and also by a Mr. Forde for the parents of the deceased.

20. It can fairly be said that the five groups represented at the hearing divided into two camps, with the Minister and the parents of the deceased contending for the proposition that the acceptance by K.W. did not preclude appeals by other dependants dissatisfied with the amounts awarded to them, and K.W. and K.C., and S.C. and the Tribunal contending for the opposing proposition namely that the acceptance by K.W. was a valid acceptance pursuant to s. 5(9)(a) of the 1997 Act, binding on all other dependants and thus none of them could maintain an appeal against any part of the award of the Tribunal.

21. The submissions in favour of the proposition that this appeal cannot be maintained are as follows:

"1. Section 48 of the Civil Liability Act 1961 is imported into the Hepatitis C Compensation Tribunal legislation either by the express provisions of s. 5(1) of the Act of 1997 or by necessary implication or analogy.

In consequence therefore where dependency claims are made only one claim can be brought to the Tribunal on behalf of all of the dependants.

2. Section 5(2A)(b) which enables an award to be made in respect of the general damages which the deceased would have been entitled to speaks only of one award i.e. in the singular, which is then to be divided amongst the dependants. The making of a single award necessarily implies a single claimant. The only statutory remit is to make a single award to a single claimant for all the dependants.

3. Section 5(6) of the 1997 Act speaks also of a single lump sum award and where dependants are involved they are included in this. Section 5 (8) does provide a choice between a final award and a provisional award but in all circumstances the award is a single lump sum payment.

4. Section 4(1) merely establishes eligibility to make a claim but it does not automatically make a dependant a "claimant". To be a claimant one must have first eligibility and then make a claim to the Tribunal in the appropriate

"application form" as determined by the Tribunal under s. 4(5) of the 1997 Act. In this case the appropriate form being Form II which was completed by K.W. for all of the dependants.

5. No objection was taken at any stage by any of the dependants to K.W. being treated as the claimant or to the claim being dealt with in this way.

6. Under s. 5(15) of the 1997 Act only claimants have a right of appeal and not dependants. A literal interpretation leads to a conclusion that only K.W. has a right of appeal.

7. It thus follows that the only acceptance, rejection or appeal that will be valid or recognisable under s. 5(9)(a) of the Act of 1997 is that of the claimant K.W. She accepted the award of the Tribunal and as it is well settled that an acceptance precludes an appeal, it necessarily follows that the appellants in these proceedings cannot maintain their purported appeals.

8. The judgment of this court in the cases of A.D. and H.C. v. Minister for Health and Children Judgment delivered the 10th day of October, 2003 established that an acceptance may be vitiated by an appeal taken at the same time by the same party on the basis that the acceptance is not unconditional. No such inconsistency arises here where the only party legally competent to execute an acceptance has done so unequivocally. The purported appeals by parties who are not legally competent to appeal cannot effect the validity of the acceptance by K.W.

9. It was submitted in particular by the Tribunal that dependency claims made under the 1997 Act are to be treated as equivalent to dependency claims made in respect of fatal injuries under Part IV of the Civil Liability Act 1961 and the Tribunal has since its establishment adopted a procedure that treats these claims as being brought by one claimant on behalf of all of the statutory dependants. That was the procedure which was adopted by the Tribunal, and accepted by the appellants in the proceedings before the Tribunal."

22. The submissions made in favour of the proposition that the appellants are entitled to maintain their appeals, may be summarised as follows:

1. For a person to be a "claimant" they must be person referred to in s. 4(1) and make a claim to the Tribunal. A person who is a dependant as set out in s. 47(1) of the Civil Liability Act 1961 is entitled under s. 4(1) to make a claim and if that person makes a claim in accordance with the procedural provisions of the Act of 1997 they are then a "claimant".

2. Section 5(1) of the Act of 1997 is limited to the computation of the measure of damages and does not refer to procedures for the making of a claim. Hence the reference in section 5(1) to part IV of the Civil Liability Act is not an express importation of s. 48 of the Civil Liability Act 1961 into the Act of 1997. Section 48 and in particular the limitation in it which restricts dependency claims to one claim is not expressly mandated in any way in the 1997 Act and its inclusion should not be implied.

3. A significant injustice can result if one dependant can block another from appeal.

4. This court in the cases of A.D. and H.C. v. Minister for Health and Children held that the commencement of an appeal was found to vitiate the acceptance signed by the claimants in those cases, so that the effect of the acceptance was undermined by the fact of an appeal. It was submitted that the same principle might be said to apply in this case, where the fact of an appeal could be said to undermine or vitiate the effect of the acceptances as signed by K.W. and K.C. It was submitted that any other interpretation would lead to a significant injustice whereby one dependant/claimant could prevent an appeal by another dependant by the act of signing an acceptance. It was submitted that this was not what was intended by the act.

23. It was submitted by Mr. Ford as follows:

1. That forms in accordance with the recognised procedure of the Tribunal were submitted by all of the dependants by either Fitzpatrick and Company for all but two, and their remaining two that is T.C. and M.C. made separate claims through a different solicitor.

2. There was no provision in the 1997 Act or 2002 Act similar to s. 48 of the Civil Liability Act 1961 or no express reference in the Act of 1997 or the Act of 2002 to s. 48.

3. The maxim *expressio unius exclusio alterius* leads to an interpretation of the acts of 1997 and 2002 which necessarily excludes the restriction contained in s. 48(2) to the bringing of one claim in respect of a fatal injury case. Thus it was submitted any dependant can make a separate claim as it was done in this case.

4. Section 5(6) of the Act of 1997 does provide for a single ward but for each dependant. There is no provision for composite awards here.

5. Where in an, appeal by one dependant, the damages were increased only that part of the increase proportioned to the successful appellant would be awarded to him and the rest would be credited back to the exchequer, because other dependants would have accepted their awards.

Relevant statutory provisions

24. Civil Liability Act 1961

"48.- (1)Where the death of a person is caused by the wrongful act of another such as would have entitled the party injured, but for his death, to maintain an action and recover damages in respect thereof, the person who would have been so liable shall be liable to an action for damages for the benefit of the dependants of the deceased.

(2) Only one action for damages may be brought against the same person in respect of the death.

(3) The action may be brought by the personal representative of the deceased or if at the expiration of six months

from the death there is no personal representative or no action has been brought by the personal representative, by all or any of the dependants.

(4) The action by whomsoever brought, shall be for the benefit of all the dependants.

(5) The plaintiff shall furnish the defendant with particulars of the person or persons for whom and on whose behalf the action is brought and of the nature of the claim in respect of which damages are sought to be recovered.

(6) Action shall be commenced within three years after the death.

49. -(1)(a) The damages under section 48 shall be—

(i) the total of such amounts (if any) as the jury or the judge, as the case may be, shall consider proportioned to the injury resulting from the death to each of the dependants, respectively, for whom or on whose behalf the action is brought, and

(ii) subject to Paragraph (b) of this subsection, the total of such amounts (if any) as the judge shall consider reasonable compensation for mental distress resulting from the death to each of such dependants.

(b) The total of any amounts awarded by virtue of subparagraph (II) of paragraph (a) of this subsection shall not exceed €25,400.

(c) Each amount awarded by virtue of paragraph (a) of this subsection shall be indicated separately in the award.

25. The Hepatitis C Compensation Tribunal Act 1997

1.-(1) In this Act, unless the context otherwise requires-

"application form" means any form of application determined by the Tribunal under section 4(5);

"award" means an award of compensation;

"claimant" means a person referred to in s. 4(1) making a claim to the Tribunal in respect of any matter referred to in that subsection or a person referred to in any regulations made under s. 9 in respect of the matters referred to in those regulations;

"dependant" has the meaning assigned to it by s. 47(1) (inserted by s. 1 of the Civil Liability (Amendment) Act, 1996) of the Civil Liability Act, 1961;.....

3.-(11) Subject to this Act, the Tribunal shall determine its own procedures and, in so doing, shall as far as is practicable adopt procedures which are informal.....

4.-(1) The following persons may make a claim for compensation to the Tribunal-

(e) where a person referred to in paragraph (a), (b) or (c) has died as a result of having contracted Hepatitis C or where Hepatitis C was a significant contributory factor to the cause of death, any dependant of such person...

(j) where a person referred to in paragraph (f) or (g) has died as a result of having contracted (HIV) or where (HIV) was a significant contributory factor to the cause of death, any dependant of such person...5.-(1) An award of the Tribunal to a claimant shall be made on the same basis as an award of the High Court calculated by reference to the principles which govern the measure of damages in the law of tort and any relevant statutory provisions (including Part IV of the Civil Liability Act, 1961), and including, subject to s. 11, consideration of an award on the basis which reflects the principles of aggravated and exemplary damages...

5.-(2a) Notwithstanding subsection (1)-

(a) section 49 of the Civil Liability Act, 1961 shall apply in relation to the assessment of the amount of the award to a dependant referred to in paragraph (e) or (j) of s. 4(1) with the modification that the reference in subsection (1)(a)(i) of the said s. 49 to the death shall be construed as a reference to the injury of the deceased and the death of the deceased

(b) the Tribunal may make an award to a dependant referred to in paragraph (e) or (j) of s. 4(1) consisting of an amount equal to the amount of the general damages including damages for pain and suffering, personal injury, loss of or diminution of expectation of life or happiness which the deceased suffered during his or her lifetime and to which the deceased would have been entitled if he or she had survived and brought a claim for compensation to the Tribunal, and where there is more than one such dependant, the amount aforesaid of the award shall be divided amongst those dependants in such manner as the Tribunal thinks just, and ...

5.-(3) (a) Where a dependant referred to in paragraph (e) or (j) of s. 4

(1) is the child, spouse, father or mother of the person who died ('the deceased') as a result of having contracted HIV or Hepatitis C, or where HIV or Hepatitis C was a significant contributory factor to the cause of death, the Tribunal may make an award to that dependant in respect of post traumatic stress disorder or nervous shock if he or she satisfies the Tribunal that he or she has suffered or is suffering from that condition as a result of the death.

(b) In determining whether to make an award under this subsection, the Tribunal shall have regard to any decision of the High Court or the Supreme Court announcing principles of law relating to the award of damages for post traumatic stress disorder or nervous shock as the case may be.

(3B)(a) the Tribunal may make an award to a person referred to in s. 4(1) (h) in respect of the loss of consortium of a person referred to in paragraph (a), (b) or (f) of s. 4(1), including the impairment of sexual relations with the person if the Tribunal is satisfied that there has been such loss or impairment arising from the risk of transmission of Hepatitis C or HIV.

(b) where a dependant referred to in paragraph (e) or (j) of s. 4(1) is the child, spouse or parent of the person who died ("the deceased") as a result of having contracted Hepatitis C or HIV, or where Hepatitis C or HIV was a significant contributory factor to the cause of death, the Tribunal may make an award to that dependant in respect of loss of society of the deceased, including the loss of the care, companionship and affection of the deceased as a result of the death...

5.-(6) The Tribunal shall assess and make an award for general or special damages on the basis of a single lump sum award or a provisional award as chosen by a claimant under subsection (8)...

5.-(8) A claimant shall choose on making a claim to the Tribunal whether she or he is seeking a single lump sum award or a provisional award. A claimant may, at the discretion of the Tribunal, alter her or his choice before the conclusion of the hearing of her or his claim.....

5.-(9) Subject to subs. (13), where the Tribunal makes an award to a claimant, the claimant shall have a period of one month or such greater period as may be prescribed from the date of receiving notice of the making of the award during which the claimant may decide in writing either to accept or reject the award or to appeal the award under subsection (15).....

5.-(15) An appeal shall lie to the High Court by a claimant in respect of any decision made by the Tribunal and the Minister may cross-appeal any such appeal....."

Decision

26. The decisive issue in determining whether or not the appellants can maintain this appeal is whether or not they are "claimants" as defined in s. 1 of the Act of 1997.

27 There is no doubt that they are "dependants" within the meaning of s. 47(1) of the Civil Liability Act 1961 as amended and as such are persons who are entitled under s. 4(1)(e) and (j) to make a claims as dependants of the deceased.

28. That notwithstanding however, if s. 48 of the Civil Liability Act 1961 were to apply either because it was expressly incorporated into the 1997 Act or if it were to apply by necessary implication, it has been argued, that would have the effect of confining all of the potential dependant claims to one application. Thus the first question to be decided there is whether or not s. 48 applies or not.

29. As with all questions of statutory interpretation the first approach is always the literal approach. It is quite clear that there is no express reference to s. 48 in either the Act of 1997 or the Act of 2002. The nearest one gets to that kind of reference is in s. 5(1) of the Act of 1997 where it is said:

"An award of the Tribunal to a claimant shall be made on the same basis as an award of the High Court calculated by reference to the principles which govern the measure of damages in the law of tort and any relevant statutory provisions (including Part IV of the Civil Liability Act, 1961)..."

30. Part IV of the Civil Liability Act 1961 does of course include s. 48. Of particular relevance to this problem is s. 48(2) which says that only one action for damages may be brought against the same person in respect of a death.

31. I am of opinion that this reference in s. 5(1) of the Act of 1997 does not import the restriction in s. 48(2) into the Hepatitis C and HIV Compensation code. Manifestly s. 48 is not expressly referred to in either the Act of 1997 or 2002. It could however be said that the reference to Part IV of the Civil Liability Act in s. 5(1) on a literal construction could include and therefore import s.48(2).

32. I do not agree that the reference to Part IV of the Civil Liability Act, in s. 5(1), has the effect of importing s. 48(2) into the Acts of 1997 and 2002, because it is clear from s. 5(1) itself where this reference is included, that that subsection is solely concerned with the computation of damages and not with procedural arrangements for the making of claims. Furthermore s.5(1) is in that part of the Act which deals with awards of the Tribunal whereas procedural matters relating to the making of claims are dealt with in earlier sections, namely, sections 3 and 4. All of this leads me to conclude that a literal construction results in the exclusion of s. 48(2).

33. The next question which arises is whether or not a purposive approach requires the inclusion of a restriction such as is contained in s. 48(2) of the Civil Liability Act 1961.

34. The first thing to be observed is that the policy underlying the restriction in s. 48(2) may not be appropriately transferred to applications to the Tribunal by dependants for compensation. The action for wrongful death created by s. 48 arises where, but for the death, the deceased would have been entitled to maintain an action and recover damages. In that circumstance of course the defendant would be facing a single action. The effect of s. 48 is to protect such a defendant from a proliferation of separate actions by all of the potential dependants.

35. The scope of the action for wrongful death, notwithstanding the relatively broad terms used in s. 49(1)(a)(i), has been confined to damages for pecuniary loss and damages for mental distress awarded under s. 49(1)(a)(ii).

36. In contrast a much wider range of dependants' claims arise from the Act of 2002. There are the claims maintainable under the Act of 1997 similar to the dependants claims under the Civil Liability Act namely for pecuniary loss and mental distress. The Act of 2002 introduced claims in respect of loss of consortium, loss of society, post traumatic stress disorder or nervous shock and a claim in respect of the general damages to which the deceased would have been entitled had he survived to pursue a claim. Clearly the loss of consortium claim is not a dependency claim at all as it does not arise from a death and is not expressed as a dependency claim in

the Act of 2002. A feature of some of these new dependency claims introduced by the Act of 2002 is that they are not available to all dependants. The claims in respect of loss of society and post traumatic stress disorder or nervous shock are limited to a child, spouse, or father and mother of the deceased excluding all other dependants within the meaning of s. 47(1) of the Civil Liability Act 1961.

37. Apart from the claim in respect of the general damages to which the deceased would have been entitled had he survived, and perhaps, the claim for mental distress, all the other dependency claims are manifestly of an individual nature and for the benefit solely of the particular dependant who has suffered the injury in question.

38. There would appear to be no good reason apart from administrative convenience for restricting that range and variety of claims into one application under the effective control of one claimant who might have no interest in some of the claims and who might very well have a significant conflict of interest with other claimants in relation to the claim for the general damages to which the deceased would have been entitled, as has occurred in this case. In my opinion a significant injustice could result from a situation in which a dependant, dissatisfied with either the apportionment of the general damages or the amount of the general damages was prevented from appealing by another dependant who was perhaps the beneficiary of what other dependants might consider an unfair apportionment of the general damages to which the deceased was entitled, or where a dependant was dissatisfied with what he or she or they believed was an insufficient award in the first place.

39. Insofar as the damages for mental distress are concerned, under s. 49(1)(a)(ii) of the Civil Liability Act 1961, a judge must consider what is reasonable compensation for the mental distress suffered by each dependant and award reasonable compensation to each dependant, subject to the overall limit on the totality of these amounts contained in s. 49(1)(a)(ii) (b). Where damages for pecuniary loss are claimed, the Judge must assess the loss suffered by each dependant. A significant feature of s. 49 is that each amount awarded to every dependant is required by s. 49 (1)(a)(ii)(c) to be indicated separately in the award.

40. There is no doubt in my opinion that the entirety of s. 49 having as its subject matter the assessment or computation of damages is imported by s. 5(1) of the 1997 Act into the operation of the Acts of 1997 and 2002.

41. There is an essential difference therefore between the exercise undertaken by a court or a tribunal in relation to the assessment of damages for mental distress and the apportionment of the general damages to which the deceased might have been entitled by virtue of s. 5 (2a)(b). Insofar as the damages for mental distress is concerned there must be an assessment of the mental distress suffered and an appropriate award of damages to each dependant subject to the overall limit. The assessment of the general damages to which the deceased would have been entitled has nothing to do with any injury suffered by a dependant. In the apportionment of the amount of the general damages between the dependants the Act gives to the Tribunal the widest possible discretion in the selection of factors which would sway the Tribunal in arriving at an apportionment which it thinks "just".

42. The separate indication of awards under s. 49(1)(a)(c), apart from the very obvious consequence of indicating what each dependant is to get also facilitates an appeal by any dependant. There is no exclusion of an appeal by a dependant who is not a plaintiff under Part IV of the Civil Liability Act and I have never heard it suggested or submitted that a dissatisfied dependant, making a claim pursuant to s. 48, did not have a right of appeal.

43. It becomes difficult to argue, by analogy with Part IV of the Civil Liability Act 1961, that there is not or should not be a right of appeal under the Acts of 1997 and 2002 when in fact Part IV of the Civil Liability Act clearly does not remove the right of appeal which is always there under the general law.

44. As said earlier, the nature of most of the dependant claims under the Acts of 1997 and 2002 are individual and for the benefit of one dependant only. The original dependency claims that were there prior to the Act of 2002 were not expressly provided for in the Act of 1997 but were encompassed by the reference to Part IV of the Civil Liability Act 1961 and therefore regulated directly by s. 49 of the Civil Liability Act 1961.

45. Of the new dependency claims introduced in the Act of 2002, the claims in respect of post traumatic stress disorder or nervous shock, and the claim in respect of loss of society of the deceased are all manifestly individual claims for the sole benefit of the dependant in question. In respect of each of the claims the relevant subsections use exactly the same terminology "*The Tribunal may make an award to that dependant...*," in respect of the claim for post traumatic stress and nervous shock and loss of society."

46. In my opinion it is absolutely clear from the language used in the relevant sections in respect of these claims that the Tribunal must make an award of compensation in respect of each of the dependant's claims under these headings. These awards are of necessity separate and individual awards because of their very nature but also because they are in my opinion, expressed in the relevant sections as being separate awards.

47. Insofar as the damages for pecuniary loss are damages for mental distress are concerned which, as I have already indicated, fall to be regulated under s. 49 of the Civil Liability Act 1961, these are of the very nature separate awards in which the each dependant is individually and solely entitled and s. 49(1)(a) requires that they be indicated separately in the overall award.

48. It has been submitted that the award to be made under s. 5(2a)(b) and I assume also under 5(2a)(c) is in the nature of a composite or single award covering all of the dependants entitlements to share in a single award of general damages to which the deceased was entitled, and to a single award of aggravated damages.

49. Necessarily, the assessment of the amount of the general damages, it having nothing to do with the individual circumstances of individual dependants, is an exercise confined to an assessment the effects upon the deceased of either Hepatitis C and/or HIV and necessarily results in the assessment of a single amount or quantum of damage. The Tribunal then, where there is more than one dependant must divide the amount of that award between the dependants in a manner in which it thinks just. The same applies in respect of the amount of an award of aggravated or exemplary damages.

50. The word "award" is defined in s. 1(1) of the 1997 Act as meaning "an award of compensation". In my opinion the amount assessed by the Tribunal as either general damages or aggravated or exemplary damages does not become an award of compensation until such time as the Tribunal determines to whom it is to be awarded. Until then the amount assessed under these two headings is no more than that, namely the amount assessed by the Tribunal, which must then be divided amongst the dependants, to whom such sums are then awarded as compensation.

51. The following passage from the judgment of McGuinness J. in the case of DB v. Minister for Health and Children and the Hepatitis C Compensation Tribunal, appears to support that view:

"I do not accept the submission of counsel for the claim that an award is a "bundle of decisions" some of which may be appealed. It seems to me that in the context of s. 5 (9)(a) an award of compensation is the actual amount which is to be paid to the claimant. Clearly not all decisions made by the Tribunal are awards but an award is a decision for the purposes of s. 5(15) and it is a single decision."

52. In that case the Supreme Court rejected the submission that conclusions of the Tribunal leading to an award could be treated as "decisions" capable of appeal under s. 5(15). By the same token, in my view, conclusions of the Tribunal such as the assessment of the amount or quantum of general damages or aggravated or exemplary damages, no doubt a necessary step in the process of arriving at an award, cannot be treated as the "award of compensation" itself.

53. I have come to the conclusion therefore that the amounts divided up between the dependants under s. 5 (2)(a)(b) and (c) are to be treated as awards of compensation to these individual dependants. Such an approach appears to me to be more in harmony with the definition of "award" in s. 1(1) of the Act of 1997. I am of the view that the requirement in subs. 5(2a)(b) and (c) that the amount of the award be divided among those dependants does not, have the effect, that between the assessment of the composite award and its division among the dependants, it loses the character of an "award" in the division. The use of the word "award" in the singular in the subsection, does not deprive what is ultimately awarded to each dependant of the character of "an award", because it is quite clear that the division of the amount and the giving of it to individual dependant is manifestly "an award of compensation", which is exactly what an "award" is, within the meaning of s. 1(1) of the Act of 1997.

54. I am satisfied therefore that the amounts awarded to these individual dependants are "awards", amenable to the process of acceptance, rejection or appeal as provided for in s. 5(9)(a) of the Act of 1997.

55. I am also satisfied that each of the appellants is eligible to be a "claimant" as provided for in s. 4 of the Act of 1997 as amended and I am satisfied on the facts that each of these claimants did complete an appropriate claim form to the Tribunal and did therefore become claimants.

56. Because of the difference, in the range of claims, under the Acts of 1997 and 2002 and the individual nature of nearly all of these, I would be of the view, that the policy underlying s. 48(2) is not appropriately transferable to the Acts of 1997 and 2002, nor is the objective of protecting a defendant, from a multiplicity of actions as by defendants as compelling as is the case of actions brought under s. 48 of the Civil Liability Act 1961.

57. It should be borne in mind that s. 48 of the Civil Liability Act 1961 whilst it does have a restriction to one action only against a defendant arising out of a wrongful death, it does not limit the number of claimants that can be plaintiffs in such an action and in fact it specifically provides in s. 48(3) as follows:

"The action may be brought by the personal representative of the deceased or if at the expiration of six months from the death there is no personal representative or no action has been brought by the personal representative, by all or any of the dependants."

58. It seems to me, therefore, that even if s. 48 applied in the operation of the acts of 1997 or of 2002, all of the appellants, having submitted individual claim forms or having been included in the claim of K.W. and K.C. would have to be regarded as "claimants".

59. What then is the position of claimants who accept the award of the Tribunal?. Awards to dependants in respect of financial loss, or loss of society or for post traumatic stress disorder or nervous shock present no difficulty in my opinion. These awards are solely for the benefit of the dependant to whom they are awarded and the assessment of the quantum of these awards depends solely on the injury suffered under each heading by each dependant. In my view each of the dependants who is a recipient of awards of this kind can individually exercise the choices required by s. 5 (9) (a) of the Act of 1997 and if administrative changes are required in order to enable dependants to whom awards of this kind are made, to exercise those choices, then that must be done.

60. The award of damages of mental distress is required by the s. 49 to be separately indicated. Although the award is in respect of the assessment of the mental distress suffered by the individual dependants, because of the statutory limitation on the totality of awards for mental distress it would invariably, though perhaps not always, be the case that an appeal by one dependant of an award for mental distress would effect awards under this heading to other dependants.

61. Similarly awards to dependants in respect of the division of the general damages or aggravated or exemplary damages would likewise inevitably affect amounts awarded to other dependants unless of course the assessment of the quantum of general damages was increased, so as to protect awards to other dependants from reduction.

62 It would appear to me to be unavoidable that if some or any dependants wish to appeal the awards to them in respect of general damages, or the aggravated or exemplary damages, that there will be interference with other awards to other dependants in respect of the division, of general damages, even though the recipients of those awards may be disposed to accept them.

63. It necessarily follows in my opinion that, where one or more dependants in these circumstances wishes to appeal, there are three possible consequences.

64. Firstly one could follow the approach adopted heretofore by the Tribunal and treat the award as a single award to a single claimant who alone would exercise the choices required by s. 5 (9)(a). For the reasons set out above and in particular bearing in mind that if one claimant, who would undoubtedly have a conflict of interest is permitted to prevent all or any of other claimants, appealing, a significant injustice can result.

65. A second possibility is to permit a dependant who wishes to accept the award in respect of a division of the general damages to accept that award and thereby preserve that award inviolable to the appeals of other dependants. The consequences of this approach would be if the appellants were successful in their claim for either a larger assessment of damage or a larger division of the general damages then the Minister would necessarily be exposed to an artificially inflated assessment of the quantum of general damages. If this were not done then the preservation intact of the award in the hands of a dependant who had accepted it, would have the effect of defeating a potential appeal.

66. The third possibility is, that in the event of an appeal by one or more dependants in respect of an assessment of the quantum of general damages or the award to him of compensation following a division of that award, then that appeal must have the effect of defeating an acceptance by another dependant.

67. I am inclined towards the third choice as being the only one which is capable of achieving an appropriate balance of justice between dependant claimants and the minister.

68. It is unfortunate that the acts of 1997 or 2002 do not provide an express statutory solution to the problem revealed in this preliminary issue. Amending legislation, clearly would be very helpful.

69. The problem thus posed arises from an analysis of the terms of the Acts adhering to a literal approach. In that way you arrive at the conclusion reached above, that the award to a dependant in respect of a division of general damages is amenable to the choices in s. 5 (9)(a).

70. It is common case that the appellants in this case are persons who are eligible to be claimants and in my view having submitted claims individually and then being included collectively in the claims of K.W. and K.C., they are persons who have made claims to the Tribunal in the form prescribed by the Tribunal pursuant to s. 4(5) of the 1997 Act, and are "claimants" as defined in s. (1)(1) of the Act of 1997.

71. These conclusions lead inexorably to the apparent irreconcilability as discussed above, between the position of a dependant or dependants who wish to accept, such as K.W. and K.C. in this case, and the position of other dependants who wish to appeal such as the appellants in this case.

72. Faced with these irreconcilable positions the Court has no choice but to resort to the purposive approach, and in so doing I am of opinion that the third possibility set out above, namely that in the event of an appeal by one dependant, the acceptance by another is to be deemed ineffective in respect of dependant claims under s. 5 (2)(a)(b) and (c).

73. It is therefore with some hesitation that I have come to the conclusion that the appellants in this case are entitled to appeal both in respect of the quantum of the general damages and the division of the same amongst the dependants.