

THE HIGH COURT

[2021] IEHC 652
[2013 .No. 580 SP]

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

BETWEEN

GAVIN RYAN

APPLICANT

AND

THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM

RESPONDENT

Ex tempore judgment of Ms. Justice Reynolds delivered on the 30th July 2021

Introduction

1. This is an application made pursuant to the provisions of the Garda Siochána (Compensation) Acts for compensation arising from an incident which occurred on the 11th March 2008 during the course of Mr. Ryan's former employment as a member of An Garda Siochána.

Background

2. Mr. Ryan was born on the 7th August 1979 and is in a long term relationship with his partner. They have two children together, aged 7 and 9. His partner is in full time employment as a tax consultant and he is the primary carer of their young children.
3. Mr. Ryan joined An Garda Siochána in 2000 and in 2008 was stationed in Ballyfermot Garda Station.
4. During the course of his duties on the 11th March 2008, he was called upon to assist his colleagues at the scene of an armed robbery. When they arrived at the premises, the perpetrators were still present. In the course of trying to apprehend one of them, Gda. Ryan had a shotgun pointed at him. Fortunately, Gda. Ryan was in a position to tackle his assailant to the ground and one of his colleagues secured the firearm. Thereafter, the assailant was arrested, taken to Ballyfermot Garda Station and processed in the ordinary way. Gda. Ryan was the prosecuting officer responsible for the investigation that ensued and the culprit was subsequently convicted of a robbery charge and sanctioned with a term of imprisonment.
5. Gda. Ryan was awarded the Scott Medal in October 2009 and is to be commended for his considerable bravery on the night in question.

The evidence

6. Subsequent to the robbery, Gda. Ryan began to suffer from stress and anxiety together with sleep disturbance. He first attended with his general practitioner, Dr. Lee, on the 8th September 2008 and was deemed unfit for work for a period of two weeks. Whilst he resumed work for a short period thereafter, he reattended on the 7th October with similar complaints and was again deemed unfit for work for a further two-week period.
7. Unfortunately, matters were further compounded by events on the 22nd November 2008 when during the course of his duties he suffered a needlestick injury. Consequently, he

was required to attend St. James' Hospital for the appropriate treatment and blood tests. This gave rise to a concern on his part that he may have contracted a serious infection. It took several months before the results of blood tests excluded that possibility.

8. There is no doubt but that this incident exacerbated Gda. Ryan's symptoms of anxiety and psychological trauma. He was referred for counselling by the Garda Welfare Officer. Due to the ongoing nature and severity of his symptoms, he was subsequently referred by his psychotherapist to Dr. Robert Daly, consultant psychiatrist, and was initially seen by him on the 17th June 2009.
9. At that time, Gda. Ryan complained of marked insomnia, weight loss, low mood and loss of confidence. He stated that his performance at work was poor, he had become socially withdrawn and had difficulty coping. Dr. Daly opined that his symptoms were post – traumatic in nature and diagnosed "an adjustment reaction with mixed anxious and depressive features". He prescribed sleeping tablets and advised Gda. Ryan to continue with counselling.
10. Upon further review on the 8th June 2011, Dr. Daly noted an overall improvement in Gda. Ryan from a mental health perspective although Gda. Ryan's insomnia remained problematic. He had complied well with treatment and was making a good recovery overall.
11. It is evident that Gda. Ryan suffered further trauma and distress arising from a very unfortunate incident which occurred in 2011 when a "bullet was put through the letterbox of his home". It remains unclear who was responsible for this threat. Due to Gda. Ryan's concern for the safety of his family, he and his partner moved out of their own accommodation and went to live with his partner's mother. In 2014, they returned to accommodation of their own.
12. In terms of his ongoing medical treatment, Gda. Ryan came under the care of Dr. McGovern in 2014 for treatment of cannabis dependency. Gda. Ryan reported to Dr. McGovern that his addiction issues stemmed from the traumatic events surrounding the armed robbery in 2008. Dr. McGovern noted that he responded well to treatment for his drug misuse but opined that he required additional treatment for symptoms of post – traumatic stress disorder. He referred Gda. Ryan to Mr. Gaynor, clinical psychologist.
13. Upon review and assessment by Mr. Gaynor in late 2014/early 2015, Gda. Ryan was diagnosed with post - traumatic stress disorder (PTSD) and thereafter underwent intensive cognitive behavioural therapy over a year long period, concluding in January 2016. Mr. Gaynor reported that he engaged well throughout therapy and his symptoms had improved significantly as a result. Mr. Gaynor stated that he was "hopeful that Mr. Ryan would make a functional recovery in the future so that he is able to hold down a job, interact socially, gain enjoyment from life etc. However, he also cautioned that it was unlikely that Gda. Ryan would be able to return to the "high-stress nature of roles (both front line and back office) within An Garda Síochána".

14. In July 2014, Gda. Ryan was reviewed by Dr. Tobin on behalf of the Chief Medical Officer at a time when Gda. Ryan had been out on sick leave for a period of four months. It was noted that he had overcome his addiction issues but continued to suffer from low mood and other symptoms referable to his PTSD.
15. Thereafter, Gda Ryan remained under review by the Assistant Chief Medical Officer and on the 19th February 2018, he was discharged on medical grounds. This occurred against a background where he had been on long term sick leave since April 2014.
16. A loss of earnings claim is being pursued by Mr. Ryan for losses to date and into the future. Mr. Ryan has not returned to the workforce since his medical discharge in 2018.
17. To assist with this aspect of the claim, I have the benefit of evidence from Ms. McMahon, vocational consultant, who assessed Mr. Ryan in February 2018 and her comprehensive report setting out Mr. Ryan's educational background and work history.
18. At the time of assessment, Mr. Ryan continued to complain of ongoing psychological difficulties which he felt precluded him from returning to the workforce.
19. Having completed her assessment, and with the benefit of the relevant medical reports, Ms. McMahon opined that having regard to his work history, his future employment prospects were limited to unskilled work e.g. general operative roles. She outlined that the basic rates of pay for such employment were in the range of €24,000 to €28,000 per annum entry level.
20. In summary, she concluded: -

"Given his relatively young age, one is hopeful that with continuing involvement with the psychological services that Mr. Ryan will develop sufficient coping strategies to enable him to return to the work force in the future".
21. However, she thereafter went on to state that in alternative employment he was unlikely "initially at least", to achieve the rate of pay associated with his employment as a member of An Garda Síochána.
22. I also have the benefit of actuarial evidence from Mr. Byrne and Mr. Lynch in relation to their respective calculations of losses into the future and the appropriate multipliers to be applied.
23. The parties have agreed a figure in respect of past loss of earnings in the sum of €60,635 subject to the court being satisfied that the losses were accrued and flow from the incident in March 2008.

Discussion

24. Before embarking on any consideration of the actuarial evidence in this case, it is necessary to engage with the entirety of the evidence to establish whether such a claim arises.

25. As a starting point, it is necessary to consider the injuries sustained by Mr. Ryan as a result of the incident in March 2008 and from the two further incidents which occurred in late 2008 and 2011. In that regard, I have to attach considerable weight to the evidence of Dr. Daly, consultant psychiatrist, who treated Mr. Ryan for his symptoms arising from the first and second incident. Most telling in my view is his report of the 18th September 2009, in which he opines that Mr. Ryan's psychological sequelae after the first incident "rendered him more psychologically vulnerable to stress and contributed towards his experiencing further stress following the needlestick injury". It follows that it also left him more vulnerable in respect of the third incident.
26. It is evident that the first incident was a very significant life threatening event which was likely to and did have a profound effect on Mr. Ryan. Whilst there may have been a period of years before he was properly diagnosed with PTSD, his first symptoms of an adjustment disorder with associated depressive symptoms arose from the incident in March 2008 and were exacerbated by the events thereafter.
27. In the circumstances, I am satisfied his diagnosis of PTSD is primarily attributable to the aftermath of the armed robbery in March 2008.

General damages

28. In considering the appropriate level of damages for the PTSD, I have considered the very helpful authorities submitted to the court by way of assistance from counsel for both the applicant and respondent.
29. I am satisfied that the correct approach in cases with psychological and psychiatric injuries is that as set out by Irvine J. in the *Carey* decision (*Carey & Ors v. Minister for Finance* [2010] IEHC 247).
30. The evidence establishes that this was a life threatening incident which had prolonged psychiatric and psychological sequelae for Mr. Ryan over many years. Fortunately, he engaged well with all modalities of treatment and has not required any treatment in many years.
31. In relation to his drug misuse, I am satisfied that his addiction arose by way of a coping strategy for his psychiatric difficulties as outlined by Dr. McGovern but I simply cannot accept that it dates back to 2008, in circumstances where he remained in his employment until he went out on long term sick leave in April 2014. I am satisfied that it is more likely to have arisen consequent upon the culmination of traumatic events between 2008 and 2011, and became increasingly problematic such that he eventually sought medical intervention.
32. I have no doubt that all of these events put a strain on his relationship with his partner but fortunately they have maintained that relationship over the years and now have two young children. Mr. Ryan has also suffered from the loss of a promising career with An Garda Síochána, a role which he had hoped to enjoy until retirement and this has understandably been a source of considerable regret and upset for him.

33. In all the circumstances, I am satisfied that the most appropriate comparator for the court to consider by way of guidance in assessing general damages is the O'Hara decision (O'Hara v. Minister for Finance, Public Expenditure and Reform [2009] 1093 SP) and will award Mr. Ryan general damages in the sum of €100,000.

Loss of earnings

34. In terms of the loss of earnings claim, there are a number of factors I have to take into account in considering same.
35. Firstly, Mr. Ryan has been the primary carer of his young children since 2014 and accepts that this is a full time job, given their after school activities and his involvement with them.
36. Secondly, he has not sought any alternative employment since his medical discharge in 2018 nor has he made any attempt to retrain or upskill.
37. Thirdly, his financial position by way of pension entitlements equates to 75% of what he would otherwise have been earning and therefore there is little or no incentive for him to look for or take up alternative employment.
38. Fourthly, if he did pursue alternative employment he would lose a portion of his pension entitlements and would also have to bear childcare costs.
39. Fifthly, his current role as primary carer facilitates his partner's full time employment as a tax consultant.
40. In all the circumstances, I am satisfied that there is simply no financial incentive to go out to work and that his current arrangements suit his domestic affairs. It follows, therefore, that there is no reality to the loss of earnings claim that has been maintained.
41. I am however very conscious that the loss of Mr. Ryan's career with An Garda Síochána was devastating for him particularly at such a relatively young age. In the circumstances, I propose to adopt the approach taken by Barton J. in the *O'Hara* case by awarding enhanced damages for loss of opportunity which I assess in the sum of €50,000.
42. The total award is €150,000.