

THE HIGH COURT

[2000/9168 P]

BETWEEN

FRANCIS CORBETT

PLAINTIFF

AND

IRELAND, THE ATTORNEY GENERAL AND THE MINISTER FOR DEFENCE

DEFENDANTS

Judgment of Mr. Justice de Valera delivered the 25th day of April, 2006.

1. Francis Corbett the plaintiff joined the army on the 15th January, 1990; he was born on the 22nd April, 1972 and was, therefore, 17 years of age on joining.

2. As a member of the Defence Forces the plaintiff was eligible, on completion of his training, to volunteer for service abroad and as a volunteer he served tours of six months duration in the Lebanon on three separate occasions in 1991, 1993 and 1997. On the latter occasion the plaintiff served a second tour of duty in direct succession to his first and at the time had been promoted to Corporal.

3. It is in the very nature of military life that a soldier must expect to find himself, on occasion, in harms way and a witness to horrific and barbaric acts. The life of a soldier in Ireland may rarely include the risks of active service but Irish soldiers, members of the Permanent Defence Forces, all volunteers, for more than 40 years have served in highly dangerous situations in various, and varied troubled spots abroad with great distinction; reflecting great credit on their country. No Irish soldier is compelled to serve abroad; all who choose to do so are volunteers.

4. In this action the plaintiff complains of three major incidents which, he says, have given rise to a condition known as Post Traumatic Stress Disorder (PTSD) these incidents appear to be as follows.

Firstly: the explosion which killed and mutilated a member of the South Lebanese Army who was on a mine sweeping patrol in full view of the plaintiff. This occurred within two weeks of the commencement of the plaintiff's first tour of duty in the Lebanon in 1991.

Secondly: in what the plaintiff describes as an Israeli mine-sweeping operation, with 10 to 15 Israeli soldiers, a member of the patrol was to use his words, "blown to bits" about 50 meters from a lookout post the plaintiff was occupying. The explosion was so severe it blew him backwards and this occurred late in his first 1991 tour, sometime in August of that year.

The third incident involved a helicopter crash. A helicopter on manoeuvres had just landed at post 644 where the plaintiff was on duty and having taken off crashed some distance away, not as it subsequently transpired in direct view of post 644, killing all on board including an Irish sergeant not personally known to the plaintiff. This (the death of the sergeant) the plaintiff did not know until sometime after the crash.

5. I am satisfied, from the evidence, that the plaintiff by the time of the initiation of these proceedings (8th August, 2000) was suffering from a serious psychiatric condition which on the balance of probabilities is PTSD. This is the plaintiff's case and is, in fact, conceded by the defence.

6. I am also satisfied, on the balance of probabilities, that this has arisen as a result of the experiences he endured in his four tours of duty and specifically the two incidents in the 1991 tour and the single incident in the 1997 tour. I am satisfied that no incident relevant to these proceedings took place during the 1993 tour.

7. As I have already stated soldiers must be prepared to be involved in events of the kind experienced by the plaintiff and the army cannot be held responsible for these events. However I am satisfied that the army has a duty to its soldiers to ensure that, as far as possible the circumstances obtaining at a given time, that they, the soldiers, have the appropriate training and support to allow them to cope with these traumatic events.

8. In the 1991 incident the plaintiff, then a young Private, was affected by the sight of a Lebanese soldier being "blown to bits" as he watched. I am satisfied that the plaintiff's commanding officer responded appropriately on the basis of the information available to him at that time. The temporary removal of the plaintiff from duty was clearly humane and precautionary and I am not satisfied that Colonel McNamara had any reason to suspect anything more serious than the normal reaction from a young inexperienced soldier after a mere two weeks on his first tour of overseas duty. Had the plaintiff himself, as he had the clear opportunity to do, amplified his concern for example by referring to the self soiling episode then, perhaps, Colonel McNamara might have treated the matter differently but the plaintiff failed to do this.

9. The second incident again in the plaintiff's first, 1991, tour of duty occurred in August and again concerned a mine explosion which killed and mutilated Israeli soldiers. A comrade of the plaintiff was wounded in this action, by shrapnel, apparently not seriously. According to the plaintiff himself in the following weeks he had sleepless nights and wasn't eating properly but on his own evidence he tried to carry on as best he could and his evidence suggests that, to an observer, no abnormality could be detected – and the plaintiff made no complaints and sought no assistance from his NCOs and officers.

10. The plaintiff claims that he began drinking in the period between his first and second tour of duty and that he continued to have nightmares sweating and tensions. But again he sought no assistance for these and volunteered, apparently without any qualms, for a second tour with the 73rd Battalion.

11. Despite some confusion in the plaintiff's account no significant incident is alleged in the evidence during this tour but the plaintiff claims his nightmares and other symptoms continued. Again he does not appear to have sought any assistance though there is ample evidence that medical and other assistance was available if sought.

12. After returning in 1993 the plaintiff continued with his duties and in 1995 was downgraded, for two years, as a result of an ulcer.

13. By 1997 the plaintiff had recovered and was promoted to Corporal. This constituted a significant advancement in his career and suggests a commitment to the army and a desire to remain within its ranks inconsistent with his allegations of nervousness, anxiety

and sleeplessness.

14. It was on the plaintiff's third tour that the helicopter crash occurred. The plaintiff's evidence about this is confused but it is clear that the description he gave to the psychiatrists who interviewed him, and particularly Dr. O'Connell, was exaggerated to a considerable extent though Dr. O'Connell could not have known this at the time. I am satisfied that the plaintiff did not see the helicopter crash (he was below in the post at the time) and he could not see the wreckage at night when the crash occurred or in daylight the next day. He did not see bodies or body parts and did not visit the scene until days afterwards. On the balance of probabilities all the plaintiff saw that night, after the crash occurred, was the glow caused by the burning wreckage.

15. I am also satisfied that the plaintiff knew of Critical Incident Stress Debriefing (CISD) by this time and I am satisfied that this was well known throughout the army and in particular that briefings were given to the 81st Battalion as stated by Lieutenant Colonel Buckley and Sergeant Major Lamb among others.

16. It has been submitted to me that the alleged failure of some of the plaintiff's fellow soldiers to report their purported concerns about the plaintiff's condition to superiors should not be entertained because this aspect of the plaintiff's case was not pleaded and therefore cross-examination of the topic did not take place. Having heard the evidence I am not satisfied that these witnesses were reliable on this point. In view of the confusion and contradictions in the plaintiff's recounting of events his evidence cannot be relied upon and I am satisfied that the witnesses who "could not remember" the CISD briefings and information or who denied their existence are similarly unreliable.

17. Those witnesses who claimed to have been concerned about the plaintiff but who did not report their concerns to their superiors cannot have been as worried at the time of the occurrences as they now believe they were. Their evidence contrasts with the evidence from Sergeant Egan, Captain Flannery, Colonel Buckley, Captain Taylor as well as Colonel McNamara all of whose evidence I accept and, where it conflicts with other evidence, prefer.

18. I also note, and attach importance to, the evidence of Commandant Dr. Curran who carried out an examination of the plaintiff at the end of his tour with the 82nd Battalion and found him to be psychologically fit in addition to his physical condition which was also satisfactory.

19. I am satisfied on the evidence in this case that the military authorities were, prior to the plaintiff's enlistment, aware of the significance of stress and stress related complaints as a factor in soldiers welfare. I am also satisfied that in the period 1990-1998 that stress and its identification in treatment was recognised as an important factor and that the army considered it important to stay abreast of developments internationally.

20. I do not accept the plaintiff's contention that his treatment after the first mine explosion in 1991, the second mine explosion again in 1991 or the helicopter crash in 1997 was in the circumstances that obtained at the time inappropriate or deficient. Also I do not accept that the army could have identified any aspect of the plaintiff's condition at that time which could have lead to psychiatric or psychological problems in the future and I am satisfied that when he returned from Lebanon in April, 1998, he, the plaintiff, showed no signs of the psychiatric condition first identified in or about August of 1998.

21. In the circumstances the plaintiff's claim must fail.