

THE HIGH COURT

[2007 No. 553 SP]

IN THE MATTER OF AN GARDA SIOCHANA (COMPENSATION) ACTS 1941-1945

BETWEEN

JAMES LYNN

APPLICANT

AND

MINISTER FOR FINANCE

RESPONDENT

JUDGMENT of Ms. Justice Irvine delivered on 26th day of July, 2012

1. Mr. James Lynn was born on 27th June, 1959. He is a married man who has two grown up daughters who are now aged 20 and 16 years of age. The applicant prior to his discharge from An Garda Síochána in 2004, on grounds of ill health, was stationed at Castlebar Garda Station.

2. The applicant was injured in the course of his duties on 23rd June, 2001. At the relevant time he was involved releasing a prisoner who had been detained overnight at the garda station. This prisoner became argumentative and as he was being sent out through the door of the garda station, he suddenly turned around and punched the applicant in the left eye and forehead. The applicant fell to the ground and was dazed. He was also shocked at the nature of this unprovoked attack.

3. Of minor significance to this claim is the fact that the applicant was earlier assaulted in the course of his duties on 1st August, 1991. On that occasion, he had an altercation with a member of the travelling community who swung a slash hook at his head at a time when he was trying to give assistance to a colleague involved in an altercation. As a result the applicant injured his right arm, right shoulder and low back. He developed Post Traumatic Stress Disorder which was described as being relatively minor. The applicant recovered without undue complication and was awarded a sum of £25,000 in respect of this injury. He was off work for five to six weeks.

4. The applicant was also involved in another incident in 1993, when he was struck several times to the left side of his face, ear and eye. He had no psychological problems following that incident and recovered €35,000 by way of damages in July 2000.

5. As a result of the most recent assault, the applicant's eye started to swell. He was taken to Mayo General Hospital where he was noted to be dizzy and nauseous. X-rays taken were clear. The applicant's eyes became badly bruised and swollen. He was prescribed painkillers and was given advice regarding a head injury. He was reviewed at the hospital on two subsequent occasions.

6. In respect of his physical injuries, the applicant attended his general practitioner, Dr. Broderick on a number of occasions. He referred him to Mr John Moran, Consultant Neurologist as a result of ongoing headaches and he saw him on two occasions. Mr. Moran carried out a CT Scan which was normal and advised that the headaches were probably post traumatic in nature. He also felt that the applicant had possibly developed PTSD and advised him to seek psychiatric help.

7. The applicant attended Dr. Katerina Tobin, Ophthalmologist, in July 2002, because of ongoing soreness around the left eye. She found no significant abnormality. He also was seen by Dr. Crowley, Consultant Cardiologist, in relation to hypertension in September 2003. Sometime, thereafter, he was put on medication for this condition which now seems to be well controlled. It is not at all clear from the evidence whether this condition was caused by the assault or was a condition which the applicant already had and which was aggravated by it. Regardless, of the lack of clarity in respect of this issue I am satisfied that if the applicant's hypertension was caused by the assault, it is a modest complaint which is asymptomatic by reason of ongoing medication.

8. In respect of his psychological health, the applicant was initially referred by Dr. Broderick to Dr. O'Rourke, Consultant Psychiatrist, late in 2001. He saw her on three occasions. The applicant then attended Dr. John Connolly, Consultant Psychiatrist in May 2002. On examination, he found the applicant to be extremely anxious. He expressed himself fearful of being assaulted and described being socially isolated. He also recounted having bad dreams and nightmares. Dr. Connolly concluded that the applicant had all of the hallmark symptoms of Post Traumatic Stress Disorder. He concluded that this condition was affecting the applicant's relationship with his family. He was finding it difficult to drive his children to school and he did not want to go into Castlebar where he felt people might jeer him or where he might be subjected to further attack.

9. Dr. Connolly prescribed anti-depressant medication for the applicant. He also saw him on a regular basis to monitor his medication and give him counselling. He further advised the applicant to participate in cognitive behavioural therapy which he did with Ms. Heneghan over an extended period. As of 2005, Dr. Connolly felt that the applicant was still not functioning at a normal level. At that stage he lacked motivation and interest and continued to be symptomatic albeit that these were less severe since his retirement.

10. Dr. Connolly saw the applicant on a regular basis from 2005 up to the present time. He told the court in evidence that the applicant's PTSD had gradually abated and that he no longer has symptoms of this condition. He also accepts that his depression is much improved and is now moderate in terms of its severity. It is well controlled but the applicant requires ongoing medication to maintain his present status.

11. Dr. John Tobin, Consultant Psychiatrist, assessed the applicant on behalf of the Chief Medical Officer in April 2004. His conclusions were very much in keeping with those of Dr. Connolly in 2005 notwithstanding the fact that the applicant had not retired at the time of interview. He concluded that the applicant would be at serious risk suffering a recurrence of his depression if he was assaulted again. Accordingly, he felt that it was unlikely that he would ever be able to return to work as a member of An Garda Síochána and

that he should be discharged. However, from a clinical prospective Dr Tobin concluded that following his retirement, the applicant would probably be capable of taking up some type of manual or shop work and that his injuries would not preclude him from work of all types.

12. Dr. Tobin reassessed the applicant in July 2011. At that time, he noted the applicant's mood was still fluxuating but was much improved. He was less socially isolated. The applicant was able to go into Castlebar. He was also able to play golf a couple of times a month, participate in the meals-on-wheels programme and involve himself in significant gardening. In particular, Dr. Tobin noted that the applicant's wife had developed multiple sclerosis and in evidence stated that this diagnosis had caused the applicant great upset. He told the court that the applicant's daily routine demonstrated that he had a significant amount of discipline and it was his opinion that in the years since his discharge from An Garda Síochána, he ought to have found it possible to take up a job in which he would be unlikely to encounter confrontation.

13. Based principally on the evidence of Dr. Connolly and that of Ms. Patricia Coughlin, Vocational Occupational Consultant, the applicant maintains that he has not been fit to take up any type of remunerative employment since he was discharged from An Garda Síochána in 2004 and he maintains that he will not be in a position to carry out gainful employment for the rest of his life. It is asserted that were it not for the incident the subject matter of these proceedings, the applicant would probably have retired from An Garda Síochána at 60 years of age and thereafter worked in some alternative but suitable employment until the age of 65.

14. In relation to this aspect of the claim, there was significant controversy. The respondent, through the evidence of Dr. Tobin and Mr. Roger Leonard, Vocational Occupational Consultant, maintained that the applicant ought to have been in a position to obtain gainful employment not long after his retirement from an Garda Síochána and that he has the capacity to seek out employment at a modest level in the future if he committed himself to that objective.

15. Having heard and considered all of the evidence, I will now deal with the categories of damages which are as follows:-

- (i) General damages to date.
- (ii) General damages into the future.
- (iii) Loss of earnings to date.
- (iv) Loss of earnings to age 60.
- (v) Loss of earnings between the ages of 60 and 65 years.
- (vi) Costs of ongoing medication.

General Damages to Date

16. I will not rehearse the nature of the physical injuries which the applicant sustained and which are briefly referred to earlier in this judgment. Suffice to state that the applicant's physical symptoms abated over a number of months. He had substantial headaches which led to neurological investigation, CT Scanning and his need to take substantial amounts of painkilling medication.

17. Of much more concern are the psychological injuries sustained by the applicant. He developed all of the hallmark symptoms of PTSD. He no longer suffers from this condition, it having abated well prior to 2011. He was noted by Dr. Connolly to have made significant improvement by 2005 and that part of this improvement was due to the effects of cognitive behavioural therapy. However, the applicant still suffers from anxiety and hypervigilence.

18. The applicant also suffered from significant depression. This improved between 2001 and 2005 and is now described as being moderate but permanent. The applicant will need to attend his psychiatrist twice a year for the rest of his life and will also require life long medication to ensure that his depression will not become symptomatic.

19. Of some importance to the issue of general damages is the fact that the applicant lost the career he had fought so hard to get into and which I am satisfied he found rewarding and fulfilling. He also has suffered a loss of his status in society. The applicant is somewhat socially isolated and has lost much of his prior self confidence. His injuries have affected every aspect of his everyday life although there is still some room for improvement. The applicant does however enjoy a good quality family life. While his wife is not dependent upon him as her carer he spends substantial amounts of time with her and he enjoys being around to take her anywhere she wishes to go. He also enjoys a regular albeit not too frequent game of golf and he gets some satisfaction from participating in the local meals-on-wheels programme. He gets great pleasure from time spent with his children and in particular likes driving them to school and college and he can still give tremendous support to his mother who lives some distance away in Crossmolina.

20. In all of the circumstances, I think the appropriate sum for general damages to date is €80,000 and €40,000 for general damages into the future.

Claim for Loss of Earnings

21. The plaintiff makes a substantial claim in respect of special damages and this breaks down into three different periods. The first is the period between the date of his discharge from An Garda Síochána and the date of the hearing. The second is from the date of the hearing to age 60. The final period of alleged loss is from age 60 - 65 and this is based upon an assumption that many gardai, when they retire from active duty, take up alternative types of employment.

22. The sum claimed in respect of loss of earnings to date is €148,629. It is agreed that I must deduct from this figure the sum of €6,226 in respect of benefits paid to the applicant over this period. The balance is the figure which represents the difference between the applicant's pension and what he would have expected to earn in respect of full time pay including standard overtime had he remained in An Garda Síochána up to the present time. The applicant maintains that because of his injuries, he was not in a position to take up any remunerative work whether it be part time or full time over this period. The respondent on the other hand contends that the applicant made insufficient efforts to work over this period and that had he prioritised his return to work, he would indeed have earned substantial sums over this period. The respondent relied upon the fact that having regard to his pension, the applicant would only have had to have worked part-time in modest employment to make up the difference in his earnings.

23. I have carefully considered all of the evidence in relation to the applicant's injuries and his vocational prospects as outlined to the

court. Having done so, I feel that it is important for me to state that I am satisfied that the applicant is not malingering. He was a committed and conscientious member of An Garda Síochána who had worked extraordinarily hard to gain entry into that career and would not likely have given it up. Indeed, it was clear to me from his evidence that he is a man of integrity and very strong family values.

24. I am satisfied that there are a number of fairly unique facts relevant to this claim which I believe impacted upon the approach of the applicant to potential employment since his discharge from An Garda Síochána on the grounds of ill health in 2004. During the period when the applicant was endeavouring to recover from his injuries, his mother, who lives about 15 miles from Castlebar in Crossmalina, had a stroke and became wheelchair bound. As a result, the applicant has made it his business to visit his mother twice a week to spend time with her as he believes she was entitled to this type of support from him. Further and regrettably, the applicant's wife has been diagnosed with MS. The applicant told me that he was understandably emotionally upset by this diagnosis. His wife had cared for and supported him over a difficult period in his life and he wanted to reciprocate particularly given her inability to drive. He stated that he likes to be available to take her anywhere she wishes to go. In addition, the applicant is also very attached to his two daughters whom he drives to school and college on a daily basis. Having heard his evidence, I am satisfied that his commitment to his family and the support which he gives them is not of the type that can be comfortably accommodated whilst maintaining substantial employment commitments as was urged on the court on the applicant's behalf.

25. On the medical and vocational evidence, I am satisfied that the applicant was fit and ought to have pursued with much greater vigour, the possibility of returning to the workplace whether by seeking to retrain or otherwise by approximately 2007. I accept the applicant's evidence that he tried to work in a filling station and that he only lasted two days due to an altercation with a customer and that his efforts to become a driving instructor failed when he did not pass a preliminary test. However, these efforts do not, to my mind, discharge the applicant's onus to mitigate the losses which he now claims against his employer. In this regard, I have taken into account, his evidence to the effect that he made an inquiry of his sister who was working for FAS at the time as to whether there were any courses suitable for him in that organisation and to which she responded in the negative. I also accept his evidence that he sent a letter to try to obtain a position on the European Computer Driving Licence course but got no response. However, he never followed up this letter.

26. While it has to be accepted that the applicant by reason of his ongoing depression and anxiety may have been compromised in the open market, he could have applied to retrain through organisations designed to assist those who are long term unemployed or who have been injured. These organisations place people in community employment schemes to facilitate them getting back into the market. Indeed, the applicant was advised by Ms. Patricia Coughlin that he should avail of retraining but he did not do so.

27. It may well be the case that the applicant, having faltered twice in efforts to return to the workforce, decided, having regard to his family circumstances to give up on the possibility of work or retraining and to spend his energies looking after his family commitments. This, of course, would have been an entirely laudable decision but is one that he cannot expect his employer to pay for.

28. Notwithstanding all of the foregoing, I am satisfied it is likely that had the applicant used his efforts to retrain that he would not have been in continuous employment from 2007. He probably would have worked part time and he may have had to change jobs on one or more occasions with periods of unemployment in between. Accordingly, I propose to reduce the loss of earnings claim in respect of this period to €100,000.

29. As to the loss of earnings and loss of gratuity claimed from the present time until aged 60, I am satisfied as a matter of fact that regardless of the assault, it is probable that the applicant would not have worked until 60 years of age. He told me in the course of his evidence that having regard to his family circumstances, he thinks he probably would have retired at this point in time i.e. seven years prior to his 60th birthday. I think the applicant was taken somewhat by surprise at the time he gave this answer to the court and it may well be the case that he would have continued to work on for another year or two. Nonetheless, I am satisfied that he would have retired well short of 60 years of age. Accordingly, I propose to allow one third of the claim for loss of earnings and loss of gratuity to age sixty. The relevant figures are €28,140.00 in respect of loss of earnings and a sum of €8,076.00 in respect of loss of gratuity.

30. I am not satisfied that the applicant would have worked beyond 60 years of age and therefore I will reject this claim.

31. I will allow the full amount of the medical expenses claimed in the sum of €33,726 regardless of the whether the same includes medication for hypertension and whether that condition is or is not related to the assault given that the applicant will continue to attend Dr. Connolly twice a year indefinitely and no sum is being claimed in this regard.

The total award will be as follows:

Pain and suffering to date € 80,000.00

Pain and suffering into future € 40,000.00

Loss of Earnings to date € 100,000.00

Loss of earnings to age 60 € 28,140.00

Loss of Gratuity to age 60 € 8,100.00

Medical expenses € 33,726.00

Miscellaneous € 11,306.49

Total award € 301,272.49