Neutral Citation Number: [2012] IEHC 519

THE HIGH COURT

[2012 No. 264 J.R.]

BETWEEN

JAMES McGUILL

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY, THE COMMISSIONER OF AN GARDA SÍOCHÁNA, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Hogan delivered on the 26th day of November, 2012

1. Section 6 of the Garda Síochána (Compensation) Act 1941 ("the Act of 1941") is a most unusual statutory provision in that provides that, save in cases involving a fatality, the prior consent of the Minister for Justice is required before an applicant member of An Garda Síochána can present his or her claim for compensation arising out of occupational injuries to this Court. Whether the Oireachtas can constitutionally limit access to this Court in this fashion is a matter which may yet have to be considered in another case at some later juncture, not least having regard to decisions such as *Macauley v. Minister for Posts and Telegraphs* [1966] I.R. 345 and *Blehein v. Minister for Health* [2008] IESC 40, [2009] 1 I.R. 275

2. The present case concerns the application of s. 6(1)(b)(i) of Act of 1941. This sub-section provides that:-

> "Whenever an application is duly made to the Minister for compensation under this Act, the following provisions shall have effect, that is to say:-
>
> … (b) if the application is in respect of injuries not causing death, then –
>
> (i) in case the Minister is of opinion that such injuries are of a minor character and were sustained in the course of the performance of a duty not involving special risk, the Minister shall refuse the application…"

3. The key words here are the requirement that the Minister must be "of opinion". As I pointed out in a very recent judgment delivered within the last few days, *Flynn v. Medical Council* [2012] IEHC 000, the use of these words is generally understood to import the triple requirement that the decision-maker must act in a manner which is *bona fide*, factually sustainable and not unreasonable: see, in particular, the judgments of O'Higgins C.J. and Henchy J. in *The State (Lynch) v. Cooney*[1982] I.R. 337 and that of Blayney J. in *Kiberd v. Hamilton* [1992] 2 I.R. 257.

4. But, as we shall presently see, the application was refused on the ground that the Minister was of opinion that the injuries were of a minor character and that the injuries were sustained in the course of a duty not involving special risk. There are two distinct issues here which may ultimately overlap. First, the Minister must properly understand and define the relevant statutory terms ("injuries of a minor character", "duty not involving special risk"). This question of statutory interpretation is one of pure *vires*, so that if the Minister were to misconstrue these terms, the ensuing decision could not properly stand. Second, if, however, the Minister has properly defined these terms, then his application of this definition to the facts (*i.e.*, the process which is involved in the Minister forming the requisite statutory opinion) is governed by the triple requirements enunciated by the Supreme Court in *Lynch*. Since the Minister's *bona fides* are not at issue, in essence then the question at this point is whether the decision is factually sustainable and not unreasonable.

5. This is the general legal background to the present application for judicial review. The application itself arises from an incident which took place almost four years ago in the early morning of 5th December, 2008, when the applicant, a member of An Garda Síochána, was injured when the patrol car in which he was an observer was rammed by a jeep. On 23rd December, 2008, Garda McGuill submitted an application seeking compensation under the Garda Síochána (Compensation) Acts 1941-1945. This application was refused by decision of the Minister dated 13th January under s.6(1)(b) of the 1941 Act on the ground that the injuries in question were of a "minor character" and were not sustained in the course of the performance of a duty involving a "special risk.".

6. There is, of course, no doubt at all but that Garda McGuill sustained personal injuries as a result of the incident which was doubtless unpleasant and frightening. He was a backseat passenger in a patrol car and as he was getting out of the car, the car was hit from the front by a jeep. While Garda McGuill was knocked over by the car door, he held on to the door handle and was dragged under the car for a short distance.

7. The medical reports show that the applicant sprained his left shoulder and left knee and he had superficial grazes to his left knee and elbow. He was found to be alert and fully conscious, but he was given painkillers and was then allowed home. It was also found that he had sprained his shoulder. The consultant who treated him concluded that he had "sustained a minor injury to his knee and elbow" from which he had fully recovered and that he was unlikely to face any long-term problems. In total, Garda McGuill was obliged to be absent from work for twelve days as a result of these injuries.

8. Furthermore, Garda McGuill had difficulties sleeping for several weeks after the incident and he also saw a counsellor in respect of post-traumatic stress disorder. He was prescribed sleeping tablets for a few days and his sleep pattern was restored.

9. Garda McGuill was also examined by the Office of the Chief Medical Officer in the Garda Medical Department. In his report of 13th August 2010, Dr. John Walsh observed that:-

> "Garda McGuill appears to have made a full recovery from the injuries to the left elbow and left knee with no residual sequelae. He also appears to have made a good recovery from the injury to his left shoulder…He has some mild residual

symptoms in the left shoulder which are intermittent and short lived and respond to over the counter anti-inflammatory medication if required. The injury to his left shoulder is not considered by his treating specialist to be associated with increased risk of development of longer term sequelae such as osteoarthritis in the joint.

The psychological upset suffered by Mr. McGuill in the aftermath of the incident would appear to have been mild in nature and not functionally impairing for him following his return for work."

Whether the Minister could properly conclude that the injuries were of a "minor character"?

10. The essential question, accordingly, is whether the Minister's opinion that the injuries which Garda McGuill suffered were of a "minor character" is factually sustainable and not unreasonable? Some assistance may be gleaned from two earlier decisions of this Court, *McGee v. Minister for Finance* [1996] 3 I.R. 234 and *Merrigan v. Minister for Justice* [1998] IEHC 11. In McGee the applicant Garda had been assaulted by a prisoner and had suffered minor nose bleed from which he quickly recovered. Rather remarkably, the Minister granted the requisite certificate pursuant to s. 6(1)(b) of the Act of 1941. While Carney J. held that he could not go behind the Minister's certificate, he nonetheless clearly indicated that she had in this instance abjectly failed "to discharge her statutory function to filter out the advancement of trivial and minor claims", as a nose bleed could not by definition be regarded as other than an injury of a minor nature.

11. In *Merrigan* Geoghegan J. quashed a decision of the Minister to refuse to grant a certificate where the shoulder injuries suffered by the member had given rise to ongoing sequelae over four years since the incident giving rise to the injury first occurred. While Geoghegan J. declined to attempt a definition of the meaning of the term injuries "of a minor character", the following passage is nonetheless of considerable assistance:-

> "I think that the expression 'of a minor character' implies a consideration of the nature of the injury rather than the amount of compensation which would be paid for it. What the legislature intended, in my view, was that if, for example, a member of the force sustained an injury of the kind which would otherwise be compensatable but which cleared up after, say, two months with no ill effects such an injury would be considered to be of a minor character. I give that as an example of such an injury rather than a definition which would be quite impossible. It is my view, therefore, that the Minister ought to refuse to authorise proceedings in a case where there has been a complete recovery within a matter of weeks with no medically explicable adverse sequelae. But this case is very different and the injury on any fair appraisal, in my view, could not be regarded as being of a minor character."

12. If one applies these principles to the present case, one may say at the outset that there is no doubt but that the injury could have been a very serious one. One may equally say that Garda McGuill showed commendable bravery and professionalism in the face of a difficult situation. Yet, as Geoghegan J. noted in *Merrigan*, s. 6 of the 1941 Act posits a test which focusses on the nature of the injury *actually suffered*. Judged by that standard, I find it impossible to hold that the Minister was not entitled to conclude that the injuries were minor in nature. The Minister had, after all, directed his mind to the nature of the injuries and it was clear that the physical injuries had more or less entirely cleared up within a few weeks of the incident. It is true that Garda McGuill's sleeping pattern had been upset and that he had experienced symptoms associated with post-traumatic stress disorder, some of which lingered for several months. Yet these symptoms were on the whole mild and did not functionally impair the performance of duty.

13. In these circumstances, I am coerced to the conclusion that the Minister's opinion regarding the minor character of the injury is, in the circumstances, unimpeachable, as it was arrived at bona fide and the conclusions regarding the nature of the injury are factually sustainable and not unreasonable.

14. There is, however, one other issue which requires to be considered. In an email sent on 4th February 2011, the Minister emphasized that the "Department's information regarding a possible refusal of this application refers solely to the injuries sustained." This letter certainly suggested that the nature of the injury was the only issue and, inferentially, that it was accepted that the applicant was engaged in an activity involving "special risk".

15. In the wake of this a detailed submission was prepared by counsel which focussed entirely on the nature of the injuries suffered and which did not address the "special risk" issue. Yet when the Minister refused the application by letter dated 13th January, 2012, he concluded that the operation was one which did not involve "special risk." No reasons were given for this conclusion and, just as importantly, there must be concern that the applicant's advisers were lulled into a false sense of security by the implicit assurance given in the email of 4th February, 2011, that the question of special risk would not be resolved adversely to the interests of their clients.

16. Given this inadvertent breach of fair procedures, I have little option but to quash the decision so far as it deals with this question of special risk. This is still of some importance to the applicant, because the structure of s. 6 of the 1941 Act is such that an applicant can be permitted to sue even in respect of injuries of a minor character in those instances where the injury was sustained in the course of an operation attracting special risk. Here it may be recalled that the applicant was injured in circumstances where the patrol car was rammed by another vehicle. It may, for example, that Garda McGuill will be able to show that his own vehicle was instructed to keep under surveillance or even pursue the vehicle of a known criminal and that such a surveillance operation was intrinsically dangerous and, hence, attracting a special risk.

17. It would probably be inappropriate for me to dwell on this issue further, since this will be a matter for Garda McGuill to address and for the Minister to decide. It suffices to say that I will remit the matter to the Minister to enable him to consider such submissions as the applicant may wish to tender concerning the question of special risk.

Conclusions

18. In conclusion, therefore, I find myself constrained on the evidence to hold that the Minister was entitled to conclude that the injuries in question were of a minor nature within the meaning of s. 6 of the Act of 1941. I will, however, quash the decision insofar as it finds against the applicant on the issue of special risk and direct that this matter be remitted to the Minister to enable the applicant make a submission on this issue. In the event that the Minister were to conclude that the injuries were sustained in the course of an operation attracting special risk, then, of course, it would be open to the Minister to grant the appropriate certificate under s. 6(1)(b)(iii), the nature of the applicant's otherwise minor injuries notwithstanding.