

THE HIGH COURT
IN THE MATTER OF THE HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997, AND
IN THE MATTER OF THE SECTION 5(9)(A), AND
IN THE MATTER OF SECTION 5(15) OF THE HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (AS AMENDED) BY THE
HEPATITIS C COMPENSATION TRIBUNAL (AMENDMENT) ACT, 2002

[2015/CT No. 1]

BETWEEN**D.M.****APPELLANT****AND****THE MINISTER FOR HEALTH AND CHILDREN****RESPONDENT****AND****HEPATITIS C AND HIV COMPENSATION TRIBUNAL****NOTICE PARTY****JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 9th day of August, 2018.**

1. This case comes before the Court by way of an appeal from a decision of the Tribunal made the 4th February, 2015, whereby the Appellant's application for compensation brought pursuant to s. 4(1) (e) and s. 5 (3), (3A) (a) and (b) of the Hepatitis C Compensation Tribunal Acts, 1997-2006, (the Acts) was dismissed.

Background

2. The Appellant was born on 25th October, 1973. Her parents were married in 1968. She was the second of their four children. Her father was born on 30th April, 1948, and suffered from a severe form of Haemophilia A. He died on the 19th November, 1989, from the complications of HIV infection contracted from blood products administered within the State. As a consequence of his death the Appellant's mother made the following applications for compensation to the Tribunal:

- (i) A Fatal Injuries claim on her own behalf and on behalf of the other statutory dependants of the Deceased;
- (ii) A claim for Loss of Consortium;
- (iii) A claim for Loss of Society; and,
- (iv) A claim for Post-Traumatic Stress Disorder.

The Tribunal made awards in respect of these claims on the 23rd of November, 2009.

3. With regard to the claim in respect of Post-Traumatic Stress Disorder, (PTSD) it is not without some significance to the issue which arises on this appeal that the deceased's death and the circumstances attendant upon it were found by the Tribunal to have resulted in shock and that this was the cause of her illness. In making the award the Tribunal noted that after he became ill, particularly during the last year of his life, the deceased suffered from a constellation of serious and nasty illnesses the symptoms of which were distressing not only for him but also for his wife and family. A transcript of the proceedings and the awards made in respect of these applications has been considered by the Court. The following extract from the transcript of the award in respect of the claim for Post-Traumatic Stress Disorder is germane to this appeal. Having described the deceased's occupation, in which he was highly skilled, the Tribunal went on to deal with the effects which the infection had on every aspect of his life, vocationally, "... he had to give up work all together due to his ill health in early 1986. He had a gradual further deterioration during all of this and he was nursed with almost incredible devotion and love by his wife. He was hospitalised about three weeks before he died (in November 1989). At that time there was little appreciation by medical practitioners or in hospitals as to how to deal with such patients or how to deal with their families.

The result was that neither the Deceased nor the applicant or her family received any help, counselling or explanations. The manner in which the Deceased's corpse was dealt with has left the Applicant with lasting shock and the entire has contributed to her Post-Traumatic Stress Disorder in no small way. [emphasis added]

The Deceased died at 40. His life expectancy then was about 38 years. He had a very great number of serious, often very painful illnesses and a very hard death. He was completely shattered, obviously, by the knowledge that he had HIV.

He and the Applicant went to considerable lengths to keep his condition secret. This is one of the worse cases which we have dealt with. It is possible, if not probable, that the extremes to which they went and the stress to which the applicant was subjected to accordingly, both mentally and physically, in tending her husband was contributed to by deserve (sic) or secrecy." The last phrase is clerically incorrect and it seems to me most likely should have read 'by the desire for secrecy'. [emphasis added].

4. The Deceased and his family lived in a small house. Privacy was difficult to achieve. Conversations and noises made elsewhere in the home were easily overheard. The description by the Appellant's mother to the Tribunal of what it was like to live with and care for the Deceased, particularly in the last eighteen months of his life, can best be described as harrowing. The progressive inability to maintain balance, the development of a propensity to fall, the excessive sweating, the incontinence, the coughing and the vomiting which attended his approaching death must have caused the deceased and his family great anguish and distress. Despite his best efforts to face the end with fortitude, inner most emotions erupted in uncontrolled bouts of desperate crying. Although his wife tried to maintain a veneer of normality and reassure her children that their father would recover, the confined circumstances in which the family lived made it almost impossible to hide from the children the seriousness of their father's illness: their senses of sight and sound saw to that.

5. The evidence before the Tribunal was that at the time of his death the Deceased was only the seventh known sufferer of AIDS to die in Ireland and was the first to die of that illness in Cork. The Deceased was not laid out. His wife and family did not see him again. He was zipped into a body bag and put into a sealed coffin. Those circumstances and his death at such a young age led to questioning comment in the parlour by mourners before the funeral which were overheard by the Applicant. Her parents were unaware that she knew the truth about her father's illness and the likely consequences of that event for all concerned.

6. The stigma which attached at the time to death in such circumstances was not just social, it was also medical. The policy of patient isolation, the face masks, the hand washing and the way in which the corpse was dealt with exemplified that. The Appellant's mother was determined to make sure the truth of what caused her husband's death would, so far as humanly possible, remain hidden from her children, wider family, friends and neighbours. She created an elaborate fiction which involved telling everyone, including her children, that the cause of death was cancer.

7. Despite her knowledge of the truth, which she hid from her mother, the Appellant went along with what was perceived to be a socially acceptable explanation for her father's untimely death. In my view it is also of some significance to the issue under consideration that she continued to maintain what she knew to be a fiction at a time many years later when she was being treated for depression while a hospital inpatient.

8. The Appellant's mother either did not realise that her daughter knew the truth about her father's illness or, if she did, chose to believe otherwise. The reality was altogether different. The Appellant had not only overheard conversations from which she had ascertained the seriousness of her father's illness but was also independently aware that as a result he was likely to face an early death. She knew the explanations given by her mother for her father's constant coughing and the vomiting which developed and worsened as his life ebbed away was an attempt to shield her from the truth. Sadly, as it transpired, what mother and daughter each knew to be true they kept from each other.

9. Despite being only in her early to mid-teens, the Appellant started to smoke and to drink alcohol to help her cope with a progressively deteriorating situation. After her father's death, she would go on to develop a seriously abusive relationship with alcohol, in particular Vodka. Not only had she to deal with the truth about her father's death, she also had to deal with the collapse in the health of her mother. Her apparent capacity to partially take on the role of parent by looking after her younger brothers, the ability to complete her education to a reasonable standard, her employment with a well known international corporation in a role she enjoyed and the absence of any contemporaneous medical record of symptomatic psychological complaints over a decade during which she attended her GP on approximately 50 occasions were prominent features in the controversy between the physicians on the issue which falls for determination.

10. The Appellant developed a relationship with the father of her child which ended up in a hopelessly unsuitable marriage. Her husband became commercially involved with well-known and dangerous criminals, an association which ultimately resulted in the family home being raided and searched by officers from the Criminal Assets Bureau (CAB) who questioned the Appellant in the process. She subsequently received threats to her safety and the safety of her child. Her health deteriorated and she became seriously depressed, an illness for which she was admitted to hospital in 2006 and from which she continues to suffer notwithstanding the medical treatment afforded.

The Issue

11. Section 5(3A) (a) provides: -

"(3A)(a) Where a dependant referred to in paragraph (e) or (j) of section 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.[emphasis added]"

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

Findings of the Tribunal

12. On much the same medical evidence which was lead on the appeal, the Tribunal found that as a result of her father's death the Appellant suffers from a depressive disorder with a co-morbid diagnosis of adjustment disorder and that "... the factors surrounding his illness and death are the most significant factors in causing this depression. We also believe that the effects of her very unhappy and unfortunate marriage have contributed to exacerbating this illness", a significant finding in terms of causation. However, the Tribunal was not satisfied that the Appellant had met the requirement to establish on the balance of probabilities that her illness was shock induced; accordingly, the claim was dismissed.

13. It was agreed that the controversy could be netted down to the following question: was the Appellant's psychiatric illness shock induced by the circumstances of her father's death. In passing I should say that the Tribunal made awards to the Appellant in respect of her Loss of Society and Loss of Opportunity claims. In formulating its decision to dismiss her claim for PTSD, the Tribunal had particular regard to a number of case authorities. See *S.C. v. The Minister for Health and Children and the Hepatitis C and HIV Compensation Tribunal* [2012] IEHC 49; *Alcock-v-Chief Constable of S. Yorkshire* [1992] 1 AC 301 and *Delvin v. The National Maternity Hospital* [2008] 2 I.R. 222.

14. The rationale for the decision of the Tribunal appears in the following extract from the transcript: -

"In this case it is undoubted that the Applicant's experience of [her father's] illness and death was distressing and traumatic but there does not appear to be one particularly horrifying or traumatic event or series of events which she witnessed and experienced herself which caused her illness."

"To adopt the phraseology used in the Alcock case, quoted above we do not believe that the evidence establishes that the Applicant's illness was caused by the sudden-appreciation by sight or sound of a horrific event which violently agitated her mind."

15. Within three weeks of their decision the Tribunal also dismissed the application for compensation of another teenager in respect of PTSD arising from the death of his mother in not dissimilar circumstances. His appeal against that decision was allowed. See *D.J. v. Minister for Health* [2017] IEHC 114. Having regard to the provisions of s. 5 (3), (3A) (a) and (b) in that case the Court had to consider the meaning of "nervous shock". I see no reason to depart from the judgement delivered where the law on the meaning of "nervous shock" is expounded and where the issue arising was essentially the same.

The Statutory Scheme

16. With particular regard to the nature of the claim being advanced in this case, it is abundantly clear that when the Tribunal, and on appeal the Court, makes a determination on an application for compensation it does so within the statutory framework established by the Acts, the object of which is to provide a scheme whereby compensation may be sought and awarded to the victims of Hepatitis C and HIV infection subject to the satisfaction of certain criteria. Infection must have occurred as a matter of probability through the administration of blood or blood products within the State; apart from those so infected compensation may be awarded to a limited class of claimants indirectly affected, such as the immediate family and statutory dependants of the primary victim.

17. The following extract from the decision of the tribunal in *D.J. v. Minister for Health*, exemplifies the distressing circumstances which all too often attended those facing death as a consequence of having contracted Hepatitis C or HIV and witnessed by close family, which were well documented and known to the Oireachtas at the time when the provisions of s. 5 (3A) (a), were being enacted,

"...victims were suffering horrific deaths where there were incidents of spontaneous and uncontrolled bleeding being witnessed by dependents. Relatives were witnessing body bags, masked and protected medical attendants in their homes and in hospital and many other examples of profoundly alarming and deeply shocking circumstances in the final moments of the loved one's life which were outside what could be described as shock in the normal experience of death which is universal."

And so it was in the case of the Applicant's father.

18. It follows that the decisions of the Superior Courts enunciating principles of law in relation to the award of damages for PTSD or Nervous Shock to which regard must be had by the tribunal and, on appeal, by the Court, cannot be divorced or considered in isolation from the object for which the statutory framework was established. The context and circumstances in which claims for PTSD or Nervous Shock arise as a result of the death of a victim of Hepatitis C or HIV are altogether different from the circumstances which in general have pertained to the kind of events on foot of which the common law has evolved, most commonly the sudden and unexpected collapse of a building or other structure and serious road, rail and aviation accidents.

The meaning of 'Nervous Shock'

19. "Nervous shock" is an archaic legal term which, as Denham J., observed in *Devlin*, has been used by lawyers and judges alike to connote a mental rather than physical injury. It comprises any medically recognised psychiatric illness which is shock induced; PTSD is but one example. The survival of such terminology at law long after it was abandoned in medical science most likely explains how it has found its way onto the statute book in the provisions of s. 5 of the Hepatitis C Compensation Tribunal (Amendment) Act 2002.

20. The importance of having due regard to the terms of the statutory scheme and the purpose or object for which it was established when the principals of law enunciated by the Superior Courts are being applied to an application such as the present is underscored in the observations made by Denham J. in *Devlin* when commenting on the evolution of the common law concerning the occurrence of specific events such as railway or car accidents which gave rise to the so called 'aftermath cases'. Thus, in *Alcock v. Chief Constable*, Lord Ackner said at p. 41: -

"Shock, in the context of this cause of action, involves a sudden appreciation by sight or sound of a horrifying event, which violently agitates the mind. It has yet to include psychiatric illness caused by the accumulation over a period of time or gradual assaults on the nervous system."

Referring to this statement in *Devlin*, Denham J. observed at p. 239:-

"This statement reflects the common law in Ireland where the 'aftermath cases' either relate to the event, or the situation in its immediate aftermath." [emphasis added]

21. The horrific circumstances so often associated with the impending death as well as at and in its immediate aftermath from the complications of Hepatitis C or HIV infection do not easily equate with the so called 'aftermath cases' involving as they do the sudden apprehension by sight or sound of a horrifying and unexpected event or its immediate aftermath such by way of example as occurs with a plane, car or rail crash or the collapse of a building or other structure.

22. The qualifying event for recovery under s. 5 (3A) (a), is limited to the occurrence of death by virtue of having contracted Hepatitis C or HIV or where either or both of those infections were a significant contributory factor in the cause of the death. It is the cause and surrounding circumstances as well as the event of death itself which takes its occurrence into a realm which is out of the ordinary of experience of the end of life.

23. In just the same way as the circumstances of an unexpected accident are relevant at common law to causation and diagnosis of a recognised psychiatric illness so too are the circumstances attendant on a death from Hepatitis C or HIV if there is to be recovery under the provisions of s. 5 (3A) (a). Given the state of knowledge at the time when the provision was enacted, which is a matter of public record, and having due regard to the object for which the statutory scheme was established, had been the intention of the Oireachtas to limit or confine recovery of compensation for PTSD or Nervous Shock to the circumstances which pertain to the "aftermath cases", it would have been necessary to expressly so provide. If the provision is to be so construed then absent a sudden and unexpected event such as an unexpected catastrophe or serious accident, in my judgement the provision would be rendered almost nugatory thus defeating the very purpose for which the provision was expressly enacted.

24. As we have seen the circumstances of the deaths which had been suffered and were likely to be suffered by the victims of Hepatitis C and HIV at the time when s. 5 (3A) (a) was enacted were far removed from those usually encountered in a death which occurs naturally at the end of life. In providing a right to recover compensation for Nervous Shock or PTSD arising from the circumstances surrounding and the occurrence of death as a consequence of Hepatitis C or HIV, the Oireachtas recognised that psychiatric illness could be caused to the spouse, child or parents of the deceased.

25. In passing I pause to observe that the policy considerations and division of potential claimants into primary and secondary victims exemplified by Lord Wilberforce in *McLoughlin v O'Brien* [1983] 1 A.C. 410 and adopted in *Alcock* do not necessarily reflect the law in this jurisdiction. See *Curran v. Cadbury (Ireland) Ltd* [2000] 2 ILRM 343 and *McMahon and Binchy* 4th Ed. at 17.72 et seq.

26. In the event such considerations do not concern the Court on this appeal; the Oireachtas has confined the class of claimants who may recover for PTSD or Nervous Shock to the spouse, child and parents of the deceased rather than to the dependants within the meaning of s. 47(1) of the Civil Liability Act 1961, as inserted by s. 1 of the Civil Liability (Amendment) Act 1996.

Conclusion

27. For these reasons the adoption and application by the Tribunal of Lord Ackner's statement of the law in *Alcock*, made as it was in the context of the "aftermath cases", to found the basis for refusing the Appellant's application was misplaced and inappropriate to an application for compensation in respect of PTSD or Nervous Shock under the statutory scheme. The death of a person from the complications of Hepatitis C or HIV is invariably not the result of a sudden and unexpected event such as a rail, plane or car crash or building collapse, quite the contrary, such deaths are all too often the end result of a long illness caused by the infection, deaths which are preceded and accompanied by immense suffering on the part of the victim which those closest, the spouse, children and parents are invariably required to witness directly or indirectly through the human senses.

Circumstances Surrounding the Death of the Applicant's Father

28. Given the centrality of the event to the Appellant's claim it is considered necessary to summarise the circumstances and her knowledge of them which attended her father's death. The Appellant was twelve or thirteen perhaps at most when she first became aware he was seriously ill. She described a close family relationship and a very happy childhood. She was particularly attached to her father of whom she spoke lovingly and with great affection. They developed a close bond. She became aware of the seriousness of the illness as a result of overhearing her mother speaking with a doctor. In the course of the conversation she heard mention of AIDS. She knew that was bad news.

29. A follower of the rock band 'Queen', she aware that Freddy Mercury had 'come out' to say he was dying of aids and was also aware that the actor Rock Hudson had already died from the same illness. As stated earlier, she never informed her mother that she had overheard the conversation nor did she ever discuss with her the nature of his illness. Her father had to give up work and ultimately became so invalid that he spent most of his day upstairs in his bedroom. The Appellant literally watched him waste away. Short visits into his bedroom were allowed. At night time she could hear him crying on occasion. The crying upset her a lot but so did other symptoms which she observed. He developed a cough which became worse towards the end accompanied by episodes of vomiting after eating. Her mother was constantly up and down to the bedroom. She kept reassuring her children that their father would get well, that he just had a bad chest infection but that he would get over it.

30. The Appellant's father went into hospital on a number of occasions with pneumonia, a condition which became particularly acute in the last weeks of life and was consistent with the collapse of the immune system from the ravages of the virus. The Appellant used to visit hospital on a Wednesday and at weekends. She was also allowed to bring her two younger brothers with her on a Saturday or Sunday. She was worried about the length of what turned out to be her father's last hospitalisation. Her mother kept giving her assurances that her father would recover and would be home soon. She wanted to believe what she was being told but feared the worst. The day before her father died she received a call from her mother to bring the two younger brothers up to the hospital on the bus. She was then just a teenager.

31. She remembered seeing her father in hospital looking very frail and yellow. He had a mask on his face and could not really talk. Neither she nor the younger children were allowed to spend very much time with him. She recalled her mother telling her that she should say goodbye to her father and take the boys home because he was really tired. It was not unusual for the children to spend very little time visiting their father in hospital and then to be told to say goodbye. The Appellant knew he would die some day from his illness but certainly didn't expect it to be that evening.

32. She went over to her father gave him a kiss and told him that she would see him the following day. She took the boys home on the bus. It was a Saturday. She expected to return the next day with her younger brothers. For some time prior to his death the Appellant had found it difficult to get to sleep at night. She was worrying about her father and what would happen to her and to the family. To help her cope she had started to drink alcohol and smoke cigarettes. She also prayed a lot that the worst would not happen.

33. She recounted how she learnt of her father's death. At about three in the morning she remembered hearing footsteps downstairs. Her mother used to wear high heel shoes which made a noise on the floor when she walked. She generally spent the night in hospital so she thought it unusual to hear the noise made by her shoes on the floor downstairs at that hour. Her grandmother had opened front the door; she could hear crying. She feared the worst and started praying furiously, asking God not to let her father die.

34. She had prayed like that previously but this time her grandmother came into her bedroom and told her that father was dead. She was devastated. Following the funeral her mother's initial response was to adopt an external veneer which could best be described as 'a rally around' approach to everything. The children were told their father had died of cancer; hard and sad though it was the message was clear, these things happen, keep the sunny side out, pick yourself up, be brave and get on with your life, advice her mother could not implement. She imploded physically and psychologically

35. The Appellant described how she never saw her father laid out. No one was allowed to see him. He was put in a bag 'just like he was rubbish'. She overheard that his corpse had been dealt with this way from a conversation she had overheard between her mother and her grandmother. She also learned that the coffin had to be sealed because of her father's illness. She described how strange it felt that he had quite literally disappeared. She also remembered mourners calling to pay their respects before the funeral and asking questions about the reason for death and why the coffin had been closed.

Consequences of the Death on the Appellant

36. Apart from feelings of devastation and loss which followed her father's death, the Appellant's started to experience nightmares, one of which was recurrent. In it she was down at the bottom of the steps of the Cathedral on her own. The passing mourners were laughing at her saying that she did not even know that her father's funeral was on. She used to wake regularly from this nightmare crying and in a sweat; it's a nightmare which has never left her.

37. The Appellant's mother was determined to ensure that the truth about her husband's illness would remain a closely guarded secret. The Appellant knew that her mother was lying to her when she said he had died of cancer but there was never any question of telling her mother that she knew the truth. The necessity to keep the truth a secret invaded every aspect of their lives. When her mother's health collapsed the Appellant found herself in the role of performing the duties of a carer for her brothers. In order to deal with the emotional pain and psychological turmoil which she experienced following her father's death she internalised and anaesthetised her feelings by drinking naggings of Vodka. Notwithstanding, her extraordinary resilience was such that she was able to portray the persona of a young woman who was coping with her loss.

38. If evidence was required to illustrate the grip which the psychological consequences of her father's death had had on her it was the Appellant's adherence to what she knew to be a fiction created by her mother about her father's illness and reason for his death, a fiction in which she participated and with which she persisted even after her admission and treatment in hospital for depression in 2006. It was not until 2009, at the prompting of her solicitor, that she finally told the truth to her clinical psychologist, Joe Campion.

As mentioned earlier, the Appellant continues to suffer the consequences of her psychiatric illness for which she requires ongoing treatment, indeed, at the hearing her treating psychiatrist, Dr. O'Ceallaigh considered that she would benefit from a further admission to hospital.

39. The Court is also cognisant of the extensive evidence concerning the Appellant's relationship with the man who would subsequently become her husband, his business dealings with individuals who were involved in serious criminal activity, the raid on the family home by officers from CAB and the threats made to the safety of herself and her child by these criminals as consequence of which a serious depression developed ultimately manifesting itself in depression which required hospital treatment.

40. I had the opportunity to observe the Appellant's demeanour as she gave her evidence. She answered questions in a forthright manner and I am quite satisfied that she was a truthful and reliable witness upon whom the Court may rely. I accept her evidence about the impact which her father's death had on her psychologically, in particular her evidence as to the circumstances leading up to, at and immediately after his death, the way in which his corpse was dealt with, the inability to speak about the truth, the necessity to maintain a fiction, the loneliness and the devastating emptiness which followed.

41. I was also impressed by the frankness with which the Appellant answered the questions put to her on what I may say was a very skilful cross-examination by Senior Counsel for the Respondent, Ms Egan, concerning her disastrous relationship with the father of her child, an altogether unsuitable marriage, her pregnancy and the pressure she was put under to have an abortion as well as the effect which her husband's relationships with serious criminals had had on her. At the end of it all she described the psychological effect of her father's death as 'a bomb going off'; it was as if her world had fallen apart but there was no one she could turn to for help, not even her mother.

42. Dr. Cryan, Consultant Psychiatrist, was at pains to emphasise that the Court had to see what had happened in a particular context, namely the social as well as the medical knowledge at the time concerning AIDS and the consequences of that illness, the knowledge which had been acquired by the Appellant, but about which she dared not speak, the circumstances leading up to and immediately after her father's death which she witnessed or about which she became aware and most particularly of all, the fact that she was only a teenager at the time. These were all relevant factors which combined to sensitise her and create a sense of heightened vulnerability. In her opinion, these factors had an immense impact on the Appellant's ability to deal with what for her was a cataclysmic event. While she knew her father was ill and that someday death would ensue as a consequence she prayed desperately that would not happen; when it did she developed an adjustment disorder.

43. Dr. O'Ceallaigh, expressed the opinion that as a result of her father's death the Appellant developed a depressive disorder which had features common to an adjustment disorder. In this regard he emphasised that there was no significant disagreement between himself and Dr. Cryan. When he ultimately became aware of the truth concerning the death of the Appellant's father and how this event had affected her he had had to reevaluate his entire opinion as to the cause of her depression which he had initially attributed to the events and circumstances that had proximally preceded her admission to hospital in 2006.

44. Once he became aware of the truth of the circumstances surrounding her father's death, the effect that had had on her and the way in which she had dealt with the issues that had been thrown up as a result, he had reevaluated his entire diagnosis as to the cause of her illness. In his opinion the depressive disorder developed as a result of the death and had never fully resolved. It bubbled along under the surface until the events of 2005 and 2006, which led to her hospital admission. It must be said that Dr. O'Ceallaigh fairly accepted under cross-examination that these events were very relevant to the emergence of the depression at that time, events which he described as having 'pushed her over the line'. This evidence was accepted by the Tribunal.

45. In resolving the issue with which the Court is concerned, it is particularly significant on my view of the evidence that before she became aware of her father's illness the Appellant dealt appropriately with the death of her grandfather. The Tribunal observed in its decision the devastation which would be caused to a child by the loss of a parent at a young age and similarly noted the intense emotions, including feelings of what may fairly be described as shock and/or anger which would invariably be experienced by close family members where a young person dies. No doubt the Appellant also experienced a range of emotions including shock, upset, sadness and grief on the death of her grandfather, an event which might be described for present purposes as a death which invariably occurs at the end of a long life and thus within the range of normal human experiences.

46. The Tribunal concluded that the Appellant found the death of her father to be a traumatic and distressing experience and that this was a significant factor in the cause of her psychiatric illness but dismissed the claim on the grounds that the event or series of events which she had experienced in association with the death were not particularly horrifying or traumatic. That conclusion is difficult to reconcile with the Tribunal's findings and conclusion on the application by her mother for compensation in respect of PTSD under the same provision and on foot of which she was made an award in the same circumstances, circumstances which were found to be anything but normal; they were horrific.

47. With regard to the absence in the medical notes of her doctor of any complaints evidencing psychological sequelae following the death of her father I pause to observe that neither Dr. O'Ceallaigh nor Dr. Cryan thought that omission unusual. Between 1999 and her admission to hospital in 2006 the Appellant had made over 50 visits to her GP. I accept the explanations offered by these witnesses and note that even with the treatment she received after admission in 2006, the appellant continued to hide the truth and to maintain the fiction that her father had died of cancer, a suppressive behaviour adopted from the outset and consistent with the absence of any recorded psychological complaint in the GP's notes.

48. I accept the evidence of Dr. O'Ceallaigh, Dr. Cryan and Ms. Jo Campion and find that the death of the Appellant's father and the circumstances leading up to, at and after that event caused her to suffer a recognised psychiatric illnesses in the form of depressive and adjustment disorders for which she is entitled to be compensated and that these illnesses did not fully resolve but emerged symptomatically as a result of the additional stressors arising from the events which resulted in her admission to hospital in 2006.

Ruling

49. It follows from the findings made, the conclusions reached and the reasons given that the Appellant suffered 'Nervous Shock' within the meaning of s.5 (3A) (a) of the Acts consequent upon her father's untimely death from the complications of HIV infection contracted from the administration of contaminated blood products within the State.

50. Accordingly, the Court will allow the appeal and remit the matter back to the Tribunal for assessment and award.