Neutral Citation [2015] IEHC 299

THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 657 JR]

BETWEEN

DAVID COSTIGAN

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr Justice Hedigan delivered the 13th of May 2015.

1. I am very conscious of the limited role that the court has in judicial review. It must not interpose its opinion for that of the decision maker in this case the Minister. The only base on which it can intervene is where it finds that the decision is not factually sustainable or reasonable. See *James McGuill v. the Minister for Justice* 2012 IEHC 519 Hogan J. paras. 3 and 4.

2. The decision challenged herein is that the injury sustained by the applicant was of a minor character. In the result the applicant was refused authorisation to apply to the High Court for compensation. What was the injury? On the 2nd January 2008 the applicant was head butted by a prisoner in the patrol car. He sustained a fracture to his nose. He was brought to Loughlinstown Hospital for urgent treatment from there he was referred to the ENT department of St. Vincent's Hospital. He attended there on the 10th January. He had a manipulation of a fracture to his nasal bone under a local anaesthetic. He was fitted with a nasal splint. As he continued with discomfort he was eventually operated under general anaesthetic for a deviated nasal septum, a septoplasty, on the 30th January 2008. He remained as an inpatient for two days post operatively. He had an external nasal splint for two weeks post operatively. On re-evaluation on the 17th February 2010 Professor Michael Walsh found that the applicant continued to complain of intermittent congestion of his nose. Examination showed significant congestion of the nasal lining and some scar tissue in the right nasal airway which Professor Walsh considered secondary to the applicant's previous surgery and trauma.

3. Professor Walsh also went on to note that nasal congestion is also secondary to sensitivity to dusty dry atmospheric air in keeping with his asthmatic condition.

4. Was this injury minor? Almost identical injuries to which the court was referred in *Anthony Flanagan v. the Minister for Finance* 11th June 2007 and *Ingrid Moore v. the Minister for Finance* 19th July 2010 were found to be "not of a minor character" and authorisation was granted. Sums of €25,000 and €18,500 respectively were awarded.

5. The court should look primarily to the nature of the injury but it may also take account of comparator cases to determine the unreasonableness or otherwise of the characterisation as minor of a particular injury. Clear inconsistency in the characterisation of such injuries is obviously undesirable and indicative of unreasonableness. Such inconsistency can only be identified by comparison with similar cases.

6. Mr McGuinness has tried to point out certain differences between the applicant's injury and that of the comparator cases. I find the distinctions to rather strained and I am unconvinced by them. The comparator injuries are in all main respects identical and the applicant has every reason to believe that a different standard was applied to his case. In my judgment a broken nose requiring two surgical procedures, one under local, the other under general anaesthetic, together with two days in hospital and symptoms at least related to the injury two years before cannot reasonably be characterised as minor.

7. Thus the decision refusing authorisation will be quashed. I will hear counsel on the further orders that have been sought herein.