

THE HIGH COURT

[2007 900 SP]

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

BETWEEN

EUGENE WATTERS

APPLICANT

AND

THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM

RESPONDENT

JUDGMENT of Mr. Justice Bernard J. Barton delivered the 27th day of July 2015.

1. The applicant was born on the 28th of October 1951 and resides at Curryline, Newtownforbes, Co. Longford. Having completed 30 years of service he retired on the 30th of June, 2005. He is married and has a grown up family but is recently bereaved following the tragic death of his son in May of this year.
2. The applicant was authorised to bring these proceedings in respect of an incident which occurred in the early hours of the 17th March 2002, near Edgeworthstown, County Longford. He was on mobile patrol with another colleague. As they approached the village they noticed a car in a ditch on the left hand side of the road. The car had been abandoned. The Edgeworthstown patrol car also attended at the scene; both cars were parked on the side of the road with lights on and beams flashing to give a warning to approaching motorists.
3. The applicant and his colleagues were wearing fluorescent jackets and holding torches. Whilst standing in front of one of the patrol cars the applicant became aware of a car approaching at speed. He waved his torch and his hand to signal the driver to slow down. There was no reaction; the car kept coming, heading straight for the applicant and his colleagues. Realising that he would be hit by the approaching car if he did not get out of the way the applicant literally dived into the ditch; momentarily after doing so there was a collision with one of the patrol cars in which the applicant's colleague, Garda Browne, was sitting.
4. The applicant was in a state of shock. He found it hard to breathe, felt tightness in his chest, experienced weakness and became nauseous. Despite all this he went to the aid of Garda Browne.
5. The applicant, his colleagues, and the driver who had crashed into the patrol car, were all removed from the scene by ambulance and taken to Mullingar General Hospital. The applicant was clinically examined, was prescribed medication, given assurances and discharged back to the care of his general practitioner.
6. Dr. Sharkey, who was not the applicant's usual doctor, reviewed the applicant on the 19th of March 2002. Clinical examination disclosed chest bruising and Dr Sharkey recorded that the applicant was experiencing chest tightness, difficulty with breathing, and a feeling of nausea as well as headaches. The applicant became extremely anxious and irritable. Dr. Sharkey prescribed pain relieving medication and an anxiolytic drug, Xanax. The applicant continued to feel stressed and returned to Dr. Sharkey in May 2002 complaining of gastritis and insomnia which the applicant attributed to stress. Further medication was prescribed, including hypnotics. According to a medical report dated the 29th of July 2003 and prepared subsequent to follow up examination on the 2nd of July, The applicant's symptoms were reported to have resolved.
7. In or about November 2003 the applicant sustained a back injury while he was gardening and went to his GP, Dr. McGarry. The applicant's mood became depressed at that time and ultimately Dr. McGarry referred the applicant Dr. Mary Maguire consultant psychiatrist and clinical director of Roscommon Psychiatric Services.
8. The applicant has a relevant pre-accident history. This is referred to in the medical report of Dr. Mary Maguire dated the 1st of October 2008. It appears that the applicant had first suffered from depressive episodes some 25 to 26 years previously and had natural remissions until approximately 1990 when symptoms returned. Since that time the applicant had been treated intermittently for a depressive disorder. That report refers to the applicant having been assessed on the 10th of August 2004 in respect of the classic psychological and biological symptoms of depression. He attended under Dr. Maguire regularly and responded well to anti depressive medication; on the basis of that report, he was last seen by her on the 20th of May 2008 at which time she described the applicant as being objectively and subjectively in good form.
9. There was no mention in that report of the incident which occurred on the 17th March 2002. The incident and its consequences are, however, dealt with by Dr. Maguire in a further report dated the 10th of November 2009. In that report she describes the applicants psychological sequelae in the following terms:

"Mr. Watters felt very shaky and was preoccupied regarding the accident initially. He cannot remember if he experienced flashbacks at the time. He can clearly remember the anxiety he felt when on traffic duty thereafter and this continued until he retired from the force. On one occasion, approximately one year after the accident, he was called to a double fatal accident and could not deal with it. He had to ask a colleague to deal with the accident. He feels he did not have the nerve to look at victims in the accident and walked away. He helped with the traffic control aspect of the accident but did not look at the victims. He avoided similar accidents thereafter and hated answering the garda station phone in case he had to attend another accident. He was nervous".
10. It is acknowledged by Dr. Maguire that the applicant did not make any connection between the accident and the recurrence of depressive symptoms in 2004. She expressed the view that there may well be a link between the two events. One way or another it

was her opinion that the applicant had suffered significant symptoms of post traumatic stress disorder syndrome for some time after the incident and that the accident had had a significant impact on his mental health.

11. According to this medical report, following initial assessment and treatment in 2004, the applicant's condition deteriorated to the point where he had to be admitted to hospital for a course of ECT which he underwent from the 23rd of June 2005 to the 25th of July 2005 in Roscommon County Hospital. He remains on medication for what is, in effect, an endogenous depression.

12. The ECT treatment together with medication was effective in dealing with his depression at that time; that much is evident from Dr Maguire's report of the 1st of October 2008. It is also clear that when the applicant was first assessed and subsequently treated by Dr. Maguire from August 2004, he appears not to have made any reference to the frightening incident which is the subject matter of these proceedings. Whilst Dr. McGarry is his usual GP, the applicant says that he attended Dr. Sharkey, who is a local GP in Edgeworthstown, because he found it easier to talk to him than to Dr. McGarry. The applicant himself says that by July 2003 he felt that his psychological sequelae had resolved and this, indeed, is confirmed by Dr. Sharkey in his follow up medical report.

13. However, the applicant's evidence was that after this frightening incident he also began to think about retirement though fairly accepted that this was not the sole reason for doing so. His retirement took effect from the 30th of June 2005 whilst he was being treated for depression in Roscommon County Hospital.

14. The applicant's evidence was that he enjoyed his career in the force and that before the incident he had managed all aspects of his duties, including attendances at the scene of some very serious accidents where he had witnessed the victims of both fatal and very serious personal injury. During his career he had served in a number of stations until his final posting at Rathowen, County Westmeath, where he served until his retirement in 2005. That station is now closed.

15. The applicant was medically reviewed on behalf of the respondent by Dr. Murphy, occupational physician, the Chief Medical Officer, and Dr. Patrick Devitt, consultant psychiatrist. Reports from these physicians were prepared and furnished for the assistance of the court.

16. Dr. Murphy's diagnosis was that the applicant had experienced an exacerbation of a previous existing depression as a result of the incident. He had had sight of a report from Mr. Ghulam, A & E locum consultant, dated the 24th of July 2002, and which dealt with the applicant's attendance at Longford Hospital immediately following the incident. He also had had sight of Dr. Sharkey's reports. It appears that at the time of that medical examination the applicant was "doing well" and Dr Murphy's prognosis was "good".

17. Having read and considered the applicant's affidavit and the medical reports of Dr. Maguire and Dr. Sharkey, the Chief Medical Officer decided to refer the applicant for medical examination and review by Dr. Devitt. He assessed and reviewed the plaintiff on the 30th of August 2012. In his opinion there was no doubt but that as a result of the incident the applicant had experienced acute anxiety symptoms for which he required anti anxiety treatment by his GP, however, he was in agreement with Dr. Sharkey that the psychological sequelae consequent upon the incident had abated by July 2003.

18. Dr. Devitt was of the opinion that the exacerbation of the applicant's depression from November 2003 until his retirement in 2005 was largely independent of the incident on the 17th of March 2002. He did not consider that the applicant had suffered a post traumatic stress disorder as a result of the incident for the reasons set out in his report and given in his evidence. He accepted, however, that the incident of 2002 made a small adverse contribution to the applicant's overall mental state from November 2003 until retirement. He thought it much more likely that the decision to retire was due to a well documented depression during the eighteen month period prior to retirement consequent upon the back injury in November 2003.

19. There is no doubt but that there were other elements and factors which had a bearing on the plaintiff's medical condition including the fact that his son had a drug addiction and as a result of which he subsequently died last May.

20. The applicant's evidence was that he believed that were it not for the fact that he had "lost his bottle" after the incident in 2002, he would most likely have continued to serve in the force. He accepted that his memory had been quite badly affected from time to time by his depression and by the medication which he had had to take.

21. His view of his role as a police officer, however, and how he performed that role changed quite dramatically following the incident moreover it was the incident which provoked his thoughts of retirement.

22. Under cross examination the applicant accepted that by July 2003 he felt that he was no longer depressed and that he had been discharged by Dr. Sharkey. It was not until the episode in 2003 that he again experienced a bad episode of depression. He said that he found it very difficult to talk about depression and the consequences psychologically and agreed that he may not have given a full account to Dr. Devitt in the same way that he had not connected in any way the symptoms for which he was being treated in 2004 and 2005 with the incident in 2002.

23. The applicant fairly accepted that the reason given for retiring was his age and the fact that he qualified to do so having served 30 years. He did not think that his back symptomology had had anything to do with his decision. He agreed that it was the bringing of this application that had prompted him to bring the incident and its consequences to the attention of Dr. Maguire.

24. The applicant accepted that prior to Dr. Maguire writing a report for the purposes of these proceedings that he had written to her on the 22nd July and 30th August 2008 fully informing her of the existence of these proceedings and also of the facts surrounding and consequent upon the incident. He accepted that with respect to the question of causation that in his letter of the 30th August 2008 to Dr. Maguire he had emphasised that he was not claiming that the incident had anything to do with his depression and that he was merely referring to it because he had been advised to make sure that he gave a full medical history.

25. Dr. Maguire's oral evidence to the court was that the applicant was a very shy and retiring man who finds it difficult to speak about his inner most feelings. She confirmed that his memory would have been affected as a result of the ECT therapy which he had had in 2005. While she herself did not have a record of the letters referred to in discovery and on cross examination, she accepted that she was told about the proceedings and the incident in 2008. Her assessment of the applicant was that he was not functioning properly at the time. The reference in correspondence to his making no connection between the depression and the incident was taken by Dr. Maguire to mean that no connection was being made by him between the incident and his underlying and well established pre-incident history of depression. When she first saw him in 2004 the applicant was clearly not able to cope because of his psychological state. She was quite satisfied that subsequent to the incident in 2002 the applicant exhibited definite features of a post traumatic stress disorder and she stood over her written opinion in this regard. In her view there was no question but that the depression for which she treated the applicant in 2004 was an endogenous depression which was an episodic flare up following the

back injury. When it was suggested to Dr. Maguire that the applicant did not qualify for a diagnosis of post traumatic stress disorder as he did not report flashbacks or avoidance behaviour her evidence to the court was that the applicant had exhibited avoidance behaviour and that that was quite apparent from reviews of the applicant over a prolonged period of time in 2004-2005 during which he had been seen on approximately 20 occasions. The failure to mention the incident of 2002 when he was suffering from severe depression in 2004-2005 period was not an unusual feature. The applicant was very depressed at that time and it was no surprise to Dr. Maguire that that would have had a significant affect on his memory. He would simply not have been functioning properly at all. He would not have been focussing on the causes of his illness but rather on what was required to return to some form of normality and which for him was a capacity to deal with the consequences of his condition. Having treated the applicant clinically over such a prolonged period Dr. Maguire was absolutely satisfied that the applicant was a genuine and honest individual who had long suffered from a profound depressive disorder. The incident of 2002 caused a flare up and may have been linked to the flare up which occurred subsequent to the back injury.

26. Dr. Devitt also gave evidence to the court. He accepted that the applicant suffered from very serious depression in the period 2004 and 2005. As far as he was concerned whilst that was not causally connected to the incident it was the reason behind the applicant's decision to retire. It was his opinion that the factors necessary to warrant a diagnosis of post traumatic stress disorder were not present in this case. He accepted, however, that the applicant was an honest individual and had not made any attempt to exaggerate. As far as Dr. Devitt was concerned the predominant symptomology experienced by the applicant after the incident was that of anxiety and not really depression of any sort; he did not agree with Dr. Murphy's opinion that the applicant's underlying depression had been exacerbated by the incident. Under cross examination Dr. Devitt agreed that the incident may have had a minor effect on the applicant's mental state and on his decision to retire.

27. Dr. Devitt felt quite satisfied that he was in a position to give a professional opinion in relation to the applicant on the basis of the information which he had to hand and on the basis of his own assessment of the applicant without the benefit of any of the applicant's medical notes and records. He accepted that the decision to retire had probably been made well in advance of the retirement date and before the serious depressive symptomology and ECT treatment in 2005.

Decision.

28. There are two significant issues to be resolved by the court in this case. The first is whether the applicant suffered a shock induced recognised medical illness as a result of the incident and, secondly, if he did, the duration and consequences of that for him.

29. It is common case that the applicant has suffered from an endogenous depression for what is now nearly 35 years. Since in or about 1990 the symptoms of his depression have had to be medically treated and that that treatment was effective in keeping his depressive condition under control. The uncontroverted evidence in this case is that until the incident in 2002 the applicant was able to perform all of the duties assigned to him as a police officer including attendance at traumatic events such as serious road traffic accidents. Whilst it was suggested to the applicant that he had returned to work within a relatively short period of time following the incident and had remained at work save for a period when he was hospitalised following the back injury in December 2003 and during his ECT treatment in June 2005, it was not suggested to him that he had had no problems with performing his duties, such as attending the scenes of accidents or operating road blocks.

30. The applicant fairly accepted that he had been back at work but insisted that he had had serious difficulty and problems performing any duty which he considered exposed him to a risk of a repetition of the incident which had occurred or of any other incident which might lead to injury; I accept that evidence.

31. It was acknowledged on behalf of the applicant that the respondent is not responsible for the underlying endogenous depression or for the consequences of that condition, however, it was submitted on behalf of the applicant that the shocking events of the 17th March 2002, experienced as they were by a man who had an underlying depressive illness, resulted in his suffering, at the very least, an exacerbation of that illness with features of a post traumatic stress disorder. It was Dr. Devitt's evidence that this was not so, that the applicant had merely suffered a short lived anxiety and that at the very best there was some minor contribution towards the applicant's decision to retire.

32. During the course of the hearing I had the opportunity to observe the demeanour of the applicant as he gave his evidence. Having done so it came as no surprise to me to hear from both Dr. Maguire and Dr. Devitt that in their view the applicant was an entirely genuine individual who was making no attempt to exaggerate either his condition or the claim before the court.

33. Quite understandably he was still saddened and upset by the tragic loss of his son but beyond that it was also obvious that he was a private individual and had great difficulty in talking about his inner feelings.

34. Given the conflict on the medical evidence in this case I think it entirely reasonable and appropriate in the resolution of that conflict to prefer the evidence of Dr. Maguire since she was inextricably involved over a significant period of time in the clinical assessment and treatment of the applicant. The court accepts her evidence that the reference by the applicant in his correspondence with her that he was not attributing his depression to the incident was a reference to his underlying and pre-existing condition rather than to any consequence psychological or otherwise of the incident of March 2002.

35. Accepting, as I do, the evidence of Dr. Maguire, the court finds that the psychological sequelae resulting from the incident on the 17th March 2002 were significant and took some eighteen months to abate. In this regard I note that Dr. Murphy, reporting on behalf of the respondent, but with whom Dr. Devitt disagreed, was also of the opinion that the applicant's underlying depressive illness would have been exacerbated for some time. It cannot be said nor in fairness was it contended that the significant depressive episode which ultimately resulted in the applicant receiving ECT at Roscommon County Hospital in 2005 was caused by the incident in March 2002 nevertheless some causal link was suggested.

36. Whilst Dr. Maguire was at some pains in the course of her evidence to explain why the applicant may not have made any connection between the incident in 2002 and the problems for which she was treating him in 2004 and 2005, and that there may well have been some link with the incident, it is notable that when referring the applicant to Dr. Maguire, the plaintiff's GP, Dr. McGarry, made no connection between the two events.

37. On the balance of probabilities, the evidence points to the back injury in late 2003 which appears to have provoked the serious episode of the applicant's underlying depressive illness and which was also the predominant but not the only reason for the applicant's decision to retire.

38. Whilst the applicant quite understandably had concerns and fears that he would be exposed to a risk of injury or the provocation of further episodes of depression as a result of performing duties, such as attending at the scene of an accident or manning a road

check and which became manifest when he was called to attend the scene of a fatal accident, it is an inescapable fact that the applicant otherwise continued to perform his duties normally from shortly after the incident until late 2003 when he was hospitalised following a back injury after which he resumed duties until he again became ill necessitating ECT in June 2005.

39. Whilst I accept that his experience as a result of the incident in 2002 marked the commencement of his thoughts about retirement, it is another matter altogether to infer that but for the occurrence of the incident the applicant would have continued to serve beyond the 30th anniversary of the commencement of his service in 2004, especially against a background where he had suffered a back injury necessitating admission under Mr. Bolger for surgery in the Blackrock clinic and subsequent to which he also suffered a very serious episode of his underlying depressive illness.

40. However, that the incident of 2002 was contributory to the decision to retire, albeit to a lesser extent than those matters, I have no doubt and in this regard I thought it fairly acknowledged by Dr. Devitt that this would have been so although he considered any such contribution to have been minimal, an assessment of degree which the court does not accept.

41. No claim was made for future loss of earnings or any other pecuniary loss consequent upon the applicant's retirement. The court is, however, being invited to consider making some provision for this aspect of matters in the assessment of general compensation.

42. Having concluded that the applicant suffered a shock induced medically recognised psychological injury he is entitled to recover compensation in respect of his injuries and loss, this to be assessed in accordance with the law. Accordingly, and having due regard to the findings made, the submissions of counsel and the principals to be applied, the court will award the applicant general compensation in the sum of €50,000 in respect of pain and suffering to include the contributory affect of the incident on his decision to retire, together with such pecuniary loss as has been agreed between the parties, and the court will so order.