

THE HIGH COURT

IN THE MATTER OF THE GARDA SÍOCHÁNA (COMPENSATION) 1941 AND 1945

[2015 No. 261 S.P.]

BETWEEN

N.B.

APPLICANT

AND

THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM

RESPONDENT

JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 17th day of April 2018

1. The Applicant is a serving member of an Garda Síochána. She was born on the 13th June, 1983 and is married. On the 4th August, 2014 she was authorised to bring these proceedings for compensation in respect of a serious assault and battery on her which occurred on the 23rd July, 2015.

Background.

2. The Applicant was stationed at Galway Garda station and was on duty in the official patrol car with a colleague when they received a call at approximately 7.40 pm from the Galway Divisional Control Room instructing them to attend at Innishannagh Park, Westside, Galway where it was reported a large disturbance was taking place between members of the travelling community. Upon arrival at Siobhann McKenna Road, the Applicant and her colleague were confronted by four men who were then instructed to leave the area; three complied but one remained in the vicinity.

3. At the scene of the disturbance the Applicant noticed that a white van had been parked. There was no insurance disc displayed on the windscreen. The Applicant decided to seize the vehicle pursuant to s. 41 of the Road Traffic Act and contacted Galway Divisional Control Room for a recovery vehicle to remove the vehicle from the area. When the recovery vehicle arrived to remove the van, the individual who had remained in the vicinity following the instruction to leave ran up to the van and began shouting abuse at the Applicant and her colleague. The Applicant informed the man that she was seizing the vehicle for non display of an insurance disc and advised that if insurance was produced the vehicle would be released. The only response from the man was to place himself between the van and the recovery vehicle in order to prevent removal of the van.

4. When the Applicant's colleague attempted to remove the man from between the two vehicles he was punched in the face by the man. The Applicant went to assist her colleague but as she did so the man turned on her and placing one of his hands between her legs and lifted her bodily off the ground. The Applicant was shocked and distressed by the manner in which she had been assaulted; she was aware of acute pain in the area of her vagina and shouted at the assailant to let her go, he refused. The Applicant struggled with the assailant and ultimately managed to free herself from his grasp, however, this was not the end of the assault, the assailant lashed out with a fist and struck the Applicant forcibly on her right arm.

5. The Applicant's colleague in his turn came to her assistance. Together they managed to subdue the assailant by deploying an incapacitant spray; he was then handcuffed. By this time a large crowd had gathered around the police officers and the assailant. The mood of the crowd was aggressive and several individuals started to shout abuse and threats of violence. The officers were intimidated by the crowd's behaviour and the threats made against them. Fortunately, other officers then arrived at the scene to assist; they dispersed the crowd and conveyed the assailant to Galway Garda station.

Consequences of the Assault and Battery

6. The assault left the Applicant feeling violated and that her personal space had been desecrated by the manner of the assault. In her evidence she described a feeling of defilement, she was extremely shocked. The enormity of the impact on her psychologically was only beginning. On one level she was very embarrassed by what had happened on the other she managed to finish her shift but could not get the thoughts of what had happened to her out of her head. Her rumination increased as she was driving home, she began to feel nauseated by the realisation she had been sexually assaulted.

7. The Applicant attempted to discharge her duties over the course of the next two of days whilst at the same time trying to make sense of the assault and attempting to come to terms with it. Despite her best efforts to do so she began to experience panic attacks and developed a disturbed sleeping pattern and a sense of nervousness; she went on sick leave and attended her G.P., Dr. Cleary on the 30th July, 2012. At consultation she asked to be referred for counselling. Dr. Cleary referred her to Dr. Patricia Noone, Consultant Psychiatrist, whom she saw on the 23rd August. In a report dated the 25th January, 2013 Dr. Noone noted that the Applicant presented with insomnia and ongoing flashbacks of the incident. She also noted that the assault had placed a strain on the Applicant's sexual relationship with her husband. She diagnosed a post-traumatic stress syndrome (PTSS) comprising fearfulness, heightened anxiety, insomnia, social withdrawal, lack of confidence, deterioration of the marital relationship and ongoing fear.

8. On Dr. Noone's recommendation the Applicant underwent a course of psychotherapy on a regular basis which she found helpful. She again attended Dr. Noone on the 17th June, 2013 following which Dr. Noone prepared a further report dated the 2nd July, 2013 in which she describes the course of the trial hearing involving the Applicant's assailant. Prior to the trial the Applicant had been fearful about giving evidence; she found doing so extremely distressing and ultimately she became very emotionally upset in the witness box; she was very embarrassed at the time.

9. The conclusion reached by Dr. Noone in her supplemental report was that the Applicant had substantially recovered from the PTSS. A transfer to a new post in Castlebar was credited as a major contributory factor towards the improvement in her psychological wellbeing, however, the strain on her marriage was still present and she remained unable to engage in intimate relations with her husband. Overall, however, the prognosis at that time was good despite the continuing presence of some underlying personal issues.

10. Although she did experience improvement as anticipated the psychological sequelae of the assault persisted. In her evidence the Applicant stated that she felt she was no longer the person she used to be and that feelings of violation which she experienced at the time had never left her, furthermore, she stated that she had been let down by certain colleagues and by management when she

discovered that the assailant was only to be charged with a s. 2 assault rather than sexual assault, a decision which she felt minimised the traumatic experience she had endured.

11. I consider it pertinent to observe that Dr. Devitt, Consultant Psychiatrist who examined and reported on behalf of the Respondent, to a large extent shared the opinion of Dr. Noone. Both psychiatrists found that the Applicant had been traumatised psychologically by the assault. It is also clear that her husband, who was at all times very supportive of his wife, had himself become depressed as a result of the significant deterioration in the marital relationship a consequence due almost entirely to the assault.

12. I am satisfied that the Applicant and her husband would like to have a baby but that at the moment she just cannot contemplate become pregnant. The reason for this is that she continues to have a fear of the intimate medical examinations which pregnancy would entail. Dr. Devitt, interestingly enough, describes this fear as bordering on a phobia. The Applicant explained to Dr. Noone that this fear of being touched intimately is a response to the assault. Whilst she had had a smear test since the incident a subsequent letter sent out for another test from her G.P. went without response because of her ongoing phobia.

13. The impression I had of the Applicant while she gave her evidence is that members of the public attending Castlebar Garda station encountering her would form the impression that there was nothing wrong. To the world at large she appears to be a perfectly normal healthy efficient and effective member of an Garda Síochána; her intimate private life and her psychological well being is altogether another matter.

14. The Applicant had not returned to psychotherapy following completion of the course initially undertaken from which I considered it reasonable to infer that she had recovered to the point that she did not feel the necessity to return for a further course of therapy. At the risk of trespassing into the realm of psychology, it seemed to me from her evidence and her demeanour in the witness box that she is a very private individual who has attempted to deal with the impact which the assault has had on her by suppressing the intimate details and the way in which the assault was actually affecting her.

15. Essentially, she attempted to get on with her life as best she could without the assistance of mental health experts. She suppressed what was in fact an ongoing psychological problem. I found her to be a truthful witness upon whose evidence the Court could rely. I accept her evidence and I am satisfied that the psychological sequelae did not resolve and that she is still suffering from PTSS. Notwithstanding Dr. Noone's prognosis it was obvious from her evidence that the Applicant had not recovered but was still significantly traumatised by the assault.

16. She was very emotional when giving her evidence in open court. Her counsel had applied to have her evidence taken in camera, an application which I refused. It was not until after she gave her evidence that it became fully apparent why the Applicant had wanted to have the application heard in camera. The profound psychological effects to the assault manifested themselves for all to see. The horrible memories, as she describes them, reared their head when she was required to re live the events of that day again in evidence. She repeated how she felt when giving evidence at the criminal trial, how embarrassed she was by the affect her emotional suffering had had on her and as a result of which she had broken down; she felt that she had let herself down.

17. The Applicant's distressed state was apparent to all when she gave evidence on this application. It was evident that the medical prognosis contained in the reports before the court, accordingly, had not been borne out, accordingly I decided to adjourn the application by agreement so that the Applicant could be re-assessed by Dr. Noone and Dr. Devitt.

18. Further assessments were carried out following which additional reports were furnished which I have read. It is apparent from these that the feelings of guilt, inability to sustain a normal marital relationship, the feelings of fear, the flashbacks, the feelings of being unclean and of being violated all continue to be present. Dr. Devitt recommended a further course of psychotherapy acknowledging that the Applicant continued to suffer from significant psychological sequelae at this time. Medication was also prescribed by Dr. Noone to deal with continuing anxiety and feelings of fear. A combined course of medication and psychotherapy proved to be beneficial; the Applicant's response was positive. A further course of ten sessions of psychotherapy was recommended by Dr. Noone. Dr. Devitt's view of this was that he expected the Applicant to go on to make a full recovery.

The Future

19. I accept the evidence of Dr. Noone and Dr. Devitt. Both physicians are essentially in agreement regarding the sequelae suffered by the Applicant and about her future prognosis, accordingly, the Court finds as a matter of probability that she will go on to make a full recovery from her psychological injuries with the benefit of the additional course of treatment albeit that this may take some time. I have absolutely no doubt that she is anxious to get on with her life and put the assault and what transpired to be an immense impact which it had on her psychological wellbeing behind her and that in this she will be supported by her loving husband. I think it also reasonable to conclude that the end of what has been a protracted litigation process cannot but positively assist in this process.

Assessment

20. Insofar as the assessment of compensation is concerned the court was referred to *Mac Eoin v. The Minister for Public Expenditure and Reform* [2015] IEHC 265 and *Phillips v. Mulcahy* [2017] IEHC 724. I have read and considered both of these decisions. The parties have agreed pecuniary losses in the sum of €1,730. The Court will allow in addition the sum of €1,000 being the cost of future psychotherapy sessions recommended by Dr. Noone. With regard to general compensation the Court is cognisant that in addition to psychological injuries the Applicant also suffered physical injuries albeit that these were minor by comparison relative to the impact which the psychological sequelae have had on the Applicant. She makes nothing of the physical injuries from which she recovered relatively quickly.

21. Having due regard to all of her injuries and applying the appropriate principles of tort law to the assessment of compensatory damages I consider that a fair and reasonable sum commensurate with the injuries to compensate the Applicant for pain and suffering to date is €40,000 and for pain and suffering into the future €15,000 making in aggregate €55,000 to which the pecuniary losses amount of €2,730 will be added making a total award of €57,730. The Court will so order.