

## THE HIGH COURT

[2017 No. 4 C.T.]

## IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 5 (15) OF THE HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997, AS AMENDED

AND IN THE MATTER OF A CLAIM BY J. Q.

AND IN THE MATTER OF A DECISION BY THE HEPATITIS C AND HIV COMPENSATION TRIBUNAL OF THE 31ST OF MAY 2017

BETWEEN

J. Q.

APPELLANT

AND

THE MINISTER FOR HEALTH

RESPONDENT

JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 6th day of October, 2017.

**Introduction**

1. This is an appeal brought by the Appellant pursuant to s. 5 (15) of the Hepatitis C Compensation Tribunal Acts, 1997 to 2006, (the Acts) to vary the award of the Tribunal made on the 31st May, 2017, in respect of the Appellant's claim for loss of society under s. 5 (3) (B) (b).

**Background**

2. The Appellant is now in her 30's. She is married with two young children and resides in the State. Her father suffered from severe haemophilia A for which he received blood transfusions and Factor VIII throughout the 1980s and 1990s.

3. Very unfortunately for him, some of the blood and blood products received in the State were contaminated with Hepatitis B and Hepatitis C as a consequence of which he developed decompensated liver disease. The resulting deterioration in his medical condition forced him to cease remunerative employment and ultimately led to his untimely death, an event in respect of which it is accepted that Hepatitis C was a significant contributory factor; he was just 51.

4. In addition to the claim for loss of society, the Appellant brought a number of other claims under the Acts, including claims for post traumatic stress disorder and loss of opportunity for which she has already been compensated. This Appeal is concerned only with her claim for loss of society.

5. The Court has had the benefit of reading the expert reports, witness statements, and other materials which were before the Tribunal together with a transcript of the evidence given and the decision made which I do not intend to summarise here; suffice it to say that the Tribunal accepted in full the evidence which was led by and on the behalf of the Appellant. In passing I also consider it pertinent to observe that it was very fairly accepted on behalf of the Appellant that the Tribunal had entertained and dealt with her application sympathetically and with sensitivity.

6. The Appellant and Ms. Jo Campion, clinical psychologist, gave evidence at the hearing. Ms. Campion had also prepared a report for the Appeal, dated the 12th September, 2017. In addition, the Court had the benefit of a report dated the 2nd October, 2017, prepared by Mr. John Logan, Consulting Actuary, which dealt with the question of the future life expectancies of the deceased and the Appellant from the date of his death.

7. It emerges from the evidence given at the hearing, and from the reports and materials made available to the Court, that no new matters of substance arise for consideration on this appeal; the net issue is whether the award of the Tribunal in the sum of €50,000 for loss of society was fair and reasonable in all the circumstances.

**Submissions**

8. In support of the submissions made on behalf of the Appellant, Ms. McCrann S.C. referred the Court to a number of decisions of the tribunal, and this Court on appeal, which included claims for loss of society. It was submitted that when regard was had to the circumstances of this case and to those decisions that the award of the Tribunal in this case was wholly insufficient and ought very substantially to be varied upwards.

9. Whilst recognising the jurisdiction of the Court to vary an award, counsel on behalf of the Respondent, Mr. Ó Scanail S.C. submitted that there were a number of matters to which the Court should have regard before that jurisdiction was exercised, in particular the nature of the statutory framework providing compensation to the victims of Hepatitis C, the very experienced Tribunal which had heard the application at first instance, and the fact that the same issues which were before the Court had been canvassed and carefully considered by the Tribunal when it assessed and awarded compensation in an amount which it considered to be fair and reasonable.

10. Furthermore, it was submitted that insofar as it might be considered that any aspect of the claim for loss of society had contributed to a loss of opportunity such head of damage had been provided for in a separate award and did not now fall to be considered further; it was not argued to the contrary, rather this was a stand alone claim.

**Function of the Court on Appeal**

11. On the hearing of an appeal from a decision or award of the tribunal the Court is not concerned with a review of the decision or the award, rather it proceeds to hear the application *de novo*. Where the appeal involves a claim for compensation, once satisfied as to causation and loss, an assessment of compensation is carried out in accordance with the well settled principals of tort law on the basis of the evidence given and the materials, if any, which have been made available, including relevant decisions of the tribunal, or the Court.

**Review of decisions in other cases to which the Court has been referred**

12. Having due regard to the submissions, I found the decision of this Court in *GO'S v. The Minister*, delivered the 24th April, 2007, to

be of limited assistance. That case involved an appeal against a number of awards made by the Tribunal, including an award of €35,000 in respect of a claim for loss of society. The Court allowed the appeal and varied the award in respect of that claim by substituting an amount of €100,000.

13. However, it appears from the transcript of the judgment that the Court had been made aware that the Appellant's brother had received a sum of €100,000 in respect of his claim for loss of society. As there was no evidence or other ground to distinguish the claims, the same amount was awarded to the Appellant. I should add that the circumstances in which the brother had received €100,000 and whether or not the amount was an award of the tribunal, or the Court on appeal, was not apparent from the transcript.

14. I did not find the decisions of this Court in *E.C v. The Minister* and *S.C v. The Minister*, which were delivered on the 8th February, 2012, to be of any great assistance. In neither case was there an appeal in respect of the award made on the claim for loss of society. However, I found three decisions of the tribunal to be of considerable assistance. In each of these cases an award of €100,000 for loss of society was made in circumstances where other claims also fell to be determined or where the tribunal was aware that other claims by the applicant were pending.

15. There were some remarkable similarities between the circumstances in this case and in those claims; the deceased had suffered from haemophilia, was relatively young at the date of death and was the father of the applicant; the similarities do not end there, the applicants were all children. In two of the cases the applicant was the same age as the Appellant at the date of the father's death, an early teen. It is also evident from those decisions that the age of the applicant, the age of the deceased and the lengthy period of life expectancy which would otherwise have been enjoyed by the deceased but for the untimely death featured significantly in carrying out the assessment.

16. In the first case the applicant's father was only forty-two when he died. In the second the tribunal found that the measure of the period of time for which the applicant had lost the companionship and support of her father was actuarially just over forty years. In two of the cases the tribunal found that a close personal relationship had developed between the child and the applicant by the date of death, a relationship which, incidentally, had yet to develop in the third case where the applicant was several years younger. I infer from other findings made that the difference in ages between the applicant in that case and the other two applicants appears not to have been significant in terms of carrying out the assessment, the tribunal being satisfied that close relationship was in the process of being established and would most likely have developed further.

17. Apart from the closeness of the relationship, the relative ages of the applicant and the deceased at the date of death and life expectancies, amongst other factors which appear to have been of significance in carrying out the assessments in those cases were the immediate emotional and psychological impact of the death at a vulnerable time in the applicant's life and the continuing affect of the loss, especially during the teenage years and into early adulthood.

18. The Court is not privy to the evidence given on those applications, there may have been other factors of relevance, more or less the same or different in kind and degree, either way the Court is reliant on the transcripts alone for an understanding of the facts found, the reasoning given and the awards made.

## **Decision**

19. I have read the expert reports and materials which were made available to the Court, including the transcript of the evidence and the decision of the Tribunal. I accept the evidence of the Appellant and Ms. Campion given at the hearing of the appeal. It is accepted by the Respondent that but for the untimely death of the deceased his life expectancy was likely to have been 31.45 years. Such an estimate is not intended to be a prediction of the future, rather, taking all relevant matters into consideration it represents the life expectancy which was probable in all the circumstances; it is possible that the deceased may have died earlier or lived longer, the Court proceeds on the basis of what was probable.

20. Accordingly, accepting the agreed probable life expectancy of the deceased in this case, the Appellant has already been 25 years without the benefit of those features most closely associated with the relationship of parent and child; love, advice, support, care and companionship, the constituents of any claim for loss of society, a loss which in the Appellant's case is still ongoing and likely to continue for a further five years, a period throughout all of which the Appellant has and will be deprived of the loss of the society of her father.

21. In this case there is a particularly poignant factor which has a very definite and particular significance in terms of support, advice and comfort which the Appellant could have expected from her father arising from his own experience in having to deal with a condition with which, unfortunately, her eldest child has been diagnosed, haemophilia.

22. No one could have been but impressed by the courage and humanity of the Appellant which was apparent as she gave her evidence and the manner in which she spoke of the closeness and importance of the parental and emotional relationship which had already developed between herself and her father at the time of his death.

23. There were a number of factors at play which influenced the development of this relationship. Having been forced to cease work there was something of a parental role reversal in the home; the deceased took on the responsibility for a significant part of the domestic life of the family which included looking after the Appellant and helping her with her homework.

24. The Appellant's father was very keen that she should have the best possible education the family could afford; he fostered in his daughter his love of reading, which she shared, and provided funding so that she could attend a convent school after his death.

25. It is apparent from the materials before the Court that the deceased's health began to fail significantly in the years before he died; he and his wife were aware of the seriousness of his illness and, ultimately, that his death was imminent. He kept nothing from his daughter; instead he shared everything with her in an effort, despite her age, to prepare her for his death and the consequences of that which he perceived for the family, consequences which proved to be devastating.

26. The Appellant's relationship with her mother was far less close than that with her father; she described her mother as being rather black and white about matters in general and that she had a rather simple way of seeing things in contrast to her father whom she described as being very intelligent and emotionally mature.

27. Having observed the Appellant as she gave her evidence I am quite satisfied that the descriptions, and in particular the adjectives which she employed when describing the relationship with her mother were capable of conveying a view that she was critical of the relationship, the Appellant went out of her way to correct any such impression. There is no doubt that she loved her mother but, in terms of emotional and intellectual development, the relationship with her father was of a very different nature and on an altogether

different level.

28. Her mother, who appears to have been a vulnerable soul, dependant in many ways on her husband, was intellectually and emotionally ill equipped to deal with his awful illness and the consequences of that for her and for the family. Of all the people who knew her best, her husband undoubtedly shared and appreciated her torment and the devastation which she must have felt, as no doubt he did, at what lay in store, especially towards the end of his illness.

29. On my view of the evidence this knowledge best explains why, despite her age, the deceased appears to have gone out of his way to prepare his daughter to cope not just with his impending death but also with the domestic burden which was likely to fall upon her, and so it did. The Appellant's mother imploded physically and emotionally with the result that Appellant had to take on responsibilities for the domestic life of the family which most children of her age would expect and associate with their parents, particularly their mother. As if this burden was not heavy enough a responsibility on one so young, in large measure the responsibility of caring for her younger brother also fell on the Appellant.

30. Although she did attend a convent school in compliance with her father's wish, that did not last; she asked to leave and go to a public school nearby for reasons which she explained, a decision which she regrets to this day and which she feels certain would not have occurred had her father lived. She missed him desperately throughout her teenage years, a loss which was accentuated by anniversaries and events such as Christmas, birthdays and the other common milestones in life; her junior certificate, leaving certificate and, perhaps most importantly of all, her wedding day. She described how much she missed her father's presence at these events and described in graphic terms how much she would have loved her father to have given her away at her wedding, a function happily performed by her younger brother.

31. Apart from these and other events, the undoubted support which she would most likely have received from a man whom she considered to be her mentor, her friend and her advisor, was lost forever, a loss which occurred at a moment in a girl's life when she is most vulnerable, on the cusp of becoming a woman, when the love and companionship of her father would have mattered most to her.

32. In the circumstances of this case it is hard to imagine a closer relationship between a father and his daughter, a relationship which I have no doubt would have endured throughout her teenage years, into adult life and parenthood.

33. Although categorising the relationship between father and daughter as 'special' would strictly be correct, such fails to adequately encapsulate the essence of their relationship which was almost unique; whatever terminology might best do so, I have no doubt but that by the date of death they had developed an immensely strong emotional and intellectual bond which was likely to have persisted during their joint lives.

34. Acknowledging that money alone can never adequately compensate the Appellant for the loss of her father's society; nevertheless, this is the only remedy which the law provides. Accordingly, for the reasons given and upon the conclusions reached the Court considers that a fair and reasonable sum to compensate the Appellant commensurate with the loss of her father's society which she has suffered to date and will continue to suffer into the future is €120,000. The Court will allow the Appeal and vary the award of the Tribunal accordingly. I will discuss with counsel the final form of the orders to be made.