

THE HIGH COURT

2004 6 CT

IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 5(15) OF THE HEPATITIS C TRIBUNAL ACTS 1997 AND 2002

AND IN THE MATTER OF A HEARING AND DECISION AND AWARD MADE BY THE TRIBUNAL TO R.C., J.C., B.C., S.C., T.C., E.B., J.C., A.C., T.C., S.C., M.C., AND T.C. ON THE 17TH DAY OF DECEMBER, 2003

AND IN THE MATTER OF AN APPEAL OF THE CLAIMANTS, RC, JC, BC, SC. TC, EB, JC, AC, TC, SC, MC AND TC

BETWEEN

R.C., J.C., B.C., S.C., T.C., E.B.,

J.C., A.C., T.C., S.C.,

M.C. AND T.C.

APPLICANTS

AND

THE MINISTER FOR HEALTH AND CHILDREN

RESPONDENT

AND

THE HEPATITIS C AND HIV COMPENSATION TRIBUNAL,

KW, KC AND SC

NOTICE PARTIES

JUDGMENT of Mr. Justice Hanna delivered on the 5th day of March, 2010

1. This matter comes before me by way of a motion to re-enter the above entitled proceedings with a view to determining the issue of whether or not interest is payable on foot of an award by the Hepatitis C and HIV Compensation Tribunal, made on 17th December, 2003. The motion has been brought by the second named and third named notice parties who were the recipients of the said award. Although the title to these proceedings is somewhat cumbersome, the issues involved are reasonably straightforward. This in no way understates the personal family tragedy which gave rise to these proceedings in the first instance.

2. The second named and third named notice parties are the wife and daughter, respectively, of one N.C. (deceased). The deceased was a haemophiliac. He contracted Hepatitis C and HIV from a blood transfusion and other blood components which were administered to him within the State. He was diagnosed as suffering from HIV in or around 1985. His Hepatitis C diagnosis was made in 1991, and he died on 18th January, 1994. He was survived by his wife and daughter and various other siblings.

3. An application was brought to the Hepatitis C Compensation Tribunal under the Hepatitis C Compensation Tribunal Act 1997, as amended. Both widow and daughter received substantial awards from the Tribunal under the headings of 'General Damages', 'Damages for Mental Distress', 'Payment from the Reparation Fund' and were awarded their costs. In the case of the second named notice party, she was awarded a total sum of €161,180.40, and the third named notice party was awarded €185,060.40. As is apparent, there were a number of other statutory dependents whose initials appear in the title to these proceedings. K.W. and K.C. were content to accept the Tribunal award and notified the Compensation Tribunal accordingly. The other dependents were not satisfied with the award, and proceeded to appeal same. Messrs. Ivor Fitzpatrick, solicitors, lodged appeal papers on 4th February, 2004. One of the siblings, S.C., changed tack and decided to accept the award of the Tribunal.

4. An issue then arose as to whether dissatisfied claimants, under the statutory scheme, could appeal an award to the High Court, where other claimants were satisfied to accept and abide by their outcomes. Could the Tribunal proceed to pay out an award to those parties who were happy to accept same, while, at the same time, deal with an appeal from a number of other parties who were not satisfied with their outcome. An obvious logistical problem arose. The awards in this instant case to the other parties were based on an apportionment. If that apportionment was disturbed on appeal to the detriment of K.W. and K.C. (and, presumably, S.C.), how could the Tribunal go about recovering the balance from the latter named parties? At all material times, the Tribunal was ready, willing and able to discharge the awards in favour of the second named and third named notice parties, but felt it could not do so.

5. Subsequent to the appeal brought by the dissatisfied siblings on 13th February, 2004, the respondent submitted to an injunction restraining payment out of compensation, which said injunction was to continue until 16th February, 2004. The order was renewed on 18th February, 2004, and the injunction continued until 26th February, 2004, save as to Special Damages. There, matters appear to have gone to sleep somewhat, and nothing further was heard of the injunctive relief. Accordingly, one can only assume that the injunction became spent and was no longer in force as of 26th February, 2004. It is worthy of note that a number of parties were added in on 18th February, 2004. In addition, the order is directed at the first named notice party, namely, the Hepatitis C and HIV Compensation Tribunal.

6. During the course of the hearing on 18th February, 2004, Mr. Colm MacEoghaigh acting for the respondent gave an undertaking as to damages. This undertaking was referable, according to the transcript of the proceedings, to interest payable on the sum awarded but which could not be paid out. However, the undertaking which was freely given by Mr. MacEochaidh on instructions was to persist for as long as the injunction was to continue. As noted above, the injunction seems to have petered out at the end of February 2004. Quite what was the reason for having such a temporarily limited injunction in the circumstances of this case is unclear to me. However, I am unable to go behind the order of O'Neill J. and I have not been invited to do so. Accordingly, on that front, it seems to me that any undertaking as to damages (to include interest) became spent when the order became spent.

7. Matters then proceeded to a fully fledged legal debate as to whether or not, in this case, dissatisfied claimants could proceed to appeal where satisfied claimants wished to receive their award. In a detailed judgment, O'Neill J. found in favour of the proposition that the appeals could proceed. This, in turn, was appealed to the Supreme Court which by a majority of two to one, upheld the views of O'Neill J. In the meantime, I should note that the second and third named notice parties ceased to be represented by Messrs. Ivor Fitzpatrick, solicitors, and were represented by Messrs. Tom Conlon, solicitors.

8. After this prolonged and eventful journey, the appeal finally came on before me, at which stage those parties who had previously declared themselves dissatisfied with the award, indicated that they did not wish to proceed with the appeal. Matters were then fully resolved, save and except the question of interest in respect of which liberty was granted to make an application to this court in the absence, presumably, of agreement being reached between the parties. That is the issue which now concerns us.

9. The second named and third named applicants seek interest on the awards made to them on 17th December, 2003, on four grounds, to one of which I have already referred. Firstly, they seek interest on the awards, pursuant to s. 26 of the Debtors (Ireland) Act 1840. This is the well known interest provision which attaches to unpaid or unsatisfied monetary court awards and is currently set at 8% per annum. This is not a discretionary matter for the court. It affixes, as a matter of course, to every monetary judgment. The second leg of the said notice parties' claim is to be found in s. 22 of the Courts Act 1981, which provides:

"(1) Where in any proceedings a court orders the payment of a sum of money (which expression includes in this section damages), the judge concerned may, if he thinks fit, also order the payment by the person of interest at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act, 1840, on the whole or any part of the sum in respect of the whole or any part of the period between the date when the cause of action accrued and the date of the judgment.

(2) Nothing in subsection (1) of this section -

(a) shall authorise the giving of interest on interest, or

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise, or

(c) shall affect any damages recoverable for the dishonour of a bill of exchange, or

(d) shall authorise the giving of interest in respect of a period before the passing of this Act, or

(e) shall authorise the giving of interest on damages for personal injuries, or in respect of a person's death, in so far as the damages are in respect of -

(i) any loss occurring after the date of the judgment for the damages, or

(ii) any loss (not being pecuniary loss) occurring between the date when the cause of action to which the damages relate accrued and the date of the said judgment.

(3) In this section -

'damages for personal injuries' includes damages for personal injuries out of a contract; 'pecuniary loss' means loss in money or money's worth, whether by parting with what one has or by not getting what one might get; 'personal injuries' includes any disease and impairment of a person's physical or mental condition; 'proceedings' includes proceedings to which the State or a State authority (within the meaning of the Act of 1961) is a party."

This is a discretionary matter and can result in interest on an award being imposed for any period commencing at the accrual of the cause of action. Thirdly, the second and third named notice parties point to the undertaking as to interest given by Mr. MacEoghaigh already referred to in which, in my view, became spent when the injunction ceased to have effect. Finally, on behalf of the second named and third named notice parties, Mr. Conlon B.L. raised an issue of estoppel. This arises from correspondence in the wake of the withdrawal of the appeals on 3rd March, 2009. When the appeals were withdrawn, the said respondents' present solicitors, Messrs. Tom Conlon, solicitors, were in communication with two bodies. Firstly, they wrote to the Secretary of the Hepatitis C and HIV Compensation Tribunal, seeking payment. In similar vein, they communicated with Mr. Barry Ryan of the Chief State Solicitor's Office who was representing the interests of the respondent, the Minister for Health and Children. This is important because of the independent status of the Compensation Tribunal. In the letter from the Chief State Solicitor's office, the following paragraph appears:-

"Please find enclosed copy perfected order dated 10th March, 2009, in the above case. This can be forwarded to the Compensation Tribunal to secure the release of any outstanding monies owed to your clients together with Courts Acts interest which has accrued on the original awards of the Tribunal on 17th December, 2008."

It is contended on behalf of the respondent and the Compensation Tribunal that this is not binding on the Compensation Tribunal which is, as I have noted, an independent body and which is the body charged with payment of the compensation awarded.

10. The nature and function of the Hepatitis C and HIV Compensation Tribunal, its statutory background and procedures

have been fully ventilated in a number of cases and it is not my intention to add to this formidable *corpus* of jurisprudence. Suffice to say, the Tribunal is an independent body set up for the purpose of compensating those persons and persons connected with them who have been infected in the State as a result of contaminated blood or blood products. It provides an alternative mechanism for compensating such victims as opposed to lengthy and complicated court proceedings and has been availed of by countless numbers of persons whose lives have been adversely affected and, indeed, ended in some cases as a consequence of being infected or dealing with a loved one who has so suffered.

11. When a person brings a claim before the Tribunal, there is no "opponent", as such. Once the award is made, an applicant may accept it or appeal to this court. Notice of appeal is served on the respondent who is represented before this court and who, where appropriate and necessary, gives challenge, to the applicant's claim.

12. The courts have continually pointed out (this court being no exception) that the Tribunal is a creature of statute. Its procedures and the scope and nature of its awards must be contained within the four walls of the statutory framework which gives it life and effect. We are here concerned with an award of a Tribunal and this is governed by s. 5(1) of the Hepatitis Compensation Tribunal Act 1997:-

"(1) An award of the Tribunal to a claimant shall be made on the same basis as an award of the High Court calculated by reference to the principles which govern the measure of damages in the law of tort and any relevant statutory provisions (including Part IV of the Civil Liability Act, 1961), and including, subject to *section 11* consideration of an award on the basis which reflects the principles of aggravated or exemplary damages."

13. The interpretation of this subsection of the 1997 Act has already been the subject of consideration by the Supreme Court in *M.O.C. v. The Minister for Health* [2002] 1 I.R. 234. The Supreme Court had to consider whether the discretionary power as to award interests contained in s. 22 of the Courts Act 1981 were captured by the framework established under s. 5(1) of the 1997 Act. At page 239 of her judgment, Denham J. says as follows:-

"It is this section which falls to be construed. It is well established that effect should be given to clear and unambiguous words. The words of the statute best declare the purpose of the Act.

I am satisfied that the words of s. 5(1) are clear and unambiguous. I shall consider them word by word. An award is to be "... on the same basis as the High Court ...". Clearly this places the awards of the Tribunal on the same basis as High Court awards. Awards of the Tribunal are to be similar to those of the High Court. The words "... calculated by reference to the principles which govern the measure of damages in the law of tort" explain the fundamental principles to apply. The amount of "compensation" is to be "calculated by reference to the principles which govern the measure of damages in the law of tort". There then follows the word "and". I am satisfied that it is a disjunctive term. The section sets out the full parameters of the jurisdiction. The award is to be calculated not only by reference to the principles which govern the measure of damages in the law of tort but also by reference to "... any relevant statutory provision ...". The remainder of the wording of the subsection specifies that these "relevant statutory provisions" are to include Part IV of the Civil Liability Act, 1961. It also specifies that the Tribunal may consider (as may the High Court) the making of an award which reflects the principles of aggravated or exemplary damages.

The wording of the subsection sets out in some detail the power of the Tribunal to make awards on the same basis as an award of the High Court. "... [A]ny relevant statutes ..." are to be applied to the calculation of these awards. Clearly s. 22 of the Courts Act, 1981, is a relevant statutory provision in this sense. On a literal interpretation, s. 5(1) of the Hepatitis C Compensation Tribunal Act, 1997, vests in the Hepatitis C Tribunal the jurisdiction under s. 22 of the Courts Act, 1981. Consequently, it is not necessary to take any further approach."

14. Even though not required to do so in the circumstances, Denham J. goes on to apply a purposive approach in interpreting the subsection.

"Applying a purposive interpretation to s. 5(1) of the Hepatitis C Compensation Tribunal Act, 1997, it is clear that the fundamental purpose of the Act is to compensate the claimants. Further, it is intended that the Tribunal shall make these awards and that an award of the Tribunal shall be made on the same basis as an award of the High Court, calculated by reference to any relevant statutory provisions. Relevant statutory provisions include the Courts Act, 1981. Consequently it follows that the purpose and intent of the Act is to put the Tribunal in the same position as the High Court in making awards. It is implicit in the machinery for the making of the award, for its computation on normal tort principles and by the choice afforded to a claimant to proceed with any right of action (s. 5, sub-ss. 9 to 14) that, so far as is reasonably possible and certainly so far as amount is concerned, a Tribunal award should be comparable with a judgment of the High Court. To exclude the right in appropriate cases to apply for interest would be to the disadvantage of the Tribunal and would conflict with the apparent intention of the Act. That being so, the Tribunal may make an order for interest pursuant to s. 22 of the Courts Act, 1981. Therefore, the High Court, on appeal from the Tribunal, may if it thinks fit, make an order for interest in accordance with the terms of s. 22 of the Courts Act, 1981 as it has the same jurisdiction as the Tribunal. The making of such an order for interest is, of course, discretionary."

Decision

15. In my view, the jurisdiction imposed by s. 5(1) of the 1997 Act on the Compensation Tribunal and, on appeal from that Tribunal, on this court addresses the issue of the measurement of damages. It gives power to award compensation and establishes the rubrics whereby that compensation is to be assessed. As is clear from *M.O.C. v. The Minister for Health*, the awarding of interest under s. 22 of the 1981 Act would fall within its parameters. Its invocation would undoubtedly affect the measurement of the quantum of damages, quite possibly in a very substantial way.

16. In the instant case, no application was made (as it could have been) to the Tribunal for interest under s. 22. As such, no "decision" was made by the Tribunal in 2003. In the absence of such a decision be it either to award or to refuse to award interest, I am of the view that I have no jurisdiction to entertain this aspect of the second named and third named notice parties' case.

17. Although addressing the issue of the measurement of damages, the 1997 Act is silent as regards the status of an award of the Tribunal as regards interest pursuant to s. 27 of the Debtors Ireland Act, 1840. That provision extended the recovery of interest to judgment debts in the Courts of Equity in an era preceding the Judicature Act, 1877 which merged the Courts of Common Law and Equity. Subsequently by specific legislation this interest provision was extended to the Superior Courts upon their establishment in this jurisdiction. This, in turn, was extended by legislation to the Circuit Court (s. 47(1) of the Courts (Supplemental Provisions) Act, 1961) and the District Court as recently as 1981 (s. 19(2) of the Courts Act, 1981). If it were the intention of the Oireachtas that Tribunal awards were to bear such interest the 1997 Act would have said so. It does not. In my view, were I to hold that the award would attract such interest I would be going outside the parameters of the jurisdiction given to the Tribunal and to this Court and, in effect, purporting to amend the 1997 Act which I may not do. In the absence of specific statutory authority to do so, I must find that the second and third named notice parties are not entitled to interest under this heading.

18. As noted above, the Compensation Tribunal is a wholly independent body. It has been set up by the Oireachtas to channel compensation to the various victims of infected blood and blood products. Although funded by the Minister for Health and Children, it is separate and distinct from the respondent. The Minister is not the paying party. The Compensation Tribunal is. Whereas the Minister provides the budget it is the Tribunal which distributes same. Had this matter never been appealed, the Minister would have no involvement apart, as I have said, from providing the year on year funds necessary for the Compensation Tribunal to do its work.

19. After this matter resolved early in 2009, and in recognition of the separate status of the respondent and the first notice party, Messrs. Conlon, Solicitors, very properly, corresponded separately with the Compensation Tribunal and the Chief State Solicitor's office given the involvement of the Minister in the appeal. However, one is to interpret the letter of the Chief State Solicitor's office and its observations on the question of interest, if binding, it was binding only on the Minister rather than on the paying party namely the Compensation the paying party, the Hepatitis C Tribunal. It was a matter entirely for the Tribunal to decide whether or not it would accede to the request for interest. In any event, the undertaking was given pending the outcome of the litigation concerning the rights of the dissatisfied siblings to appeal. That litigation ended in the Supreme Court with success for them. The second named and third named notice parties application must fail in this ground also in my view.