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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

WILLIAM JAMES CAMPBELL
AS PERSONAL REPRESENTATIVE OF THE ESTATE OF
PATRICK CAMPBELL (DECEASED)

Plaintiff

and

MINISTRY OF DEFENCE

Defendant

McALINDEN J

Introduction

[1] The Deceased, was born on 6th July, 1919, and died on 17th January, 1985, with the cause of death being stated to be cachexia due to disseminated carcinoma, primary unknown. His death was wholly unrelated to the present proceedings. It would appear that at some point in time, at least a year before his death, he received a diagnosis of cancer but told his family that he had been given the all clear. He did not wish his family to be upset and made no complaint at that time. For the last year of his life he was largely confined to bed and slowly wasted away. His son who is the personal representative of the Deceased's estate, claims damages against the Defendant in respect of injuries suffered by the Deceased when, at the age of 52, he was shot by a soldier at the rear of Block 1 of the Rossville Flats at Joseph Place, Rossville Street, Londonderry, on the afternoon of Sunday 30th January, 1972.

[2] The Deceased was a married man and the father of nine children, all living at home, then aged between 8 and 21 years. Five of the children were under the age of 16 at that time. Three of the children are now also deceased. From the age of 14, the Deceased had been in regular employment. He worked as a casual tonnage docker

for Pinkertons and he was a red button docker with the result that he got first refusal in relation to the unloading of cargo ships that came into the docks. This was by all accounts very heavy manual work. The Deceased regularly had to shovel out coal from the holds of cargo ships. There was a certain element of insecurity in this form of employment in that there was no guarantee of work and payment was strictly contingent on work being available. It would seem that the use of zero hours contracts is not a new phenomenon after all. Rather their use simply represents the re-emergence in a different guise of a form of employment practice that was until recently regarded as having been consigned to the history books relating to a much less caring era of industrial relations.

[3] As in other cases arising out of the events of Bloody Sunday in which I have been required to deliver judgment, I do not intend to set out in detail the events of that fateful Sunday afternoon in the lead up to the shooting of the Deceased on account of the way in which the Defendant has chosen to meet and deal with this litigation. The Defence in this case dated 21st January, 2016, admits that the Deceased was shot and wounded by the army at or about Rossville flats. The findings of the Saville Inquiry which are not disputed by the Defendant confirm that the Deceased was trying to run to a place of safety when he was shot in the lower back from relatively close range by a soldier using a high velocity rifle. Although the soldier, Lance Corporal F, made the case that he only engaged armed gunmen at this location and maintained this account at the Widgery Inquiry, it is clear that the Defendant does not seek to actively challenge the case made by the Plaintiff in this Action that the Deceased was an innocent victim who was shot in the lower back without lawful reason, justification or excuse.

[4] The Deceased died long before the setting up of the Saville Inquiry or the publication of the report which exonerated him. He did not live to see that righting by the State of a grievous wrong. The cloud of imputed culpability would, at least to some extent, have remained over him for the remainder of his days. However, no evidence was given which would allow the Court to conclude that he was actively suspected by the police of being involved in any wrongdoing on the day in question. It is clear that he was a man of good character, with no criminal convictions and no links to any political or paramilitary organisation. It would appear that, in common with very many others that afternoon, he attended the march in support of the idea that a society should be based upon fairness, justice and equality for all irrespective of background or creed and any claim that he was anything other than an innocent demonstrator was a fabrication constructed and perpetuated by the perpetrator or perpetrators of a wrong in an attempt to avoid personal or collective responsibility for that wrong.

[5] As I have indicated above, the Deceased was struck by a single high velocity round fired from relatively close range. It would seem from the sparse medical evidence that is still available after the passage of such a lengthy period of time that the Deceased was struck in the lower left side of the back in the region of the upper

buttock over the iliac bone in the vicinity of the left sacro-iliac joint. The bullet passed through the iliac bone and thereafter caused damage to the internal organs. The bullet caused a perforation of the sigmoid colon, resulting in the release of faeces into the pelvic cavity. The bullet also perforated the bladder causing the discharge of blood and urine into the pelvic cavity. The left ureter was also damaged although it is possible that the damage to the ureter actually occurred during surgery performed later that day. Initial x-rays taken at Altnagelvin Area Hospital revealed that the bullet which had caused this damage was retained within the abdomen. It was never retrieved. From the fact that there was no exit wound in this case, the Court can safely conclude that the projectile lost all its remaining kinetic energy upon striking the Deceased. Since this was a high velocity projectile fired from relatively close range, the Court can also safely conclude that either a very considerable amount of kinetic energy was absorbed by the body of the Deceased or the projectile had lost a significant amount of kinetic energy before it struck the Deceased by means of an intermediate penetration or deflection. There is no evidence to support this second proposition and the shape and size of the entry wound is not consistent with the proposition that the projectile was deformed or destabilised by reason of intermediate penetration or deflection.

[6] Having been shot in the lower back, the Deceased fell to his knees. After some time, he was helped to a car and it was intended that he should be taken to Altnagelvin Area Hospital, via the Foyle Bridge. The vehicle was stopped on the Foyle Bridge by the army. The Deceased was removed from the vehicle. He was then examined by an army doctor who then arranged for him to be taken to the hospital in an army vehicle. The stopping of the vehicle on the Foyle Bridge and the removal of the Deceased from the vehicle has been cited as typifying the attitude of the army to those shot that day. There is no specific allegation of false imprisonment or wrongful arrest in the Amended Statement of Claim in this case. There is no evidence about the duration of the delay in the Deceased being admitted to hospital occasioned by the vehicle being stopped on the bridge or of any adverse effects upon the Deceased occasioned by that delay. However, the Court can readily accept that from the perspective of an innocent man who has just been shot and seriously injured by a soldier, the stopping of the vehicle on the bridge and the removal of the Deceased from the vehicle must have been a distressing and upsetting event which the Defendant has not sought to explain, justify or excuse.

[7] Following the arrival of the Deceased at Altnagelvin Area Hospital, the Deceased was operated on by Mr H M Bennett, FRCS, later that evening. It is appropriate for the Court to recognise the skill, expertise and dedication of this surgeon who in the most difficult of circumstances, successfully performed complex surgery which would now be undertaken by a team of surgeons with a special interest in bowel and urological surgery. He repaired the bowel and fashioned a temporary colostomy. He repaired the bladder. He re-implanted the left ureter in the bladder. By any standards, the Deceased had suffered severe and life-threatening injuries and even by today's standards, the treatment he received at the hands of

Mr Bennett, FRCS, was of the highest quality. He is a credit to his profession and a reminder to the present generation that all through the darkest days of our troubled past, dedicated and skilled doctors, nurses and ambulance crews worked tirelessly and fearlessly to provide the very best of care to those injured and maimed. Many more lives would have been lost but for their ceaseless efforts.

[8] The Deceased remained in hospital until 18th March, 1972. During that prolonged stay in hospital he underwent a second operation to reverse the colostomy and restore the integrity of the bowel. This operation, which is described by Mr Bennett, FRCS, as a difficult operation, was performed on 6th March, 1972. Following his release from hospital, the Deceased's mobility was significantly impaired and as a result, a bed was brought downstairs to obviate the need for him to negotiate the stairs in his home.

[9] His recovery was punctuated by a further admission to hospital on 30th March, 1972 with a significant urinary tract infection. He developed signs of sepsis and he was admitted for antibiotic therapy for a period of 11 days, being fit for discharge on 10th April, 1972. Despite this history of prolonged hospital treatment and care, I readily accept that the Deceased tried to maintain a jovial and upbeat demeanour as is described by his son with support for this witness's evidence being found in the statement of Detective Sergeant Cudmore dated 6th February, 1972. I also readily accept that the Deceased was not a complainer by nature and gave the appearance to some of being an inarticulate individual. I do, however, accept that the medical records, such as they are, do contain some references to complaints being made by the Deceased and I accept that the records, such as they are, do generally accurately reflect the level of complaint made by the Deceased. However, that does not necessarily mean that the level of complaint made to medical professionals fully and comprehensively reflected the actual level of symptomology experienced by the Deceased as it is clear that he was not a man to make a meal of things.

[10] None of the Deceased's General Practitioner's notes and records are available for consideration by the Court. Some of the Altnagelvin Area Hospital notes and records are available and these give details of the various post-operative reviews which the Deceased attended up to late November, 1972. It is important to note that despite the best efforts of Mr Bennett, FRCS, some stricture formation developed at the site of the anastomosis between the ureter and the bladder. This led to the development of back pressure in the ureter and kidney. This was commented on but there is no record of any long-term urological follow up. In terms of bowel complaints, there is a note in April, 1972 containing a reference to constipation. By June, 1972, the complaints recorded were of vague weakness and soreness in the lower back and some numbness in this area. X-rays of the lumbar spine and pelvis were arranged. These revealed degenerative changes in the L3, L4 and L5 vertebrae. A "Rembelt" which is an elasticated, fabric, lower lumbar support with embedded, vertically orientated, flattened and concave metal strips, positioned to lie on each

side of the spine, was provided for use by the Deceased. A further review took place on 22nd August, 1972 when it was noted that the Deceased was still using the "Rembelt". It was recorded that most of the Deceased's symptoms had disappeared and he was advised to only use the "Rembelt" during the day for a further three months and it was hoped that this would bring about a resolution of any persisting back pain.

[11] The last medical record which is available is the record relating to the final review of the Deceased at Altnagelvin Area Hospital on 21st November, 1972. At that time, it is recorded that the Deceased had no complaints and he was discharged from active follow up. His General Practitioner was advised to refer the Deceased back to hospital if he should develop further complaints.

[12] In the prosecution of this Action, the Plaintiff has obtained independent expert medical reports from a number of sources, all of whom have been compelled to provide opinions based on the contents of the limited medical notes and records that remain in existence and the recollections of the Plaintiff who was a young man at the time. Reports were obtained from Mr Simpson, FRCS, and Mr McCormack, Consultant Orthopaedic Surgeons, Mr Mzimba, Consultant Surgeon, Mr Fogarty, Consultant Urologist, and Dr Tanya Kane, Consultant Psychiatrist. Oral evidence was given by Mr McCormack, FRCS. The Defendant also sought input from independent medical expertise and reports from Mr Mackle, Consultant Surgeon, and Dr Sharkey, Consultant Psychiatrist, were produced to the Court. Mr Mackle, FRCS, and Dr Sharkey also give oral evidence at the hearing.

[13] I do not intend to unduly lengthen this judgment by laboriously setting out the conclusions contained in each of these various reports, as supplemented in the oral evidence of Mr McCormack, Mr Mackle and Dr Sharkey. The medical issues in the case are quite straightforward. In essence, it is the Plaintiff's case that the Deceased never really recovered from his injuries. This is illustrated by the fact that he wore his "Rembelt" for the rest of his days. He developed urinary frequency, constipation and back pain and his level and intensity of physical symptoms were such that he was rendered unfit to return to work as a docker. This disability resulting in an inability to return to work precipitated the onset of a depressive illness which persisted for the remainder of his life and manifested itself in social isolation, insularity, loss of interest, sleep disturbance, weight loss and the development of the harmful use of alcohol with evidence being given that in the years following this incident the Deceased engaged in roughly biannual binge drinking with these episodes lasting a number of days at a time and being followed up with signs and expressions of deep embarrassment and regret. The Plaintiff's case is that as a result of this inability to return to remunerative employment, the Deceased suffered a significant loss of income which continued up until such times as he would have been rendered unfit for work due to the increasingly debilitating effects of cancer. Evidence was given by the Plaintiff that the Deceased did attempt to return to work some two years after this incident but he was unable to cope with

the heavy nature of the work and left after a number of weeks. He never worked again.

[14] The Defendant's case is that the hospital notes and records clearly show that the Deceased was to all intents and purposes symptom free by November, 1972. He was subsequently passed fit for work some two years after the incident. There was no physical reason why he did not remain at work from that time on. The sudden and wholly unexpected death of his wife in 1973 as the result of a heart attack readily and obviously explains the development of any depressive condition or resort by the Deceased to alcohol. His poor work record thereafter relates to these difficulties which in turn do not arise out of the shooting incident. Any symptoms of nocturnal urinary frequency is readily explained by reason of the likely onset of age related benign prostatic hyperplasia. Constipation could well be related to the development of diverticulosis in the colon.

[15] It should be remembered that none of these experts reported in this case until many years after the death of the Deceased. The adoption of these significantly differing positions by the experts retained by both sides in this case is at least partially explicable by reason of the dearth of contemporaneous medical evidence available for their review and the limited but apparently categorical information contained in the notes and records that are available. The role of the Court is to carefully consider the entirety of the evidence, giving due weight to the various strands of evidence presented to the Court in order to come to a conclusion on the balance of probabilities as to the nature, extent, sequelae and consequences in the short, medium and long-term of the gunshot injuries suffered by the Deceased.

[16] The Plaintiff's experts have all proffered the opinion that the injuries suffered by the Deceased would have given rise to levels of symptoms and disability which would have resulted in him being unable to return to the heavy manual work involved in employment as a tonnage docker. This was a high velocity round fired from relatively close range so that it directly struck the Deceased in the lower back. The bullet must have lost all its kinetic energy in the body of the Deceased because it did not exit the body and this sudden transfer of energy would have caused significant damage to the bony and soft tissues. This theory is backed up by the fact that the Deceased never did return to work as a docker and he wore a "Rembelt" for the rest of his days, indicating that he experienced significant and persisting back symptomology.

[17] The difficulty with this theory is that there is no radiological evidence of any spinal disruption, shattering of the iliac bone or disruption of the sacro-iliac joint. Secondly, there is no evidence of severe soft tissue damage in the form of tissue necrosis or haematoma formation. Thirdly, there are the various statements recorded in the surviving medical notes and records to the effect that the Deceased was well improved by August, 1972 and was virtually complaint free by November, 1972. Fourthly, the Deceased was apparently passed as fit to return to work some two

years after the shooting. In order to be able to accept this theory as valid, the Court would be required to either ignore or disregard the contents of the contemporaneous medical records or to positively conclude that the Deceased, when informing the doctors about his level of complaint in August and November, 1972, was, for some reason, deliberately understating to a significant extent, the level of symptoms actually experienced by him.

[18] Mr Mackle, FRCS, on behalf of the Defendant, positively averred that the nature and extent of the damage to the Deceased's internal organs was not such as would be expected to give rise to significant long-term symptomology which would prevent the Deceased from working. I have to accept his conclusions in this regard. However, Mr Mackle's expertise does not extend to orthopaedic injuries and it was the clear and firmly expressed opinion of Mr McCormack, FRCS, a respected and highly experienced Consultant Orthopaedic and Trauma Surgeon, that the trauma suffered by the Defendant as a result of a high velocity round penetrating the iliac bone would have been sufficiently serious as to give rise to long-term symptomology of such severity as to prevent the Deceased from engaging in heavy manual work as a docker. Having carefully assessed Mr McCormack's evidence, I am satisfied as to its veracity and correctness. I conclude that the relevant entries in the notes and records can be explained on the basis that so long as the Deceased did not stress his lower back to any real extent, his discomfort was something that did not give him cause to express significant complaint. He had not attempted to return to work when he attended the review clinics in August and November, 1972. However, when he attempted to stress test his lower back by engaging in heavy manual work as a tonnage docker some two years after his injury, the level of symptomology resulting from this additional stress must have been such as to prevent him working in that physically demanding role. He had worked from the age of 14 in that role. It was his life. I am convinced that he would not have given up that job unless compelled to do so by reason of symptomology directly attributable to and resulting from the gunshot injuries sustained on 30th January, 1972.

[19] In relation to the nature and extent of the psychological injury suffered by the Deceased, I am satisfied that initially, the Deceased's jovial disposition protected him, at least to some extent, from the onset of depression. However, the sudden death of his wife and the realisation that he would never get back to work as a docker took their toll on the psychological wellbeing of the Deceased and resulted in the development of a depressive illness which became a chronic condition. He lost his wife. He was left with 9 children. He had to give up his work, a job which no doubt also provided him with opportunities for valuable social interaction. The cause of his having to give up his work was the symptoms resulting from gunshot injuries. The gunshot injuries were inflicted in the most distressing and persistently disputed circumstances. It is entirely understandable that a man of reasonable mental fortitude would crumble under the weight of these stresses and engage in the harmful use of alcohol, with bouts of drinking being followed by periods of intense embarrassment and regret. Having carefully considered all the available evidence in

this case, I am confident that I have accurately assessed and described the nature, extent, duration and aetiology of the psychiatric injury suffered in this case.

[20] Turning now to the financial loss aspect in this case. This claim consists of a claim for loss of earnings, a claim for loss of services and a claim for interest on past losses. Both parties adduced evidence from experienced, reputable and highly respected Forensic Accountants. Mrs Beatty gave evidence for the Plaintiff and Ms Niblock gave evidence on behalf of the Defendant. I am satisfied that both witnesses were doing their very best with the very limited information available to provide an accurate assessment of the nature and extent of the special loss claim in this case to the Court. Having considered their evidence very carefully, I am able to use and assimilate that evidence and apply it to the facts of the case, having regard to the conclusions and determinations I have reached on the nature, extent, duration and aetiology of the physical and psychiatric injuries suffered in this case.

[21] I approach the calculation of the loss of earnings claim on the following basis. The evidence of the forensic accountants convinces me that the appropriate multiplicand is derived from skill level one earnings. The appropriate multiplier is derived from the period between date of injury up to the likely date of incapacity resulting from the development of cancer. An Ogden derived and extrapolated discount figure should be applied to deal with contingencies. The past cannot be plotted with certainty in this case. It is reasonable to assume that the generally adverse economic conditions prevailing in Northern Ireland during the relevant period combined with the impact of the troubles on the economy particularly in the north west would have deleteriously impacted upon the Deceased's employment prospects as a casual tonnage docker. The Ogden tables suggest a 19% discount for a 52 year old male at the present time in the present economic climate prevailing in the UK. I am convinced that it is appropriate to apply a much higher discount to take into account the economic uncertainties which I am satisfied clearly existed in this case. I also must take into account that the death of the Deceased's wife clearly contributed to the development of a depressive illness which manifested itself in the harmful use of alcohol and this even in the absence of the events of Bloody Sunday probably would have impacted upon the Deceased's earning capacity. I conclude that it is appropriate in the circumstances to apply a discount of 60% and this gives rise to a claim for loss of earnings of £9,120 with interest of £27,428 giving a total loss of earnings claim of £36,548.00.

[22] In relation to the claim for loss of services, I bear in mind that the family resided in publicly owned and maintained housing and that maintenance and repair work would have been the responsibility of the public landlord. However, the evidence was that the Deceased, prior to his injury would have engaged in gardening work and painting and decorating. It is important that any annual sum awarded for past loss of services not only fairly reflects the nature and extent of the services which would otherwise have been provided but for incapacity but also sits comfortably with and does not appear out of all proportion to the likely annual

amount representing skill level one earnings during the same period. In the circumstances, I am satisfied that a total sum of £1,500 should be awarded for loss of services in this case inclusive of interest. Therefore, the special loss award in this case is set at £38,048.

[23] In relation to the claim for general damages for pain, suffering and loss of amenity, I am grateful to both experienced Senior Counsel for their submissions on the appropriate level of damages, and I pay due regard to the guidance contained in the recently published fifth edition of the Green Book produced by the Judicial Studies Board for Northern Ireland under the chairmanship of Stephens LJ. The Deceased suffered a life-threatening injury. This was a bony pelvic injury, an injury to the sigmoid colon, an injury to the bladder and an injury to the left ureter. A sub-umbilical laparotomy was performed and a temporary colostomy was fashioned. A subsequent difficult reversal of this colostomy was performed. The Deceased suffered an episode of sepsis requiring another admission to hospital. The level of persisting symptomology which was evoked when heavy manual labour was attempted was such that he was unable to maintain that form of employment. The appropriate level of general damages for these physical injuries is the sum of £80,000.

[24] In addition to the physical injuries suffered by the Deceased, I am satisfied that it is appropriate to make an award in respect of the psychiatric injury suffered by the Deceased. In making such an award, I am acutely aware of the fact that the sudden death of the Deceased's wife in 1973 materially contributed to the development and continuance of the depressive illness suffered by the Deceased. The injury could reasonably be described as moderate psychiatric damage or possibly moderately severe psychiatric damage. I consider that it is unlikely that the events of Bloody Sunday contributed more than 50% to the development and continuance of this injury. In the circumstances, I consider that the appropriate award is the sum of £20,000 for this aspect of the case.

[25] In my earlier judgments arising out of the events of Bloody Sunday I have provided clear and comprehensive guidance on the principles applicable to the awarding of aggravated and exemplary damages. I do not propose to further lengthen this judgment by repeating what I said in those judgments. The two basic preconditions for an award of aggravated damages are:

- (1) exceptional or contumelious conduct or motive on the part of a defendant in committing the wrong, or, in certain circumstances, subsequent to the wrong; and
- (2) mental distress sustained by the Plaintiff as a result.

[26] In examining the events of the day in question the Court has no hesitation in finding that the wrongful actions of the servants or agents of the Defendant on the

day in question gave rise to emotions of extreme fear if not terror in the mind of the Deceased. The Court has no hesitation in finding as a fact that the behaviour of the soldier who shot the Deceased was exceptional and contumelious and was imbued with a degree of malevolence and flagrancy which was truly exceptional. In the circumstances, the Court determines that the claim for injury to feelings for the events of the day in question and the immediate aftermath including the incident on the Foyle Bridge is clearly established in law and that the compensation to which the Estate of the Deceased is entitled should include aggravated damages and the appropriate level of award is the sum of £25,000.

[27] In the circumstances of this particular case and having paid very careful attention to the evidence of the Plaintiff who gave his testimony in a commendably measured manner, I am not satisfied that it would be appropriate to make any further award for aggravated damages in this case. I appreciate that the Deceased died before the Saville Inquiry had been set up and that the innocence those shot on Bloody Sunday had not been officially established and proclaimed when he passed away. However, having carefully listened to the evidence of the Plaintiff, I found no support for the suggestion that the deliberate distortion of the facts which was undoubtedly a feature of the response of the Defendant to the events of Bloody Sunday resulted in an enduring injury to the Plaintiff's feelings in the years after 1972 up to his death in 1985. Although the Court has previously found that the conduct of the Defendant's servants and agents during the period between 1972 and 2010 in persisting with promoting lies in order to provide justification in law for the acts of the soldiers who opened fire on civilians on Bloody Sunday constituted unacceptable conduct of such flagrancy and malevolence as to justify an award of aggravated damages, there is no evidence in this case that the Deceased did suffer significant injury to his feelings in the period between 1972 and his death in 1985 and in the circumstances of this case no further award for aggravated damages should be made as there is no evidence of any further significant injury to feelings being suffered during this period.

[28] In summary, the compensatory payment in this case for general damages for pain, suffering and loss of amenity including psychiatric injury and injury to feelings and aggravated damages for the increased and enduring injury to feelings suffered by the Plaintiff will be in the sum of £125,000. This sum shall attract interest from date of service of the Writ (16th June, 2014) at the usual rate.

[29] The award for loss of earnings, loss of services and interest on past losses is £38,048. The total award is £163,048.

[30] The Plaintiff is entitled to his costs and the Court makes an Order for taxation of the Plaintiff's costs in default of agreement.