

APPROVED

[2021] IEHC 754



THE HIGH COURT

2017 No. 9535 P

IN THE MATTER OF PART IV OF THE CIVIL LIABILITY ACT 1961

BETWEEN

LYNDSEY COONEY
(ON BEHALF OF THE STATUTORY DEPENDANTS OF DUALTAGH
DONNELLY)

PLAINTIFF

AND

HEALTH SERVICE EXECUTIVE

DEFENDANT

JUDGMENT of Mr. Justice Garrett Simons delivered on 20 December 2021

INTRODUCTION

1. This matter comes before the High Court by way of an application to approve a proposed settlement of a fatal injuries claim under Part IV of the Civil Liability Act 1961.
2. In most instances, the function of the court on an application to approve will be twofold: first, to ensure that the interests of the minor statutory dependants are protected under the proposed settlement; and, secondly, to rule on the division of the damages for mental distress. The present case is somewhat unusual in that

NO REDACTION REQUIRED

one of the adult statutory dependants (the mother of the deceased) has concerns as to the proposed settlement and is not consenting to same. It is necessary, therefore, to consider whether the proposed settlement properly protects the mother's interests too.

THE CLAIM FOR DAMAGES

3. These proceedings arise out of the untimely death of Mr. Daultagh Donnelly (“*the deceased*”) at the age of twenty-five years. The death occurred at the house that the deceased shared with his partner and children. The deceased had returned home in an intoxicated state in the early hours of the morning of 26 October 2015. An incident then ensued whereby the deceased punched his arm through a glass panel in a door in the house, and thereby sustained a laceration to his right radial artery. This resulted in significant and rapid blood loss, and ultimately led to cardiac arrest and death.
4. The wound is described in the autopsy report as a large V-shaped wound which went deeply in the cubital soft tissue and measured 15 cm x 10 cm. The free cut end of the radial artery was visible in the wound. The autopsy report also indicates that the deceased had high levels of alcohol and illicit drugs (including cocaine) in his system. The deceased's blood alcohol levels are recorded as 217 mg/dl.
5. The within proceedings have been taken in the name of the deceased's partner, Lyndsey Cooney, on her own behalf and on behalf of the other statutory dependants. Ms. Cooney and Mr. Donnelly had lived together as a couple in an intimate and committed relationship prior to his death. The couple had three children together, the last of whom was born posthumously. Ms. Cooney meets

the statutory definition of a “*cohabitant*”, and, in consequence, comes within the statutory definition of “*dependant*”. For ease of exposition, Ms. Cooney will be referred to in this judgment as “*the representative plaintiff*” or “*the deceased’s partner*”.

6. The claim for damages relates to the actions of the national ambulance service in response to an emergency call. The deceased’s partner had telephoned for an ambulance at 03:06 hours. Two units were allocated to the call, a rapid response vehicle and an ambulance. The former arrived at the scene of the incident at 03:29 hours, the latter at 03:45 hours. The deceased had gone into respiratory arrest at approximately 03:41 hours, and into cardiac arrest at 03:47 hours.
7. Two broad complaints are made in the proceedings. First, it is alleged that there was a failure to dispatch an alternative unit which might have reached the scene faster. Secondly, criticism is made of the treatment provided to the deceased by the paramedics.
8. It is apparent from the various expert reports, which have been exhibited as part of the application to approve the proposed settlement, that there would be significant difficulties in making good either of these complaints at the trial of the action. The plea that an alternative unit could have been dispatched is premised on the false assumption that a particular unit, described as an officer car, had been available for dispatch. In fact, the officer was not on roster at the relevant time, and this unit had been properly disregarded in allocating units to the emergency call. The representative plaintiff’s own expert has opined that, in the absence of an alternative unit being available, the operations centre had adopted an appropriate course of action in allocating the units that it did. The expert further states that whilst the response time involved was not desirable, he

could not say that no other ambulance service would have acted as the national ambulance service did. On the basis of the expert reports before the court, there is no likelihood of a finding of negligence being made against the Health Service Executive in this regard.

9. The second broad complaint relates to the actions taken by the paramedics. The two experts retained on behalf of the representative plaintiff make some minor criticisms of the treatment provided at the scene. In particular, it is suggested that the deceased should have been immediately placed on the floor, rather than permitted to remain in a seated position.
10. It has to be said, however, that there appears to be some difference of opinion between the two experts on other issues. The first expert suggests that the administration of crystalloid fluid would have been unlikely to improve the outcome; the second, that a bolus of crystalloid should have been administered to obtain a systolic blood pressure.
11. There also appears to be some disagreement as to whether an attempt should have been made to transfer the deceased to hospital in the first vehicle which arrived on the scene. The first expert opines that it would not have been appropriate to have attempted a hospital transfer in the rapid response vehicle, and that no competent ambulance clinician would have attempted to do so. It is also accepted that it was appropriate to attempt resuscitation at the scene when the ambulance arrived. The second expert appears to suggest that a “*scoop and run*” might have been attempted.
12. The second expert has outlined the difficulties which can arise where a patient has imbibed alcohol and used illicit drugs. The agitation and non-compliance that results from both the shock of the primary trauma and the use of agents such

as cocaine and alcohol can potentially result in harm to both patient and healthcare professional.

13. The court has also been provided with the reports of the experts retained on behalf of the Health Service Executive. The point is made in these reports that the time between the arrival of the rapid response vehicle and the respiratory arrest was 12 minutes, with the cardiac arrest ensuing within 6 minutes thereafter. Assessing the patient, obtaining a history and vital signs, and dressing the wound, would have occupied most of this time. There was little window for additional treatment to have been given.
14. The first expert on behalf of the Health Service Executive has opined that—in the absence of immediately available massive blood and blood products transfusion and/or surgical intervention—any treatment after cardiac arrest had ensued was likely to be futile. Tranexamic acid, intravenous crystalloid fluid, oxygen, chest compressions, naloxone and adrenaline were unlikely to alter the outcome.
15. The only effective treatment for the injuries, other than prevention, was likely to have been earlier haemorrhage control. The advice given by the emergency call taker was directed at trying to achieve that prior to the arrival of the ambulance crews. This was made more difficult due to the distressed nature of the callers and also the deceased's intoxication with alcohol and cocaine.
16. The expert also opines that given that there was no active bleeding at the time, there was no immediate indication to lie the deceased down.
17. The second expert retained on behalf of the Health Service Executive opines that in the absence of un-crossmatched blood and huge IV access, of the type to be found in the resuscitation bay of a large emergency department, it is unlikely that

the deceased would have survived. The point is also made that the average journey time to the nearest hospital in Drogheda would have been at least 20 minutes. Accordingly, even if the ambulance had arrived 10 minutes after the initial injury; taking into account the 20 minute drive to Drogheda, it is unlikely that the deceased would have survived.

PROPOSED SETTLEMENT

18. Under the terms of the proposed settlement, a sum of €125,000 would be paid by the defendant, the Health Service Executive, in full and final settlement of the proceedings. It should be emphasised that the offer of settlement has been made by the Health Service Executive without any admission of liability. Indeed, the HSE had made this a precondition to its entry into settlement negotiations.
19. It should also be explained that the proceedings include a claim for nervous shock on the part of Ms. Cooney personally, in addition to the fatal injuries claim on behalf of the statutory dependants. The figure of €125,000 is intended to satisfy both claims.
20. For the purpose of the application to approve the settlement, Ms. Cooney is prepared to proceed on the basis that the settlement relates to the fatal injuries claim *simpliciter*, and that the offer includes the maximum sum recoverable in respect of mental distress (€35,000). It is suggested that €30,000 be apportioned to the deceased's three children, with the remaining €5,000 being apportioned to the deceased's mother and siblings.
21. Separately, it is intended to reimburse the family, out of the overall sum of €125,000, for the funeral costs incurred on their part.

POSITION OF THE DECEASED'S MOTHER

22. The deceased was survived by his mother, Oonagh Donnelly. Mrs. Donnelly had indicated in correspondence with the representative plaintiff's solicitor that she would not be consenting to the terms of the proposed settlement.
23. Mrs. Donnelly subsequently attended court, by way of remote link, on 6 December 2021. Mrs. Donnelly made a courteous and concise submission outlining her concerns. In particular, Mrs. Donnelly explained that she and her surviving sons are very disappointed that there has been no admission of liability on the part of the Health Service Executive. The family are also hurt by the suggestion, in the legal opinion and medical reports, that the deceased had been mainly responsible for his own death. Mrs. Donnelly has also told me that the deceased had been a loving father to his children.
24. Ms. Donnelly has emphasised that her main priority is that her grandchildren be provided for, but submits that there should be some recognition of the grief and mental distress suffered by her and her adult children, i.e. the deceased's brothers.
25. I am grateful to Ms. Donnelly for having taken the time and trouble to outline her concerns to the court. I have attempted, in the discussion below, to address these concerns, and to set out the rationale for my conclusion that the proposed settlement is in the best interests of all.
26. In the discussion which follows, I will refer to Mrs. Donnelly as "*the deceased's mother*" for ease of exposition. It should be emphasised that the use of this impersonal term does not reflect any lack of sympathy for Ms. Donnelly on her

loss. Rather, the term is intended to assist those reading the judgment to understand the relationship between the various parties.

CIVIL LIABILITY ACT 1961

27. The right to bring a claim arising out of a fatal injury is provided for under Part IV of the Civil Liability Act 1961. Section 48 of the Act stipulates that only one action may be brought against the same defendant in respect of a wrongful death, and that that action shall be for the benefit of all the dependants. The term “*dependant*” is defined as a spouse, civil partner, parent, grandparent, step-parent, child, grandchild, step-child, brother, sister, half-brother or half-sister, of the deceased. The definition also includes, relevantly, a cohabitant.
28. It should be emphasised that a statutory dependant who comes within the definition will not necessarily have been *financially* dependent on the deceased as of the date of death. Put otherwise, the concept of dependency has a broader meaning in this context than it does in everyday speech.
29. The effect of Part IV of the Civil Liability Act 1961 might be summarised as follows. First, it provides for a *substantive* right of action to recover damages for the wrongful death of another. This right is confined to those members of the deceased’s extended family, i.e. the statutory dependants as defined, who have suffered mental distress and/or injury (including loss of dependency) as a result of the wrongful death. Secondly, it provides for a *procedure* whereby the individual claims of the statutory dependants must be prosecuted in a single set of proceedings. The proceedings will be taken in the name of one of the statutory dependants on his or her own behalf, and on behalf of all of the other statutory

dependants. An adjudication upon, or settlement of, the claim will be binding on all of the statutory dependants.

30. The manner in which damages are to be assessed is set out at section 49 of the Civil Liability Act 1961 as follows:

“49.(1)(a) The damages under section 48 shall be—

- (i) the total of such amounts (if any) as the judge shall consider proportioned to the injury resulting from the death to each of the dependants, respectively, for whom or on whose behalf the action is brought, and
- (ii) subject to paragraph (b) of this subsection, the total of such amounts (if any) as the judge shall consider reasonable compensation for mental distress resulting from the death to each of such dependants.

(b) The total of any amounts awarded by virtue of subparagraph (ii) of paragraph (a) of this subsection shall not exceed €35,000.

(c) Each amount awarded by virtue of paragraph (a) of this subsection shall be indicated separately in the award.”

31. Subsection 49(1A) provides for the possibility of the total amount of the compensation for mental distress (“*the solatium*”) being increased from the current figure of €35,000, by way of Ministerial Regulations. Provision is made under subsection 49(2) for damages to be awarded in respect of funeral and other expenses incurred.

32. The Supreme Court has emphasised in *O’Sullivan v. C oras Iompair  ireann* [1978] I.R. 409 (at page 421) that the statutory right of action is given to the dependants as individuals, so that each of them is entitled to be compensated for the loss resulting to him or her personally. Put otherwise, the legislation does

not provide for what might be described informally as a “*class action*”, whereby a global sum would be awarded to the statutory dependants as a class.

33. In the event that a claim for a wrongful death comes on for full hearing, the court must assess the individual damages which each of the statutory dependants is to be awarded. The individual damages must be proportionate to the injury resulting to the particular dependant from the deceased’s death. The damages are to be based on the reasonable expectation of the pecuniary benefit which would have accrued to the particular dependant but for the wrongful death of the deceased. See *Davoren v. Health Service Executive* [2016] IECA 39 (at paragraphs 28 to 30).
34. The individual damages payable to any particular dependant will be informed by their connection with the deceased. For example, in the case of a minor child claiming for the wrongful death of a parent, the damages would seek to compensate for the loss of direct financial support provided by the deceased parent, and for the loss of what are quaintly described in the case law as “*domestic services*”. The deceased parent might not only have been providing financial support, e.g. paying for accommodation, food, education and other necessities, but may also have been providing care and support. For example, the deceased parent may have been responsible for minding a pre-school child at home. An attempt will have to be made to put a monetary value on the loss of such child minding, e.g. to assess what the cost of employing a professional child minder, to provide a level of care and support equivalent to that previously provided by the deceased parent, might be. See, generally, A. Barr, *Damages in Fatal Injury Actions — Selected Issues* (2011) 16(2) Bar Review 36.

REQUIREMENT FOR COURT APPROVAL

35. As with any civil litigation, it is open to the parties to a fatal injuries claim to negotiate a settlement of the proceedings. It will, however, be necessary to apply to court for approval of a proposed settlement in the following two circumstances. The first is where any of the statutory dependants are minors, i.e. individuals under the age of eighteen years. Whereas it is open to adult dependants to enter into a binding settlement, a minor dependant does not have the legal capacity to do so. See, generally, *Wolohan v. McDonnell* [2020] IEHC 149; [2020] 1 I.R. 394; [2020] 2 I.L.R.M. 483.
36. The requirement for court approval is intended to ensure that the interests of minors are properly protected in the settlement of proceedings. The court is in a position to provide a neutral assessment of the value of the claim and of the reasonableness of the settlement figure, having regard to issues such as any risk on liability. The court can also ensure that the apportionment of the overall sum as between the adult and minor dependants *inter se* is fair. This mitigates against any risk of a potential conflict of interest between a representative plaintiff and the minor dependants.
37. The requirement for court approval also constitutes a safeguard against possible error on the part of the legal advisors acting on behalf of the representative plaintiff. Moreover, the court can exercise some control over legal costs in those cases where the proposed settlement is an “*all in*” settlement, i.e. the legal costs are to be paid out of the figure proposed rather than there being a separate order for costs as against the defendant.
38. Where a settlement or compromise has been approved by the court, the claim will be regarded as fully and finally settled, and the minor dependant will be

bound by same. It will not be open to the minor dependant to seek to reagitate the claim on reaching their age of majority.

39. The second scenario in which court approval is required is where one or more of the adult statutory dependants objects to the proposed settlement. As discussed under the previous heading above, the statutory right of action is given to the dependants as individuals, so that each of them is entitled to be compensated for the loss resulting to him or her personally. It is, in principle, open to an adult statutory dependant to object on the basis that the terms of settlement are unfair to them when compared to the other statutory dependants. Whereas the representative plaintiff has carriage of the proceedings; in the event of a dispute, it is a matter for the court to rule upon the appropriateness of the settlement.
40. In deciding whether to approve a proposed settlement in the context of a fatal injuries claim under Part IV of the Civil Liability Act 1961, the court will generally address the following two matters in sequence. First, the court must consider whether the proposed settlement is reasonable in all the circumstances. This will require consideration of issues such as whether liability is contested, and the amount of damages which are likely to be recovered were the proceedings to go to trial. If liability is in issue, then the amount of the proposed settlement may be less than the notional full value of the claim. It may nevertheless be sensible to accept this discounted sum, rather than to allow the case to go to full hearing and run the risk that liability would be decided in favour of the defendant and no damages would be recovered.
41. This exercise has to be performed on the basis of far more limited information than would be available to the trial judge. The court must instead draw upon its knowledge of the risks inherent in litigation, and attempt to identify potential

weaknesses in the claim which may affect the outcome of the proceedings. Counsel on behalf of the representative plaintiff will have provided a confidential opinion to the court that candidly sets out the strengths and weaknesses of the case. Ultimately, however, the decision on whether to approve the settlement resides with the court alone.

42. Secondly, the court must then consider whether the apportionment of the overall sum as between the dependants *inter se* is fair. The damages should be proportionate to the injury resulting to the particular dependant from the deceased's death.
43. In most cases, the focus will be on the amount to be apportioned to the loss of dependency suffered by the minor dependants, with the court seeking to safeguard their interests. It will often be necessary, for practical reasons, that a sum notionally attributable to a minor dependant in respect of loss of dependency be paid over to the surviving parent to be expended for the benefit of the children. The surviving parent will be running the household and responsible for the provision of support and care to the children. It would not be in the children's interest were monies, which are needed now for day-to-day household expenses, to be held in abeyance until they reach their age of majority. Occasionally, however, the amount of the proposed settlement will be so substantial that it will be possible to put some money aside to be held for the minors until they reach the age of eighteen years: see, for example, *McLaughlin v. McColgan* [2021] IEHC 452.
44. The present case is somewhat unusual in that the court is required to consider the fairness of the proposed settlement from the viewpoint of one of the *adult* statutory dependants. The deceased's mother, as she is entitled to do, has raised

concerns as to the fairness of the settlement. Again, the assessment must be made by consideration of what the likely outcome would be, in terms of damages, were the matter to go to trial.

DISCUSSION AND DECISION

Reasonableness of proposed settlement

45. The first issue to be considered is the reasonableness of the proposed settlement. In particular, it is necessary to consider the likelihood of the sum offered (€125,000) being beaten were the case to go to full hearing.
46. I am satisfied that there is no realistic prospect of a higher sum being achieved at trial. This is because it would be very difficult to persuade a trial judge that there had been any negligence at all on the part of the Health Service Executive. The circumstances of the case have been discussed in detail at paragraphs 7 to 17 above. As appears, the national emergency operation centre acted appropriately in despatching the nearest available units, and the first unit arrived on scene within 23 minutes.
47. Moreover, the expert reports indicate that, having regard to the severity of the injuries sustained and the extensive blood loss, the only prospect for survival would have been if the deceased could have been brought to a well-equipped emergency department within a very short period of time. In fact, the nearest hospital was in Drogheda, some 20 minutes away. The consultant vascular surgeon retained by the defendant has opined that even if an ambulance had arrived within 10 minutes of the initial injury, it is unlikely that the deceased would have survived.

48. I have also had the benefit of a very comprehensive legal opinion from senior counsel which lays out the difficulties in the case. The deceased's mother has told me that she and her family found some of the language used in the legal opinion to be hurtful. In particular, they found it hurtful to read that the actions of the deceased had contributed significantly to the tragic events.
49. It is entirely understandable that bereaved family members would find it upsetting to read such things. It should be explained, however, that the precise purpose of the legal opinion is to provide this court with an objective and candid evaluation of the strength of the claim. This is intended to assist the court in deciding whether or not to approve the proposed settlement. The question of causation is critical to this analysis. Counsel was obliged to point out the absence of a causal link between the actions of the ambulance service and the death of Mr. Donnelly. The proximate cause of death had been the self-inflicted injuries; and the weight of the expert medical opinion is to the effect that there was nothing that the paramedics could have done, in the time available, to save the deceased. The trial judge is likely to find that the death of the deceased had been caused by want of care on the part of the deceased, and that but for the deceased's actions in punching his hand through a glass panel while heavily intoxicated with alcohol and cocaine, he would not have sustained the fatal injuries which led to his demise.
50. Having regard to the grave difficulties in respect of liability, the proposed settlement represents a very generous one from the statutory dependants' perspective. Indeed, it seems probable that the sum offered is more reflective of the value of Ms. Cooney's own claim for nervous shock than the value of the fatal injuries claim. At all events, it would be foolhardy to reject the offer in the

vain hope that a higher figure would be achieved at trial. The more likely outcome is that the claim would be dismissed.

Mother of the deceased

51. It is next necessary to consider whether the proposed division of the settlement is fair to each of the statutory dependants. I will start with the position of the mother of the deceased. The proposal is that the mother would receive a payment of €5,000 to be shared with her adult sons. The fairness of this proposal must be assessed by reference to the outcome likely to be achieved on behalf of the mother were the case to go to trial.
52. The mother had not been financially dependent on the deceased, and thus there is no claim on her part for monetary loss arising out of his death. Instead, the mother's claim is confined to one for compensation for mental distress resulting from her son's death. As explained earlier, the amount of compensation payable for mental distress is capped under the Civil Liability Act 1961. The maximum amount recoverable is currently fixed at €35,000. It should be emphasised that this threshold represents the total pot available to the statutory dependants as a collective. Put otherwise, the aggregate of the compensation payable to individual statutory dependants for mental distress cannot exceed €35,000.
53. No individual statutory dependant has an automatic right to a share of the solatium of €35,000. Rather, the division of same would be a matter for the trial judge. Having regard to the circumstances of the present case, it is likely that the greater part of the solatium would be awarded to the deceased's partner, Ms. Cooney. Ms. Cooney had been in a committed and intimate relationship with the deceased, and her mental distress will have been exacerbated by the fact that she had been a direct witness to the horrifying events leading to his death.

54. Of course, the mental distress suffered by the deceased's mother at the loss of her son at the tragically young age of twenty-five must also be acknowledged. It is likely that, at most, a sum of €7,500 out of the overall €35,000 would have been apportioned to the mother by the trial judge. The balance of €27,500 is likely to have been apportioned to the deceased's partner.
55. Subject to the modification that the mother be paid €7,500 to reflect her notional share of the solatium, I am satisfied that the proposed settlement is fair and fully protects the interests of the mother. The amount now payable to the mother is as much as, if not more than, that which might have been achieved had the case gone to trial. It should be reiterated that, in the absence of a claim for financial dependency, the mother's claim is confined to a share of the €35,000. The balance of the settlement figure, i.e. €90,000, reflects a different head of damage, namely the loss of financial dependency of the deceased's partner and children.
56. At the hearing on 6 December 2021, Mrs. Donnelly expressed the disappointment that she and her family feel at the fact that the offer of settlement has been made without any admission of liability on the part of the Health Service Executive.
57. It is not unnatural that a grieving family would look to attribute blame for their tragic loss. The function of the court, however, is to provide an objective and impassionate assessment of the proposed settlement. For the reasons outlined earlier, I am satisfied that it is in the best interests of all of the statutory dependants that the proposed settlement be approved. There is no realistic prospect of a finding of liability being made against the defendant were the case to go to trial.

Minor statutory dependants

58. I turn next to consider the position of the minor statutory dependants, namely the deceased's three children. I am satisfied that the proposed settlement is in the best interests of the children. The proposed settlement ensures that a significant sum of money will be available, through their mother, for their care and welfare. Conversely, were the matter to go to trial, there is a real risk that the proceedings would be dismissed without the payment of any damages.

Apportionment of solatium

59. A separate order needs to be made in respect of the division of the solatium. The deceased's partner has expressed the preference that €30,000 of the solatium should be divided equally between her three children. There is, however, a legal impediment to this. Strictly speaking, the solatium is only payable in respect of those who have suffered "*mental distress*" as the result of the death of a relative. This has been interpreted by the High Court (Costello J.) in *McDonagh v. McDonagh* [1992] 1 I.R. 119 as meaning that a very young child, who will have no memory of the deceased, is not normally entitled to participate in the solatium. The judgment appears to draw a distinction, for the purpose of section 49 of the Civil Liability Act 1961, between "*mental distress*" caused by the death itself, and the longer term emotional deprivation arising from the loss of a parent. Damages are only recoverable in respect of the former. These principles apply with even greater force to a child who had not yet been born at the date of the deceased's death.
60. Having regard to the fact that the youngest child was born posthumously, and that the two elder children were very young as of the date of the death of their father (3 years old, and under 1 year, respectively), I have concluded that it

would not be appropriate to apportion any part of the solatium to them. Rather, it seems appropriate that a sum of €27,500 should be paid to the deceased's partner, with the balance of €7,500 being paid to the deceased's mother for the reasons explained at paragraphs 53 and 54 above.

61. As to the deceased's brothers, any claim that they might otherwise have had to a share of the solatium must yield to that of the deceased's partner and mother. It seems to me that as between her and the surviving siblings of the deceased, the mother is the person more directly affected by the death, and, accordingly, in as much as financial payment can ever be a form of compensation, she should receive the share of €7,500 for herself. The loss of one's child is contrary to the natural order of things, and it is reasonable to assume that a mother's grief will be greater than that of a brother.

PUBLIC POLICY ISSUES

62. It should be emphasised that it has not been necessary, for the purpose of ruling on the proposed settlement in this case, to address the wider question of whether an action in negligence for an alleged delay in responding to an emergency call is precluded on public policy grounds. That issue remains to be addressed in future proceedings where its resolution is crucial to the outcome of the case.
63. This issue has received some consideration by the Courts of England and Wales. The case law there draws a distinction between the allocation of financial resources to fund an ambulance service, and what might be described as operational negligence in assigning available units to an emergency call. See *Kent v. Griffiths* [2001] Q.B. 36 (at paragraph 47) as follows:

“An important feature of this case is that there is no question of an ambulance not being available or of a conflict in

priorities. Again I recognise that where what is being attacked is the allocation of resources, whether in the provision of sufficient ambulances or sufficient drivers or attendants, different considerations could apply. There then could be issues which are not suited for resolution by the courts. However, once there are available, both in the form of an ambulance and in the form of manpower, the resources to provide an ambulance on which there are no alternative demands, the ambulance service would be acting perversely ‘in circumstances such as the present’, if it did not make those resources available. Having decided to provide an ambulance an explanation is required to justify a failure to attend within reasonable time.”

64. In the present case, there is no evidence of any operational negligence. The representative plaintiff’s own expert has opined that, in the absence of an alternative unit being available, the operations centre had adopted an appropriate course of action in allocating the units that it did.

CONCLUSION AND FORM OF ORDER

65. For the reasons outlined above, I am satisfied that the proposed settlement is in the best interests of all of the statutory dependants, including the deceased’s three children and his mother. Accordingly, the proposed settlement will be approved subject to the following modification in respect of the solatium. The solatium of €35,000 is to be divided as follows: €27,500 to the deceased’s partner, with the balance of €7,500 to the deceased’s mother.

66. In addition, the deceased’s mother is also to receive the following payments by way of special damages in respect of expenses incurred by her family:

Refund of funeral expenses	€5,687.50
Refund of catering costs	€577.00

67. It is a term of the settlement that the defendant is to pay the plaintiff the costs of the proceedings to include the costs of, and incidental to, the application to

approve the settlement. Such costs to be adjudicated upon, i.e. measured, under Part 10 of the Legal Services Regulation Act 2015 in default of agreement.

68. Finally, it should be reiterated that the Health Service Executive has made it clear at all times that the offer of settlement has been made without any admission of liability on its part. Nothing in this judgment should, therefore, be misinterpreted as implying any finding against the HSE.

Appearances

David Leonard for the representative plaintiff instructed by MacGuill & Co (Dundalk)

Approved
Gemma S. Mass