



# THE SUPREME COURT

Supreme Court Appeal No. 435/2012

Clarke C. J.

O'Malley.

Baker J.

**BETWEEN:**

**PETER MURPHY**

**APPELLANT**

**AND**

**GARY CALLINAN, JULIE CARROLL, AND ARB UNDERWRITING LIMITED,  
THE COMMISSIONER OF AN GARDA SÍOCHÁNA  
IRELAND AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**Ruling of the Court delivered the 29th day of July, 2021**

1. Judgment was given in this appeal on 30 November 2018 ([2018] IESC 59) and this is the Court's ruling on costs.
2. The appeal was from the dismissal of the proceedings by the High Court at the conclusion of the plaintiff's evidence.
3. The plaintiff's claim was made under a number of heads: for damages for injurious falsehood, and for negligence, breach of duty and breach of constitutional rights arising out of what he said was the communication of incorrect data regarding motoring and non-motoring offences which he said was false and inaccurate. The direct consequence of the release of this information by the first, fourth, fifth and sixth defendants (the "State defendants") was that a

motor insurance policy with the third defendant was cancelled on account of an alleged false answer on the proposal form to the question of whether he had ever been convicted of motoring or criminal non motoring offences.

4. The claim was made in part under the then relevant Data Protection Act 1988 as amended by the Data Protection (Amendment) Act 2003.

5. The appeal succeeded in one respect only, and this Court held that s. 7 of the Act of 1988 preserved a judicial remedy for breach of the duty of care by a data controller, and that the trial judge had been incorrect to conclude that a claim in damages could not succeed. However, the appellant failed in regard to the other grounds of appeal before this Court and the conclusion was that the trial judge had been correct in what was described as “his primary determination” that the plaintiff had not established a *prima facie* case in negligence and/or breach of duty and/or injurious falsehood.

6. The final paragraph in the judgment of this Court concluded that the appeal should be dismissed, albeit Mr Murphy was correct that the remedies given by the Data Protection Acts did not exclude remedies in tort. Nonetheless the Court concluded that the proceedings could not continue, and the finding was one as to the legal effect of the statutory provisions, which did not in the circumstances impact upon the entitlement of the appellant to a remedy on the facts.

7. Mr Murphy now relies on s. 169(1) of the Legal Services Regulation Act 2015 and says that he was successful in the proceedings, and that he did succeed in the “event” in that as a matter of fact during the hearing of the proceedings in the High Court certain documents had been produced which showed that the information ascribed to him related to another person of the same name and not to the plaintiff himself. On the facts the plaintiff argues that he succeeded in vindicating and protecting his rights to a good name in particular, and that the records by UK authorities were shown not to relate to him.

**8.** He further argues that this Court should exercise its statutory discretion to depart from the rule that costs follow the event, having regard to the nature and circumstances of the case. On that basis he argues that his constitutional right to litigate should be vindicated and that this Court did not make any determination that the proceedings were an abuse of process. He also relies on the general principle of equality of arms, and in particular asks that the Court have regard to the fact that the defendants are amply resourced and were represented by experienced solicitor and counsel.

**9.** He argues too that the processing of data is a matter of public importance and that the accuracy of information retained on the Garda PULSE database is one of public importance generally.

**10.** Some of the submissions made by Mr Murphy in regard to the appeal concerns other proceedings he commenced for judicial review, and the “event” which forms the starting point for any consideration under s. 169 of the Act of 2015 must be understood as being the event giving rise to the present proceedings and to the result of those proceedings.

**11.** Mr Murphy prosecuted the appeal with skill and respect for the Court and for the respondents to the appeal. His financial circumstances are a factor, albeit not a determinative factor, to which regard may be had.

**12.** The matters relevant to the exercise by the Court of a discretion to depart from the rule that costs follow the event as applied to the costs of this appeal do not offer much by way of guidance, and it cannot be said that any of the parties, whether the appellant or the respondents, engaged in any conduct before or during the proceedings which might disentitle that party to costs or entitle the other party to costs. The appeal did not succeed, albeit the appellant did persuade the Court that the trial judge had erred with regard to one matter of legal interpretation which did not on the facts impact upon the practical consequence of the decision on appeal.

There is no question of any exaggeration of the claim, and no question that issues were raised which it was not reasonable to pursue.

**13.** The respondents do not seek any order that the costs of the appeal be awarded to them.

**14.** The starting point for the consideration of costs is that the order of the trial judge was not reversed, and the proceedings were not reinstated in whole or in part. An “event” for the purpose of the allocation of costs is the obtaining of some or all of the remedies claimed. Success in regard to a point of law may not always result in that party achieving a remedy in that sense, but regard may be had to that factor in the exercise by a court of its general discretion regarding the award of costs.

**15.** The appellant did succeed in an important legal issue in the appeal and must be given credit for this, albeit he did not succeed in obtaining the remedy he sought. In recognition of that factor, and noting that the plaintiff did not succeed in reversing the “event” by reason of the appeal, this Court will vary the costs order made in the High Court so that the appellant is to be liable for 70% only of those costs. There is for the same reason to be no order for costs in this Court.

**16.** An award of costs to the appellant is not justified in the circumstances, and as the appellant was self-represented, his entitlement would be any expenses incurred by him which would be modest in the circumstances.