Decision of criminal injuries compensation appeal panel – Criminal Injury Compensation Scheme – crime of violence – batter – whether decision of panel unreasonable.

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Judgment: approved by the Court for handing down
(subject to editorial corrections)

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY CHARLENE RODGERS FOR JUDICIAL REVIEW

AND

IN THE MATTER OF A DECISION BY THE CRIMINAL INJURIES COMPENSATION APPEALS PANEL FOR NORTHERN IRELAND

GIRVAN J

[1] The applicant is Charlene Rodgers, an applicant seeking compensation under the Northern Ireland Criminal Injuries Compensation Scheme 2002 ("the Scheme"). In this application she seeks an order quashing a decision of the Criminal Injuries Compensation Appeals Panel upholding a decision by the Compensation Agency refusing the applicant's application for compensation.

[2] According to the affidavit grounding this judicial review application, the applicant who was born in 1985, attended a Halloween festival music event in Londonderry in 2002 with her cousin Eileen Wheeler. While waiting for a taxi at Sackville Street in the early hours of 1 November two male persons in fancy dress came running at speed towards them where they were standing. One of them shouted "get out of the way" from behind. Immediately thereafter she was pushed to the ground and pushed again by a second man as he attempted to get over her. The second man attempted to jump over her and kicked her on the head. The applicant was injured by glass on the ground and had to have 34 stitches to her right leg. She also claims to

have sustained bruising and swelling to her head and consequently headaches.

[3] The applicant made an application for compensation under the Scheme. This was refused on the ground that although the applicant was a victim of crime it was not a crime of violence within the terms of the scheme. This decision was upheld on a review carried out by the review section. The applicant appealed the refusal to the appeals panel who by decision given on 9 August 2005 refused the appeal. It is that decision of the panel that is the subject of the present application.

[4] At the hearing before the panel only the applicant gave evidence although the panel had supporting documentary materials including a statement from Ms Wheeler. The chairperson of the panel in her affidavit pointed out that there were discrepancies between the applicant's oral evidence and the written documentation. In particular in her statement on the application form seeking compensation the applicant claimed that the first male had come up behind her but in her oral evidence she said that the first male came towards her. In her police statement she made no mention of the warning which she said in oral evidence had been shouted by the first person. In the police statement she made no mention of being kicked by the second male. However, not withstanding the discrepancies, the panel concluded that there had been a warning shouted and that the applicant received a fairly hard push to the left shoulder causing her to fall to the ground. It also found that the second person did jump over her and while doing that his foot had made contact with her head but it was a deliberate kick.

[5] Under the terms of the Scheme compensation may be paid to an applicant who has sustained a "criminal injury". A criminal injury is defined as a injury sustained in Northern Ireland and directly attributable to a crime of violence. The term "crime of violence" is not defined in the scheme. The Guide to the Scheme published by the Compensation Agency in paragraph 7.9 states:

> "There is no legal definition of the term but crimes of violence usually involve a physical attack on the person, for example, assaults, wounding and sexual offences. This is not always so, however, and we judge every case on the basis of its circumstances. For example the threat of violence may, in some circumstances be considered a crime of violence."

At paragraph 7.12 the Guide goes on to state:

> "As a general rule, you will not be entitled to compensation if you were injured accidentally.

> There are some exceptions. If your injuries were sustained as a result of your involvement (whether intentional or not) in the prevention of an offence you may be eligible …"

Under the heading "Prevention of Offence" in paragraph 17 the Guide states:

> "If you were injured whilst you yourself were attempting to catch an offender or a suspected offender, or were helping a police officer to catch an offender, you may be entitled to an award… you may also be entitled to an award if you are injured during the course of such an action even though you are not yourself taking part in it. If you were, for example, an innocent by-stander and were knocked over and injured by the offender or the pursuer, you could be entitled to an award. These conditions apply even if the suspected offence was not a crime of violence."

[6] The Guide does not constitute a definitive definition of "a crime of violence" under the statutory scheme itself and it is a matter for the court to construe the Scheme and to determine as a matter of law what constitutes a crime of violence. Mr Sayers in his argument contended that the applicant sustained injuries as a result of a battery committed by at least one of the male persons. A battery is a criminal offence. It is defined in Smith and Hogan Criminal Law (11th Edition) at p. 517 thus:

> "A battery is any act by which D, intentionally or recklessly, inflicts unlawful personal violence upon V."

But violence here includes any unlawful touching of another however slight for as Blackstone wrote:

> "The law cannot draw the line between different degrees of violence and therefore prohibits the first and lowest stage of it; every man's person being sacred, and no other having a right to meddle with it, in any of the slightest manner. This reflects the fact that the offences against the person protect the individual's personal autonomy by providing at least the opportunity for criminal punishment for the slightest unjustified infringement. This is supported by the protection offered by ECHRR in Article 8."

[7] Blackstone's Criminal Practice (2006) points out that:

> "Battery need not necessarily be proceeded by any assault. A blow may, for example, be struck from behind without warning. Nor need a battery involve any serious violence. Any unlawful touching may be classed as a battery. Everyday jostling that one must expect in crowded pavements, corridors or trains cannot be considered unlawful unless it is excessive and unreasonable."

Archbold: Criminal Pleading Evidence and Practice points out that there are exceptions to the fundamental principle that everybody is to be protected against physical molestation of any kind. The correction of children, the lawful exercise of the power of arrest, use of reasonable force when a necessity to act in self defence arises are examples. A broader exception exists which caters for the exigencies of everyday life such as jostling in crowded places and touching a person for the purposes of engaging his attention. The mens rea of battery is "an intention to apply force to the body of another or recklessness whether force be so applied." According to Archbold at paragraph 19.167:

> "The test of recklessness in assault and battery is that propounded in R v Cunningham … recklessness in common assault therefore involves foresight of the possibility that the complainant would apprehend immediate and unlawful violence and taking that risk; in battery, it involves foresight of the possibility that the complainant will be subjected to unlawful force, however slight and taking that risk."

[8] In his final decision notice the panel gave the following brief reasons for it's decision:

> "On a balance of probabilities the panel were satisfied that there was no intent to cause injury. The panel considered that running would not normally be sufficient to constitute recklessness and there was nothing in the particular circumstances to make it reckless to be running."

[9] In paragraph 11 of her affidavit the chairperson of the panel stated:

> "It is not the case that the panel made a finding that the two persons had taken care in what they were doing or that the shouted warning was adequate. Our holding related only to our view that the contact made by the males with the applicant was not intentional or reckless."

[10] From the evidence before the panel and taking account of the findings of fact of the panel the following propositions can be stated:

(a) The applicant was an innocent by-stander waiting for a taxi at Sackville Street standing on the pavement and doing nothing to contribute to the causation of the injuries which she sustained.

(b) Her leg injuries were clearly directly attributable to being pushed fairly hard on the left shoulder that caused her to fall on glass on the pavement.

(c) The male persons were running along the pavement at such a speech and in such a way that they presented a clear danger to pedestrians on the pavement. That danger involved the likelihood of the runners coming into physical contact with a pedestrian such as the applicant if the pedestrian got in the way.

(d) The push given to the applicant on her left shoulder which caused her to fall was a deliberate physical act carried out by the male person, an act which interfered with the applicant's personal autonomy. As such a direct deliberate act it constituted in law an unlawful battery unless the actor could point to some justification such as necessity or self defence or could show that there was something which arose in the ordinary exigencies of everyday life to justify the push. In the event of a criminal prosecution while the Crown would have to negative such a defence, in the absence of some evidence raising the issue the inference of unlawfulness would arise from the facts.

(e) On the facts before the panel there was nothing to raise an issue that the pushing was justifiable. If the male persons were being chased by another person and could not avoid what happened, the person chasing them would have been the direct cause of the injuries and that person would have been guilty of the criminal act. If they were not being chased or where themselves chasing somebody else or were simply running to get somewhere quickly they had deliberately created a situation of risk to innocent bystanders and pedestrians, it being foreseeable that they could collide with pedestrians or force them to take potentially dangerous evasive action or that they, the runners, would have to push them out of the way thereby potentially causing them injury and/or causing them to fall and injure themselves. If they were being chased by an animal or were seeking to escape some danger then that

might in law justify the actions taken but there was no evidence that such an explanation existed.

[11] The panel mis-directed itself by posing to itself the question whether there was an intent to cause injury. The true question was whether the evidence led to the inference that the male who pushed the applicant did so deliberately and, if so, whether in law that push was justifiable. In concluding that running could not normally be sufficient to constitute recklessness and there was nothing in the particular circumstances to make it reckless to be running, the panel failed to have regard to the evident and risks potentially involved in a person deciding to run fast along a pavement where another pedestrian was walking or standing. Obviously running in a proper place cannot of itself constitute recklessness and running on a empty pavement would not constitute recklessness. However, running at some speed in circumstances where one cannot stop oneself and where it is entirely foreseeable that one could come into contact with another person could not be considered as anything other a conduct that failed to have due and proper regard to the safety of that other person. The conclusion that there was nothing in the circumstances to make it reckless to be running was a conclusion that no reasonable tribunal properly directing itself on the evidence could reach in the circumstances of this case. The context in which the push took place was such that the deliberate push that occurred was necessitated by a course of conduct undertaken by the male runners which carried with it a clear risk of collision with the pedestrian lawfully using the pavement and this could not be shown to be justifiable in law.

[12] It follows that the decision of the panel cannot stand and must be quashed. The matter must accordingly be remitted to another appeal panel which must determine the application in accordance with law, taking account of the effect of this ruling. In view of the conclusion reached by the panel it did not have to consider the extent and nature of the applicant's injuries or to quantify compensation. The new panel will have to address those issues. The panel would have to consider whether the applicant sustained head injuries and whether the head injuries were sustained as a result of a crime of violence. The applicant accepts that the kick she received to her head was not a deliberate kick but the consequence of the second male jumping over her. The panel would have to consider whether the circumstances of the male running in such a way that he was going to have to take some such action as he did meant that the physical violence to the applicant was a reckless battery. The question may arise whether the second male's conduct, if not an unlawful battery, amounted to unlawful disorderly and unruly behaviour in which is was foreseeable that injury could be suffered by a pedestrian such as the applicant and, if so, whether in the circumstances a crime of violence had occurred.