No. CO/672/88

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Royal Courts of Justice

Friday, 16th December, 1988

Before:

MR. JUSTICE ROSE

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Crown Office List

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THE QUEEN

v.

CRIMINAL INJURIES COMPENSATION BOARD

Ex parte JOAN DORIS EMMETT

- - - - - -

(Computer Aided Transcript of the Stenograph Notes of Marten Walsh Cherer Limited, Pemberton House, East Harding Street, London, EC4A 3AS. Telephone Number: 01 583 7635. Shorthandwriters to the Court)

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MR. F. BURTON (instructed by Messrs Russell Jones & Walker) appeared on behalf of the Applicant.

MR. G. SANKEY (instructed by The Treasury Solicitor) appeared on behalf of the Respondent.

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J U D G M E N T
(As approved by Judge)

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MR. JUSTICE ROSE: This is an application for judicial review by way of certiorari of a decision of the Criminal Injuries Compensation Board on 18th February 1988 the application is brought by leave of Otton J. on 11th July 1988 following an initial refusal on a paper application by Macpherson J. on 7th June 1988. The decision of the Board was of two members by consent, Mr. Barry Chedlow QC and Sir Arthur Hoolepool.

The applicant is a former woman police constable who sustained severe injuries on 22nd May 1982, when she was 23 years old, as a consequence of which in May 1984 she was invalided out of the police force.

The circumstances in which those injuries were sustained are these. She was driving a Chevette motor car in Salford in which another officer, PC Berton, was the front seat passenger. Together with other vehicles she was pursuing a Cortina motor car which had apparently been, at the least, taken without the owner's consent and it may have been stolen. That vehicle, with the applicant's vehicle behind it, came along Broom Lane to the junction with Leicester Road, which is the main road, which is shown in the plan on paragraph 77 of the applicant's bundle.

As is set out in the affidavit on behalf of the applicant at paragraph 6, what happened was this. As the applicant brought her car to a halt at the junction, the stolen motor car began to cross into the junction. The applicant accelerated into Leicester Road but suddenly,

without warning, and for no apparent reason, the stolen motor car braked heavily and forced the car driven by the applicant to stop in the middle of the nearside of the carriageway. The rear wheels of the stolen motor car were on or near the centre of the road, the stolen car then moved off at speed into Tetlow Lane, immediately on the opposite side of the junction. As the applicant began to move forwards the police car she was driving was struck from the righthand side by an Opel motor car that was driven by a Mr. Williams and approached along Leicester Road from the applicant's right. There was a violent impact. It is further said in the affidavit: "When the stolen motor car braked heavily and stopped as it proceeded across Leicester Road, there was no apparent reason for the driver doing so."

There is reference to evidence given by Inspector Reid and Sergeant Nicholson that "they believed that the action of the driver of the stolen motor car was planned and deliberate." Sergeant Nicholson said the applicant had been "hung out to dry." The driver of the stolen motor car was not caught nor has he subsequently been traced or identified.

It has to be said, as a background feature to this application, that, on advice, the applicant has not sought to bring an action against the driver of the Opel motor car, no doubt on the basis that his driving could not properly be criticised, nor indeed is that which occurred within the ambit of the MIB scheme. It follows that this application appears

to be the applicant's only prospect of obtaining compensation for the injuries which she sustained.

Mr. Burton on behalf of the applicant attacks the decision of the Board. In order to analyse that attack it is first necessary to refer to the decision, which is exhibited to the respondent's affidavit. At page 8 the board say this:

> "Mr. Horlock for the applicant contended inter alia that the applicant's claim fell both under 4(a) and 4(b). Deliberately or recklessly 'stranding' the applicant in the road was a crime of violence. The physical injury was also directly attributable to the attempted apprehension of the thief. If the Board took the view that the injury happened accidentally then he submitted there was evidence in all the circumstances of 'exceptional risk' being taken in this case. As to paragraph 11 this was not a traffic offence. Deliberately stranding the applicant was equivalent to trying to run somebody down.
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> "We retired to consider the application.
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> "We were not satisfied on the evidence that it had been shown, and the burden rests upon the applicant, that in braking as he did the stolen car driver did so either deliberately to endanger the appplicant or recklessly, as to whether injury would occur to her or not. It was not for us to speculate but the evidence might well suggest the stolen car driver braked either because he himself suddenly became conscious of the oncoming Opel car or because he was deciding whether to turn left or right in his efforts to escape rather than to go straight on. Further, in the fleeting glimpse available to him of this fast moving Opel car, we were not satisfied that the stolen car driver had, realistically, any sufficient time to formulate the course of action which the applicant sought to assign to him. Although Police Sergeant Nicholson and Chief Inspector Reid each stated in the course of their evidence that they believed that the action of the driver of the stolen car was deliberate, we were not so satisfied on the evidence.
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> "For these reasons we were not satisfied that the application fell within paragraph 4(a) of the scheme.

"We were satisfied that the injury was directly attributable to the attempted apprehension of a suspected offender. In our view, however, the injury was sustainned accidentally and the application would, therefore, come within paragraph 4(b) of the scheme only if were also satisfied under paragraph 6(d) that the applicant was taking an exceptional risk.

"It was not suggested in the evidence before us that the applicant in the heat of the chase proceeded across the main road without regard to oncoming traffic. The whole basis of the evidence indeed, was that the applicant had sufficient time to cross the road. We were unable to conclude on the evidence therefore, that the applicant was taking an exceptional risk within the terms of paragraph 6(d) of the scheme.

"In the circumstances we concluded that no award could be made."

The scheme provides in paragraph 4:

"The board will entertain applications for ex gratia payments of compensation ... attributable

"(a) to a crime of violence or

"(b) to the apprehension or attempted apprehension of an offender or suspected offender".

In paragraph 6 there is this provision:

"Furthermore, compensation will not be payable -

"(d) in the case of an application under paragraph (4b) above where the injury was sustained accdentally unless the Board are satisfied that the applicant was at the time taking an exceptional risk which was justified in all the circumstances."

There are issued by the Board guidelines, expressed to be for the benefit of applicants and their advisers, on how the Board are likely to determine applications. It is emphasised by those guidelines that "What is said in this statement does not limit the discretion of an individual board member or board members at a hearing". Paragraph L of those

guidelines refers to exceptional risk. Subparagraph 4 is in these terms:

> "In the case of car crashes, the nature of the incident will often prove decisive. Answering a 999 call relating to intruders in an unoccupied building will usually not constitute an exceptional risk, unless the premises call for such risk being taken e.g. an armoury. Chasing or attempting to intercept a car which has refused to stop will usually be within the scheme."

As I have indicated, Mr. Burton attacked the decision of the Board on two grounds and it is convenient to take his second ground first. His submission is that that which occurred in this case gave rise to a crime of violence under paragraph 4(a) of the scheme. He submits that the act of the driver of the Cortina constituted an assault because it amounted to a deliberate attempt to injure or frighten. He relies upon the evidence of the police officers to which I have referred, which spoke of the applicant being "hung out to dry."

The difficulty with that submission is that the tribunal, having heard the evidence from those officers and having considered the statements in the police report of the accident, were not satisfied that in braking as he did the stolen car driver did so either deliberately to endanger the applicant or recklessly. In other words, they were not satisfied that the driver was aiming his behaviour at the following police officer.

In my judgment, there is no basis on which it can be said that that conclusion on the evidence before the Board was

unreasonable or perverse within the Wednesbury principle and accordingly that ground of attack in my judgment fails.

Mr. Burton's primary submission, however, is that the decision of the Board was perverse and unreasonable in failing to hold that the circumstances in which these injuries were sustained gave rise to an exceptional risk. The way in which he puts the matter is that because of the terms of the guidelines to which I have referred it was really necessary for the Board to be satisfied that, notwithstanding chasing or attempting to intercept the car which had refused to stop is usually within the scheme, there were circumstances of this present chase which made it unusual and therefore brought it outside the scope of the exceptional risk which the guidelines suggested would normally be regarded as arising.

Mr. Burton stresses that these incidents occurred in darkness and when it was raining. The chase which immediately preceded the incident at this crossroads had been, as it clearly had on the evidence, a high speed chase involving speeds of 60 miles an hour and more within a built up area in which the maximum permitted speed was 30 miles an hour. He submits that if one looks at that which happened at this crossroads in the context of a chase of this kind, this was an exceptional risk situation.

Mr. Burton submits that the very fact that a stolen car is being driven by someone who is not familiar with it, and therefore is unfamiliar with its handling characteristics and

power, produces a risk. The fact that such a vehicle in such circumstances is being driven fast and in a built up area increases that risk substantially. There is in any event where a chase occurs between vehicles, an inherent danger because of the mixture of emotions, in varying degrees no doubt, on the part of the drivers of both vehicles: fear, anxiety, risk taking and matters of that sort. He submits that the Board do not appear to have considered the context of this crossroads incident and in failing so to consider and in treating that which occurred at the crossroads in isolation, they have approached the matter in a perverse and unreasonable way.

On behalf of the respondents, Mr. Sankey submits that in so far as the notes for guidance are concerned, they have no statutory status, they cannot be relied upon as a means of interpreting the words of the scheme itself. In my judgment that submission is well founded. Indeed, Mr. Burton does not seek to argue strenously to the contrary. Mr. Sankey further submits that in paragraph 6(d) the words "at the time", in relation to the taking of an exceptional risk, must be construed to relate to the very time itself at which the injuries are sustained. That submission I am unable to accept.

I ventured to suggest in the course of argument a situation in which a police officer is chasing a fleeing offender. The two of them proceed by means of hanging on to a

cable, electric or otherwise, suspended between two buildings. After negotiating that cable successfully over a period of time, and over a drop which creates, no doubt, an exceptional risk, the officer reaches the safe haven of the building on the other side. If he then loses his footing, having reached that safe haven, it seems to me that it would be manifestly arguable that although at the time when he lost his footing there was no exceptional risk, that which had immediately preceded it and had led him into that situation could not properly be ignored.

In my judgment the words "at the time" do involve taking into account not precisely what is happening when the injuries are sustained but the context in which those injuries are sustained which may, according to the circumstances of the particular case, involve looking at matters which occurred some little time before.

In my judgment, what does emerge from a construction of that paragraph is that whether or not an exceptional risk existed is essentially a jury question for determination in the first instance by the tribunal.

In my judgment, the insuperable difficulty in Mr. Burton's way is that it is clear from the last paragraph of the decision of the Board that they did view what happened at the crossroads in the context of that which had happened before. There is express reference there to the heat of the chase. It is clear in my judgment that the Board were,

although concentrating on that which occurred at the crossroads, looking at that which there occurred in the context of what had preceded it. In my judgment, there was in the evidence before the tribunal material which would enable them to reach the conclusion that there was no exceptional risk.

I refer briefly, simply to indicate that which I have in mind, to the statement of Mr. Borton the passenger in the applicant's vehicle at page 62 of the bundle. He said he could see the approaching car headlights coming fast towards them from the right some 200 yards away down Leicester Road. Constable Fenlon, who was in another vehicle shortly behind, at page 67 described looking to his right and seeing a car coming towards him at a fast speed about 100 yards away. The applicant herself in a statement at page 44, which appears in the police report, although it is not clear precisely when she made that statement, said: "I was in plenty of time to get out of the way of the fast car."

Having regard to that material, sympathetic though I am to the applicant, it seems to me to be impossible to contend that the conclusion which the Board reached in the passages which I have read was perverse or unreasonable in the Wednesbury sense.

Accordingly this application must fail.

MR. SANKEY: I ask for the costs.

MR. BURTON: I cannot resist that.

MR. JUSTICE ROSE: So be it.

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