

Neutral Citation Number: [2002] EWHC 463 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

No CO/4546/2001

Royal Courts of Justice
The Strand

Friday, 8th February 2002

Before:

MR JUSTICE ELIAS

QUEEN

ON APPLICATION OF

HUDSON

Computer Aided Transcript of the Palantype notes of
Smith Bernal Reporting Limited, 190 Fleet Street,
London EC4A 2HD
Tel: 0171 421 4040
Official Shorthand Writers to the Court)

MR STEVEN SNOWDEN (Instructed by Russell Jones & Walker of Birmingham) appeared on behalf of the Applicant.

MR JAMES STRACHAN (Instructed by Treasury Solicitor) appeared on behalf of the Respondent.

J U D G M E N T
(As Approved by the Court)
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1. **MR JUSTICE ELIAS:** I have before me an application for judicial review brought by Lesley Hudson. It challenges the decision of the Criminal Injuries Compensation Authority that she should not be entitled to any compensation in respect of the death of her common law husband, Mr Jason Savage.
2. The background was that Mr Savage was unfortunately killed following a fracas of some kind outside a fish and chip shop in Birmingham. The claimant is the common law wife. She claimed compensation. Initially, the officer of the panel determines an application of that kind on paper. In this case the decision was taken that compensation should be granted but that the award would be reduced by one-third because of the deceased's own part in the fracas. Some time later there was a determination in respect of quantification of damage, but the claimant had failed to provide information and none was awarded.
3. Following that the claimant sought to have the matter re-determined at an oral hearing. That took place, and the panel disagreed with the original determination made on paper and considered that the claimant was not eligible to any compensation at all.
4. Mr Snowden has put his argument for the claimant. He, initially, was going to run an argument that at the hearing itself counsel for the claimant had not had a proper opportunity to look at certain documents in the possession of a police officer who came to give evidence. However he had been assured by counsel - who was not Mr Snowden - who was acting for the claimant at that time that every opportunity was given for those documents to be considered by him. Accordingly, very properly and realistically. Mr Snowden is not pursuing that particular ground.
5. Mr Snowden has three other arguments he has deployed to substantiate his claim that the panel acted unlawfully. At the forefront of these was the following submission. Apparently, applications were made not only by the widow, if I may call her that, the claimant in this case, but also by the deceased's parents. The claimant has been given no indication of what the outcome of their application was. The Board does not reveal the information given by other applicants in these circumstances. But Mr Snowden says it is at least hearsay that they have received compensation. He submits two things in relation to this: first, that it is unfair for one claimant to receive compensation in such circumstances and another to be denied it and there is a perception of injustice at such a result. Second, he says the decision of the panel must be irrational because it is at odds with the decision of the officer taken on paper.
6. I can deal with the second point briefly. There is no reason to suppose it is irrational because it contravenes the decision on paper. If that were so then every judge who grants permission in open court following a refusal on paper would be acting irrationally. Different arguments are advanced and it is not unusual for there to be different results in the circumstances. The question about perception of justice is one, in principle, which would cause lawyers some concern. I am told that the way the Board deals with this is to seek to ensure that where claims are made in respect of the same incident by a number of parties, the same officer within the Board will try to make a determination in respect of all of them. That cannot always be achieved.

Claims may come in at different times or officers may have left the service. Attempts are made to try and achieve consistency across the Board.

7. The particular difficulty, it seems to me, the claimant has is that she chose to challenge the original determination. She could have accepted the original outcome, produced evidence of loss and received two-thirds of whatever would have been the appropriate figure. She chose, as was her right, to take the matter before the panel. The panel has a complete discretion as to which decision to reach. Other lay claimants in respect of the same incident may have had the same determination made at the first stage and chosen not to exercise their right to go before the panel. They are entitled to the compensation that has been fixed by the officer. There is no unfairness or inequity, it seems to me, in those arrangements, nor could it be said there was. Why should those claimants, who are satisfied with their lot, find that they are deprived of compensation because another one, who is dissatisfied, decides to take the matter to appeal? If a number of parties are seeking an oral hearing no doubt the Board will do all it can to seek to ensure there is consistency as between those parties, and that one hearing takes place in respect of all those applications. Perceptions of justice require that they should seek to do so if they can, and it is a more efficient and cheaper way of conducting their own proceedings in any event. But the Board would not be in a position to be able to guarantee that.
8. In the circumstances, although I have some sympathy for the applicant, it seems to me that that ground fails.
9. The other two grounds I can deal with more briefly. First, it is said the Board adopted the wrong test when it considered this application. What it has to do is to determine whether the deceased was a victim of a crime of violence. The part played by the deceased will be relevant in determining whether there should be a reduction but not relevant in determining whether or not he or she is a victim of a crime of violence. The claimant relies on the solicitor's notes which suggest that the panel was approaching the matter on the basis that the victim was an innocent victim of crime. I would be surprised if a panel were to make that error. They must hear cases like this with great frequency, and it is a fundamental point. I can understand there may have been some comment which was ambiguous or misinterpreted by the solicitor. Be that as it may, what we have is the decision of the Board itself. In that decision, as Mr Snowden fairly accepts, the panel have, quite plainly, properly directed themselves by saying:

“We asked ourselves whether the appellant had proved on the balance of probabilities he had ceased to become a victim of a crime of violence.”
10. It is only because they were not able to conclude he was that they reached the decision they did.
11. I do not think it would be right to go behind that statement of their reasons. Potentially, it would mean all sorts of decisions could be re-opened because of a party's understanding of how the matter was originally approached.

12. The final point was that the panel was too influenced by the views of a police officer. Mr Snowden accepts the panel can take account of hearsay evidence and opinion but he says that that would not extend to any opinion in relation to the very facts the panel has to determine. No doubt, as a statement of principle, that is correct. But there seems to be nothing in the decision which would suggest that the panel had fallen into that error.
13. In my judgment, there is no basis for permission for judicial review on that ground either. Although I have some sympathy for a claimant who must have anticipated at one stage that she would receive compensation for the death of her common law husband, I do not consider that this case has any arguable grounds justifying review.

MR SNOWDEN: I am grateful. The only matter that arises is the question of costs. The claimant has had the benefit of legal aid funding thus far. I do not have solicitors with me. I am told that the only certificate on file is an emergency one. May we have 48 hours to file the right one, and would your Lordship direct - and the wording escapes me - legal aid assessment.

MR JUSTICE ELIAS: Yes.