



17 April 2013

PRESS SUMMARY

Jones (by Caldwell) (Respondent) v First Tier Tribunal (Respondent) and Criminal Injuries Compensation Authority (Appellant) [2013] UKSC 19

On appeal from [2011] EWCA Civ 400

JUSTICES: Lord Hope (Deputy President), Lord Walker, Lady Hale, Lord Sumption and Lord Carnwath

BACKGROUND TO THE APPEAL

On 18 January 2005, at about 2.20 am, a tragic incident occurred on the A282, a six-lane carriageway which links the Dartford Crossing bridge and tunnel with the M25 motorway. Mr Jones was driving a Highways Agency gritter along the nearside carriageway. Slightly ahead of him, in the central lane of the carriageway, was an articulated lorry driven by Mr Brian Nash. Ahead of him there was a car which was parked on the hard shoulder of the carriageway. As Mr Nash's lorry approached it a man ran from near the car into the middle of the central lane, turned towards the lorry, stood in its path and raised his arms. Mr Nash braked, but he was unable to avoid hitting the man, who was killed instantly. As a result of the braking the rear nearside corner of the articulated lorry swerved into the path of the gritter vehicle. There was a collision between the two vehicles, as a result of which the cab of the gritter was destroyed and Mr Jones was thrown from it onto the roadway. He suffered very severe injuries and now requires full-time care. The man who ran onto the carriageway was Mr Barry Hughes. The inquest into his death returned an open verdict. But the obvious inference from his actions was that his intention was to kill himself [1, 2].

Acting by his mother Mrs Maureen Caldwell, Mr Jones applied to the Criminal Injuries Compensation Authority ("the CICA") for an award of compensation under the Criminal Injuries Compensation Scheme 2001 ("the Scheme"). The CICA rejected the application essentially on the basis that in terms of the Scheme Mr Jones was not a victim of a crime of violence [3].

Mr Jones appealed to the First-tier Tribunal ("the FTT"), arguing that Mr Hughes had committed two criminal offences, one of which is no longer relevant in this appeal. The FTT dismissed his appeal in relation to the other offence of inflicting grievous bodily harm contrary to section 20 of the Offences against the Person Act 1861 ("section 20"). It did so because it was not satisfied that Mr Hughes intended to cause harm, or was reckless as to whether harm of whatever degree might be caused by his actions, when he ran out into the carriageway. Mr Jones unsuccessfully sought judicial review of that decision in the Upper Tribunal (Administrative Appeals Chamber) but successfully appealed to the Court of Appeal. The matter was remitted to a differently constituted FTT to reconsider the issue of recklessness in the light of the reasons given in the judgment of the Court of Appeal [4 – 6].

The parties agreed that the appeal raised the following issues for determination by the Supreme Court: (1) whether an applicant who satisfies the CICA on the balance of probabilities that he has sustained injury directly attributable to an offence under section 20 is necessarily a victim of a crime of violence for the purposes of the Scheme; and (2) if the answer to (1) is "no", whether a person who satisfies the CICA on the balance of probabilities that he has sustained injury directly attributable to an offence under section 20 in circumstances such as those in the present case is a victim of a crime of violence for the purposes of the Scheme.

JUDGMENT

The Supreme Court unanimously allows the appeal and restores the decision of the FTT. While every sympathy must be felt for the victim, Mrs Caldwell and their family, the terms of the Scheme do not permit an award of compensation to be made in this case [28]. The lead judgment is given by Lord Hope with whom all the other

justices agree. Lord Carnwath’s judgment contains observations about procedural aspects of the case among other matters.

REASONS FOR THE JUDGMENT

Built into the phrase “a crime of violence” there are two questions that the tribunal must consider. The first is whether, having regard to the facts which have been proved, a criminal offence has been committed. That question is for the tribunal, having informed itself as to what the law requires for proof of that offence, to determine as a matter of fact. The second is whether, having regard to the nature of the criminal act, the offence that was committed was a crime of violence. This may also raise an issue of fact for the tribunal to determine, depending on what the law requires for proof of the offence. The range of acts that fall within the broad definition may vary quite widely, so the question whether there was a crime of violence will have to be determined by looking at the nature of what was done. But in this case the words of the statute speak for themselves. To wound or inflict any grievous bodily harm on another person unlawfully or recklessly, foreseeing that physical harm to some other person will be the consequence of his act, is a crime in terms of section 20. It is also a violent act. So too is the unlawful or reckless application of physical force of any kind to the person, directly or indirectly, so that they suffer injury. The crime that section 20 defines will always amount to a crime of violence for the purposes of the Scheme [16 – 18].

Fairly read, the reason why Mr Jones’ appeal to the FTT failed was that it was not proved that an offence of the kind described by section 20 had been committed by Mr Hughes [20]. The FTT appreciated that the question it had to consider first was whether an offence under section 20 had been committed. It identified correctly the tests that had to be applied and reached the conclusion that it was not satisfied that Mr Hughes did commit that offence. In particular, the FTT was not satisfied that the facts of the case demonstrated that Mr Hughes intended to cause harm or was reckless as to whether harm of whatever degree might be caused by his actions [24, 26].

The judgment of the Court of Appeal taken overall fails to identify a flaw in the reasoning of the FTT which could be said to amount to an error of law [26]. It appears to have been unwilling to accept that the question that the FTT was asking itself was whether it could be satisfied that a section 20 offence had been committed rather than whether Mr Hughes’ actions amounted to a crime of violence. It was also unduly critical of the FTT’s reasoning [25]. There are signs too that it allowed itself to be unduly influenced by its own view that it was highly improbable that anyone who runs into the path of traffic on a busy motorway will not at the least foresee the possibility of an accident and of consequential harm being caused to other road users. The question whether Mr Hughes did actually foresee this possibility was for the FTT to answer, not the Court of Appeal [26].

It is a curious feature of this appeal that the issues which both sides say are for the court to consider assume that the FTT held that a section 20 offence had been committed. The question whether a section 20 offence is necessarily a crime of violence admits of only one answer. But the FTT never got to the stage of asking itself that question because of its finding, on the facts, that a section 20 offence had not been committed [27].

Where, as here, the interpretation and application of a specialised statutory scheme has been entrusted by Parliament to the new tribunal system, an important function of the Upper Tribunal is to develop structured guidance on the use of expressions which are central to the scheme, and so as to reduce the risk of inconsistent results by different panels at the First-tier level. It is primarily for the tribunals, not the appellate courts, to develop a consistent approach to issues such as the two questions built into the phrase “a crime of violence”, bearing in mind that they are peculiarly well fitted to determine them. A pragmatic approach should be taken to the dividing line between law and fact, so that the expertise of tribunals at the First-tier level and that of the Upper Tribunal can be used to best effect. An appeal court should not venture too readily into this area by classifying issues as issues of law which are really best left for determination by the specialist appellate tribunals [16, 41, 47].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html