**Jurisdiction:** Ireland
**Judge:** Mr. Justice de Valera
**Judgment Date:** 24 October 2006
**Neutral Citation:** [2006] IEHC 393

**Reported In:** [2006] 10 JIC 2403
**Docket Number:** [1998/10555 P]
**Court:** High Court
**Date:** 24 October 2006

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## Case Analysis

**Legal issue** Is it appropriate to award aggravated and exemplary damages in a case involving sexual abuse, where the defendant refused to participate in the trial and the nature of the wrong committed warrants such additional damages?

### Headnote

TORT LAW. DAMAGES FOR SEXUAL ABUSE. The case considered whether it was appropriate to award aggravated and exemplary damages to a plaintiff who previously obtained judgment against a defendant for sexual abuse suffered by the plaintiff. The court awarded EUR 5,104 for special damages, EUR 200,000 for general damages, EUR 50,000 each for aggravated and exemplary damages. The sum awarded by the Criminal Injuries Compensation Tribunal was not taken into account in determining the amount of damages awarded.

### Key Paragraphs

"... Among the matters which I should take into consideration when considering aggravated damages is the manner in which the wrong was committed, the conduct of the wrongdoer after the commission of the offence and the conduct of the wrongdoer in the defence of the action up to and including the trial of the action., In this matter the first defendant has refused to take any part in the trial and I am satisfied that I am entitled to take this into consideration as well as his behaviour at the criminal trial which was the "trigger" for L. O'K. in initiating this action."

O'K (L) v H (L)

BETWEEN

L. O'K.
PLAINTIFF

AND

L. H., THE MINISTER FOR EDUCATION AND SCIENCE, IRELAND AND THE ATTORNEY GENERAL
DEFENDANTS

[2006] IEHC 393

[1998/10555 P]

THE HIGH COURT

DAMAGES

Assessment

The plaintiff previously obtained judgment against the first named defendant. This case concerned the appropriate measure of damages to be awarded to the plaintiff against that defendant as a result of sexual abuse suffered by the plaintiff and whether it was appropriate to award aggravated and exemplary damages also.

Held by de Valera J. in awarding the sum of Eur305,104 by way of damages to the plaintiff: That the appropriate figure for general damages in this case was the sum of Eur200,000, comprising Eur150,000 for general damages to date and Eur50,000 for damages into the future. Having regard to the fact that the defendant refused to take any part in this trial, his behaviour at the criminal trial and the nature of the wrong committed by the defendant, it was appropriate to award the sum of Eur50,000 by way of aggravated damages and Eur50,000 by way of exemplary damages. Furthermore, the compensation awarded by the Criminal Injuries Compensation Tribunal was not taken into account in respect of the amount of damages awarded in this case.

Reporter: L.O'S.

GOUGH v NEARY & CRONIN 2003 3 IR 92 2004 1 ILRM
MCINTYRE v LEWIS 1991 1 IR 121
CROFTER PROPERTIES v GENPORT LTD 2002 4 IR 73 2003 10 213
1998/10555P - de Valera J - HIGH - 24/10/2006 - 2006 46 9888 2006 IEHC 393

Mr. Justice de Valera

This judgment is circulated in a redacted form to avoid identification of the parties

Damages

The plaintiff obtained judgment against the first defendant on the 8th day of November, 1999 and the defendant did not seek to appear nor was he represented at the subsequent hearing between the plaintiff and the second, third and fourth defendants which was heard in the High Court in Dublin commencing on the 3rd day of March, 2004.

I am now asked to measure the damages to which the plaintiff is entitled against the first defendant.

Special Damages

A figure of €5,104 was claimed by the plaintiff against the defendants and agreed between the plaintiff and the second, third and fourth defendants (subject to liability). I am satisfied on the evidence that this is an appropriate amount to award the plaintiff under this heading against the first defendant.

General Damages

In deciding on the appropriate figure for general damages I am accepting the evidence of the plaintiff herself and that of Dr. O'Leary, her psychiatrist.

Since the sexual assaults on the plaintiff when she was a little girl her life has been blighted and I am satisfied on the evidence that the sexual abuse that she suffered has been, as described by Dr. O'Leary:

> "quite intrusive in her life… and still is to the present date".

Sexual abuse of the kind suffered by the plaintiff is extremely emotive and I must ensure in measuring damages that such measurement is carried out dispassionately and judicially.

There have been a number of cases in the recent past in which juries awarded sums in the region of €1,000,000 for injuries arising out of the sexual abuse of young children but the Supreme Court has made it clear that these are excessively high figures.

The Supreme Court has laid down guidelines in decisions such as*Gough v. Neary* [2003] 3 I.R. p. 92 in relation to the limit of damages in personal injury actions, of which this is one, and that limit appears to be somewhere in the region of €400,000 and this for what are described as "catastrophic injury" cases.

In deciding on the appropriate amount of general damages in L. O'K.'s situation I must maintain a proportionality between the limits set down by the Supreme Court and the severity of the damage to the plaintiff herself.

In these circumstances I believe that the appropriate figure is €200,000 being made up as to €150,000 for general damages to the date of trial and €50,000 for general damages into the future.

Aggravated and Exemplary Damages

It has been urged upon me, and I accept, by counsel for the plaintiff that I should also consider making awards under the heading of aggravated and exemplary damages. Among the matters which I should take into consideration when considering aggravated damages is the manner in which the wrong was committed, the conduct of the wrongdoer after the commission of the offence and the conduct of the wrongdoer in the defence of the action up to and including the trial of the action. In this matter the first defendant has refused to take any part in the trial and I am satisfied that I am entitled to take this into consideration as well as his behaviour at the criminal trial which was the "trigger" for L. O'K. in initiating this action.

I am also entitled to take into consideration the nature of the wrong committed by the first defendant and a sexual assault by a teacher on one of his young pupils is a matter which must excite the "proper indignation of the public" per McCarthy J. in the Supreme Court decision*McIntyre v. Lewis* [1991] 1 I.R. 121 which was followed by McCracken J. in the High Court decision *Crofter Properties v. Genport Limited* [2002] 4 I.R. 73 and award a sum for exemplary damages.

Under the headings aggravated damages and exemplary damages, therefore, I award a sum of €50,000 under each heading.

The Criminal Injuries Compensation Tribunal

In 2002, L. O'K. was awarded, and accepted, €33,962.24 as an*ex gratia* payment for compensation from the CICT. I am satisfied that it should not be taken into consideration in respect of her action against the first named defendant herein.

Total Damages

Therefore I award the plaintiff arising out of the judgment obtained by her against the first named defendant the sum of €305,104.