

Ireland

Eoin Quill

Hickey v McGowan [2017] IESC 6

Facts

- PH Sexually Abused by a Teacher Over 3 Years, 1969-1972
- Teacher was a Member of Marist Order of Brothers
- PMcG Provincial of Marist Brothers in Ireland at Time of Litigation
- PMcG Denied Vicarious Liability
- [2014] IEHC 19, O'Neill J finds in favour of PH
- Awards PH € 315,000 (€ 350,000 -10% for Imputed Contributory Negligence)

PMcG's Appeal to IESC

Issues

- Treatment of Marists as Akin to a Corporate Body
- Is the Relationship Between Brother & The Order Sufficient for VL?
- Scope of Employment/Engagement; is Close Connection Test Applicable? Is Abuse Sufficiently Connected?
- Dual Vicarious Liability; How Should Liability be Apportioned?
- Quantum of Damages

IESC Decision

- Treatment of Marists as Akin to a Corporate Body
 - Unanimously Overturned
 - Members of Unincorporated Association can be VL - Only those Members at the Time of the Tort
- Relationship Between Brother & The Order
 - It is Sufficient for VL (Unanimous)
 - PMcG Personally Liable for Technical Reasons (Majority); Minority (Charleton J) – Remit Q of Whether Provincial is a Corporation Sole to IEHC

IESC Decision

- Scope of Employment/Engagement
 - Close Connection Test Unanimously Endorsed
 - Test Satisfied on Facts (Unanimous)
- Dual Vicarious Liability
 - Unanimously Accepted in Principle
 - Minority Rejected Application to Facts
- Apportionment
 - Majority (O'Donnell J, Denham CJ & MacMenamin & Dunne JJ concurring) 50%

IESC Decision

- Quantum of Damages
 - Unanimous Reduction of Headline Figure
 - € 350,000 Down to € 150,000
 - Majority Award € 75,000 (50% Reduction for Imputed Contributory Negligence)

Comment

- VL of Unincorporated Association
 - IESC Takes Orthodox View
 - Disappointing but Understandable
- Relationship Between Brother & The Order
 - Not Based on 'Akin to Employment'
 - Minority View Raises Interesting Q re Corp Sole
 - Majority Not Averse in Principle
- Scope of Employment/Engagement
 - Good to Have Close Connection Test Endorsed
 - Lacks Clarity as to Which Version

Comment

- Dual Vicarious Liability
 - Good to Have Principle Endorsed
- Apportionment
 - Raises a Problem With Strict Liability Apportionment
 - Also a Problem with Imputed Contributory Negligence
- Quantum of Damages
 - Disappointing Reduction in Headline Figure