

The Personal
Injuries
Assessment
Board Acts and
Limitation
Periods

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▣ PERSONAL INJURIES ASSESSMENT BOARD ACTS AND LIMITATION PERIODS

Introduction

The introduction of the Injuries Board (formerly known as the Personal Injuries Assessment Board) by the Personal Injuries Assessment Board Act 2003 (the “2003 Act”) changed dramatically the way personal injury claims are processed in Ireland. Prior to the 2003 Act, challenges to the personal injury legislation were few and mainly cosmetic. The 2003 Act, together with the Civil Liability and Courts Act, 2004, (the “2004 Act”) which was brought into effect on the 20th September 2004, prevents claimants from issuing court proceedings in civil actions, save for certain exceptions, without an application having first been made to the Injuries Board to have their claim assessed. The Personal Injuries Assessment Board (Amendment) Act 2007 (the “2007 Act”) increased the pressure on claimants to accept the Injuries Board awards and introduced cost penalties in the event of a claimant refusing an Injuries Board award and being awarded the same or less by the courts. There is one aspect though of the 2003 Act, limitation periods, where there is a lacuna in the law which has not been rectified by legislation.

Limitation Periods

As Section 7 of the 2004 Act reduces the limitation period from three years to two years, this means that the time frame within which the Injuries Board has to deal with a claim is quite short. This could result in a situation where, if the Injuries Board did not deal with a claimant’s assessment in a timely fashion, then that claim could become statute barred. It is for this reason that section 50 of the 2003 Act is of importance. Section 50 states:

“In reckoning any period of time for the purposes of any limitation period in relation to a relevant claim specified by the Statute of Limitations 1957 or the Statute of Limitations (Amendment) Act 1991 , the period beginning on the making of an application under section 11 in relation to the claim and ending 6 months from the date of issue of an authorisation under, as appropriate, section 14 , 17, 32 or 36, rules under section 46 (3) or section 49 shall be disregarded.”

The result of Section 50 is that once a claim is made to the Injuries Board the two year limitation period imposed by the Statute of Limitations 1957 or the Statute of Limitations

(Amendment) Act 1991 stops and does not recommence until six months after the authorisation has issued. An authorisation is the document allowing the claimant to bring court proceedings in respect of his or her claim.

The issue here is that Section 50 only refers to limitation periods specified in the Statute of Limitations Act 1957 (the “1957 Act”) and the Statute of Limitations (Amendment) Act 1991 (the “1991 Act”). There are other types of personal injuries claims which have limitation regimes outside both of these Acts.

Maritime Claims

The issuing of proceedings in personal injury cases arising out of any incident on a vessel is governed by Section 46(2) of the Civil Liability Act, 1961 (the “1961 Act”). For most claimants’ solicitors this is a little known limitation period. The limitation period is two years. Section 46(2) states:

“Where, by the sole or concurrent fault of a vessel damage is caused to that or another vessel or to the cargo or any property on board either vessel, or loss of life or personal injury is suffered, by any person on board either vessel, then, subject to subsection (3) of this section, no action shall be maintainable to enforce a claim for damages or lien in respect of such damage, loss of life or injury unless proceedings are commenced within two years from the date when such damage, loss of life or injury was caused; and an action shall not be maintainable to enforce any claim for contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings are commenced within one year from the date of payment.”

When the general limitation period was three years practitioners tended to be more easily wrong footed by this Section. The main point is that Section 50 of the 2003 Act does not specify the 1961 Act when reckoning time for limitation purposes and maritime incidents resulting in personal injuries claims fall outside the 2003 Act.

Aviation Claims

Aviation claims, whether for cargo or injury, have always been governed by international conventions which in turn have been given force of law by the Air Navigation and Transport Acts, as amended, and by EU Regulations. The present regime is governed by the Montreal Convention 1999 (“the Convention”) and Council Regulation (EC) No. 2027/97 of the 9th

October 1997 (which essentially repeats the Convention as amended by Regulation EC No. 889/2002).

Article 35 of the Convention states:

“Limitation of actions:

1. *The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.*
2. *The method of calculating that period shall be determined by the law of the court seized of the case.”*

Interestingly Article 35 states that the *“right to damages shall be extinguished”* if the action is not brought within the two year period and this is more draconian than the normal limitation rules. Also when claiming for damages arising out of international carriage by air, a claimant’s only cause of action is under the Convention. The important issue here is that this limitation regime is separate from the 1957 and 1991 Acts as specified in Section 50 of the 2003 Act.

Actions Against the Estate of Deceased Person

This is another situation where the former limitation period of three years, prior to the implementation of Section 7 of the 2004 Act did not apply. It again caused pitfalls for claimant’s solicitors who always felt that, under the old rules, a three year limitation period applied in all claims for personal injuries.

The position relating to the suing of the estate of a deceased person is governed by Section 9 of the 1961 Act. This Section states:

“9(1) In this section “the relevant period” means the period of limitation prescribed by the Statute of Limitations or any other limitation enactment.

- (2) *No proceedings shall be maintainable in respect of any cause of action whatsoever which has survived against the estate of a deceased person unless either- (a) proceedings against him in respect of that cause of action were commenced within*

the relevant period and were pending at the date of his death, or (b) proceedings are commenced in respect of that cause of action within the relevant period or within the period of two years after his death, whichever period first expires.”

The position here is more open to interpretation than for maritime and aviation claims. The reference to “*the relevant period*” in subsection (1) has to be two years as provided by Section 3(1) of the 1991 Act as amended by Section 7 of the 2004 Act. Section 3(1) of the 1991 Act is clearly caught by Section 50 so is the position not abundantly clear? The answer has to be, not necessarily so.

Section 9(2)(b) of the 1961 Act refers to commencing proceedings “*within the relevant period or within the period of two years after his death, whichever period first expires*”. There are two limitation periods here. While the first one, “*the relevant period*”, is caught by Section 50 it is far from clear that the second period is. That period is specified by Section 9 of the 1961 Act only and not by any of the Acts mentioned in Section 50 of 2003 Act. This view may not have been the intention of the legislature because it does create a distinction between claimants with causes of action against a deceased person and those with a cause of action against a living person. However, the ordinary meaning of Section 50 of the 2003 Act would have to lead one to the view that Section 9 of the 1961 Act, at least insofar as it applies to the second limitation period, is excluded.

Conclusion

It is quite clear that the two year limitation period imposed by the Statute of Limitations 1957 or the Statute of Limitations (Amendment) Act 1991 by virtue of Section 50 of the 2003 Act does not apply to three specific areas where personal injuries could arise. This appears to be a failing by the draftsman. They are not areas where a large number of claims arise but claims do arise. The Injuries Board have resolved the situation by not agreeing to assess any claims which are submitted to them from these three areas (relying on Section 17 of the 2003 Act to do so) and issuing an authorisation immediately. It is the practical application by the Injuries Board rather than the legislature which has come to the rescue.

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