[IE] Jury determines public broadcaster 35% liable for defamatory comments made during programme

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On 21 June 2018, the important High Court judgment in Kehoe v. RTÉ was published, which held that a jury in a defamation trial may apportion liability between a broadcaster and a programme contributor, even where the contributor is not a party to the case.

The case concerned Nicky Kehoe, a member of the Irish political party Sinn Féin, and a former elected local official. The case centred on an October 2015 edition of the current affairs programme 'Saturday with Claire Byrne' broadcast live by the public broadcaster RTÉ. The edition at issue featured the presenter and two contributors, namely Joe Costello, a Labour Party member of parliament, and Eoin Ó Broin, a Sinn Féin elected local official. During the programme, the Labour Party politician, Mr Costello, claimed that a member of an illegal organisation, the IRA army council, was directing Sinn Féin councillors on Dublin City Council on how to vote. Mr Costello did not name Mr Kehoe, but the Sinn Féin politician, Mr Ó Broin, named Mr Kehoe as the person to whom Mr Costello was referring, and challenged Mr Costello about his remarks, describing them as outrageous and bizarre.

Following the broadcast, Mr Kehoe initiated defamation proceedings against RTÉ, but not against the Labour Party politician. The defamation action was heard by a High Court judge and jury in early 2018. Notably, as it was now over two years since the broadcast, any action against the Labour Party politician became "statute barred" under section 38(1) of the Defamation Act 2009, which puts a two-year limit on initiating defamation actions. Before the question was put to the jury of whether the programme was defamatory, and if any damages should be awarded, RTÉ put forward a novel submission in the High Court. RTÉ argued that the Labour Party politician should be considered a "concurrent wrongdoer" under section 35(1)(i) of the Civil Liability Act 1963, which allows the apportionment of liability to concurrent wrongdoers, even where a claim against one wrongdoer is "statute barred". In other words, even though the plaintiff had not sued the Labour Party politician, and such a claim could no longer be initiated, he should be considered a concurrent wrongdoer along with RTÉ, as he had made the comments at issue. As such, it should be open to the jury to determine whether RTÉ was liable for only a certain percentage of any damages that may be awarded.

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In the High Court judgment delivered on 21 February 2018, Mr Justice Barton agreed with RTÉ's submission, and held that the Labour Party politician "could have been joined as a co-defendant in these proceedings as an alleged concurrent wrongdoer and that if the statements are found to be defamatory his would have been a liability as such". Thus, RTÉ was entitled to plead "contributory negligence" in reduction of any award of damages made by the jury. Following this judgment, the jury delivered its verdict on 26 February 2018, and found that the programme had been defamatory, and assessed damages at EUR 10 000. However, the jury also held that RTÉ should only be held liable for 35% of the damages, which meant RTÉ was liable for EUR 3 500 in damages.

This was one of the lowest defamation awards made against a media defendant in Ireland.

Kehoe v. Raidió Teilifís Éireann [2018] IEHC 340, 21 June 2018

https://www.bailii.org/ie/cases/IEHC/2018/H340.html

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