

SOUTH AFRICA / JUDGMENT

Mouton v Compensation Commission (A38/2002) [2002] ZAWCHC 76 (30 August 2002) [2002] ZAWCHC 76

COURT

Western Cape High Court, Cape Town

BEFORE

Traverso, McDougall

CASE / FILE NUMBER

A38/2002

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JUDGMENT

IN THE HIGH COURT OF SOUTH AFRICA(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: A38/2002

DATE: 30 AUGUST 2002

In the matter between:

KAREL PETRUS JOOSTE MOUTON Appellant

and

THE COMPENSATION COMMISSIONER Respondent

TRAVERSO. DJP

The appellant in this case lodged a claim with the Compensation Commissioner for compensation fn terms of the Compensation for Occupational Injuries and Diseases Act, No 130 of 1993 (The Act) wherein he claimed compensation due to the fact that he was suffering from a stress condition caused as a result of his work in the control room.

The Compensation Commissioner refused the claim and from the summary, which was prepared b the Compensation Commissioner, the legal section of the Compensation Commissioner, stated the basis for the refusal of his claim was the following;

"On 16 November 1999 the employee was informed that compensation and medical aid expenses are not payable in terms of the Act as the chronic adjustment disorder and anxiety condition for which he received medical treatment did not arise out of or from the cause of his employment."

The appellant objected to this refusal of his claim in terms of Section 91 of the Act. Many points were raised in argument before us, particular in the heads, but in my view there is only one relevant point.

The evidence of the appellant was clear, he stated that he was at all material times employed by the Department of Correctional Services. It was common cause at the hearing that the appellant was boarded due to a major depressive disorder from which he was suffering. The appellant's work in SrandvEei Prison was that of manning the control room, where his function was to monitor conversations between prisoners, amongst themselves, and between prisoners and their visitors. During the course of these duties the appellant became privy to highly confidential and potentially dangerous information. It was not disputed that the appellant during his working hours was to all Intents and purposes In "Isolation". He was alone in the control room, and due to the confidential nature of the information which came to his attention, he could not discuss this information with either his peers or members of his family.

On behalf of the appellant two medical practitioners, a psychologist and psychiatrist also testified. From their evidence it became clear that the appellant was a very religious person, and a soft person, and found this situation extremely stressful. He perceived the knowledge which he obtained during the course of performing his functions as potentially dangerous. The problems which the appellant started experiencing started manifesting themselves as far back as 1996. The appellant was treated for his condition but his condition steadily deteriorated to the point where it was decided by the medical practitioners that he should no longer remain in his employment but should cease employment completely.

This decision was not lightly taken. This decision was only taken after the psychiatrist had in fact requested the Department of Correctional Services to transfer the appellant out of this particular prison and out of this particular work environment, and more particularly the control room, but this request fell on deaf ears.

The tribunal based its finding sofely on the basis that the appellant was not entitled to compensation because;

"According to the evidence led it is clear that the employee was never exposed to any life-threatening situation whereby his life was in danger. There was no incident or accident which can be linked to the employee's condition and treatment he received."

The Compensation for Occupational Injuries and Diseases Act contains two relevant provisions relating to compensation, the one is for occupational injuries, which is contained in Section 22, in Chapter 4 of the Act, whereas the other deals with occupational diseases and is contained in chapter 7 of the Act, and more specifically Section 65. It is accordingly clear that compensation can be claimed, either by virtue of an occupational injury, which by its very nature, and by virtue

of the provisions of Section 22, wi3] arise out of an accident or an incident. Compensation for occupational diseases on the other hand will be claimable if it is

proved to the satisfaction of the Director General, and I leave out

(a) and quote (b);

"That the employee has contracted a disease other than a disease contemplated in paragraph and that such disease has arisen out of and in the course of his or her employment."

In my view the evidence overwhelmingly established that the appellant's condition arose as a result of, and in the course and scope of his employment. The term "arising out of" and "in the course of the employment" have often been considered, with specific reference to the Act under consideration. The authors Thompson and Benjamin in paragraph H. 1.16 point out that anything "arising in the course of an employee's employment¹" is a much wider concept than arising "out of his employment". I was referred to various decisions where this clause has been considered and decided, and from that it is apparent that an accident arises out of the employment if it has a broad causal connection to the employment. In my view there was nothing to contradict the evidence that was presented.

There is however a further problem. In terms of Section 91 {5} of the Act an appellant's right of appeal is limited to inter alia a question dealing with the interpretation of this Act or any other law. Whereas on the face of it it might seem that this appeal depends on a factual inquiry it is in my view not so at all. What the tribunal did in this case was to lose sight of the provisions of Section 65 completely. They did not consider it at all, and neither did they consider any of the provisions relevant to occupational

diseases as contained in Chapter 7 of the Act. They interpreted the Act as if a claim would only lie if there was an incident or

accident.

How matters of this nature should be approached was discussed in the Supreme Court of Appeal, in the case of *Workmen's Compensation Commissioner v van Zyl* 1996(3) SA pg 757 AD at 763. In that case the Court said that although the facts which were relevant to the case had to be discussed and that reference had to be made to the facts, that was only done in order to give meaning to the provisions of the Act, and I refer specifically to 763 b-J.

In all the circumstances I am of the view that the appeal must succeed, with costs. The matter is referred back to the tribunal to determine the compensation payable to the appellant in accordance with the provisions of Chapter 7 of the Act.

It is so ordered.

TRAVERSO, DJP

McDOUGALL, AJ

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