

SOUTH AFRICA / JUDGMENT

Southern Life Association Limited v Miller (17/2004) [2004] ZASCA 135; [2005] 2 All SA 371 (SCA) (1 December 2004) [2004] ZASCA 135

COURT
Supreme Court of Appeal

BEFORE
Farlam, Scott

CASE / FILE NUMBER
17/2004

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SUMMARY: Insurance – disability insurance – clause in policy to the effect that insurer would only be liable if in its opinion claimant was totally and permanently disabled – interpretation of – necessity for claimant to establish that insurer's opinion on the point unreasonable.

FARLAM JA

[1] This is an appeal from an order made by Hattingh J, sitting in the Bloemfontein High Court. The learned judge ordered the appellant, a registered insurer, to admit liability for a claim brought by the respondent against the trustees of a provident fund (who were cited as the second defendant in the court a quo), together with interest on the claim calculated from 12 October 1993, and to pay the costs. The trustees of the provident fund were ordered to pay the amount of R205 920 to the respondent with interest, also calculated from 12 October 1993.

The respondent was thus unable to claim the disability benefit to which he alleged he was entitled from the trustees of the provident fund unless and until the appellant had admitted liability for the claim. Hence his prayer, which the trial court granted, for an order calling upon the appellant to admit liability to the trustees of the fund for the respondent's claim.

[4] Clause 3.1.0 of the policy contains a definition of disablement. It reads as follows:

3.1.1 A member will be regarded as totally and permanently disabled if in the opinion of the Southern he has been so disabled by injury or disease as to be continuously, permanently and totally incapable of engaging for remuneration or profit

(a) in his own occupation or

- (b) in any other occupation for which he is or could reasonably be expected to become qualified by his knowledge, training, education, ability and experience.’
- [5] Clause 2.3.0 of the policy, described as the ‘actively at work condition’, is also relevant. It reads as follows:
- [6] On 25 March 1991, when the respondent sustained his knee injury, he was employed as a maintenance electrician by Unipipe (Pty) Ltd in Bloemfontein. It was common cause at the trial that as a result of the injuries sustained by him on 25 March 1991 the respondent is unable to carry on the trade of a maintenance electrician. He was unable to work for some time after the incident on 25 March 1991 but he returned to his employer in January 1992 where he took up a post described in the papers as that of a ‘draughtsman’. At this stage he became a member of the provident fund. His duties included sorting and filing plans, tracing over plans which had become faint, writing water meter readings in a book, fetching post and parts, standing at a board tracing drawings, taking measurements and developing new control panels. He himself said he would not describe this job as being that of a draughtsman, stating that he felt like a messenger at that stage. He performed his duties in the post he took up in January 1992 until October 1993 when his post became redundant.
- (a) the respondent, not being party to the insurance contract between the appellant and the trustees of the provident fund, could not pursue a claim against the appellant arising out of his alleged disability; and
- (b) the respondent was not disabled as defined under the policy.

Has performed office work (Draftsman) ever since.

And I find him not totally and permanently disabled from following that occupation.’

The appeal succeeds with costs.

The order of the court a quo is set aside and altered to read:

‘The plaintiff’s claim is dismissed with costs.’

..... .

JUDGE OF APPEAL

SCOTT

JA

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