



Member of the Executive Council for Health and Social Development of the Gauteng Provincial Government v. DZ obo WZ

2017 (12) BCLR 1528 (CC)

Country: South Africa

Region: Africa

Year: 2017

Court: Constitutional Court of South Africa

Health Topics: Child and adolescent health, Chronic and noncommunicable diseases, Health care and health services, Hospitals

Human Rights: Right to bodily integrity, Right to health, Right to life

Facts

The respondent – DZ in this case gave birth to WZ. Due to prolonged labour, DZ suffered from asphyxiation, which led to cerebral palsy. WZ brought an action for damages on behalf of DZ on the account of negligence of the hospital staff. The Medical of the Executive Council (MEC) for health admitted negligence on part of the staff and accepted vicarious liability since it was a public hospital. The agreed amount of compensation was of R23 272 303, of which R19 970 631 was in respect of future medical expenses. The MEC's amended plea contended that it was her common law right to not pay the future medical expenses as a lump sum and she could choose to pay the future medical expenses if and when they arise on a written quotation from the service provider. She also contended that she should be able to pay that sum to the medical service provider directly. She also stated that if she did not have a common law right to do so, the court should develop such right.

The High Court dismissed the amended plea. The Supreme Court of Appeal stated that the common law rule of "once and for all" precludes what the MEC was seeking. It further stated that if such a rule needs to be developed, it is best for the legislature to decide to do so.

The MEC appealed to the Constitutional Court.

Decision and Reasoning

The Majority Opinion (Froneman J.) granted the Appellant the leave to appeal but dismissed the appeal with costs. It stated that the Appellant had not shown any factual material on which the common law right should be developed. The fact that negligence occurred in a public healthcare institution and negligence occurred cannot be used as a ground to develop the right as sought by the Appellant. However, it stated that if a cogent evidence to support the development of common law is brought forward, it might be open for the Court to develop such right.

Jafta J. concurred but gave different reasons for dismissing the appeal. He stated that the "once and for all" did not prohibit periodic payment. He stated that this rule does not require the determined amount to be paid as a lump sum. What it actually prohibits is multiplicity of proceedings. Further, the High Court had an inherent power to decide in what manner payment should be done. In this case, he states the MEC did not lead evidence supporting periodic payment. Further, as there is no deficiency in the common law rule, the need to develop the common law does not arise.

Decision Excerpts

"We must remind ourselves again of the context in which the argument for development of the common law is made here. We are not called upon to decide the fate of the "once and for all" rule in all personal injury cases arising from medical negligence. The most important future imponderable is the ultimate one: death. Periodic payments subject to a "top-up/claw-back" will give less speculative expression to the general principle of compensation for loss. And the likelihood of a dependant's claim, which might present problems in other cases,⁸¹ is less, if not entirely absent, here." (Para 56)

“We have seen, in this regard, that any development of the common law requires factual material upon which the assessment whether to develop the law must be made. Here that factual material is absent. The only possible factual foundation for an argument that the common law must be developed is the mere fact that WZ was born in a public healthcare institution and that is where the medical negligence occurred. This is woefully inadequate to ground development of the common law in the manner sought by the Gauteng MEC. The appeal must fail, for that reason.” (Para 57)

“But the failure of the appeal does not mean that the door to further development of the common law is shut. We have seen that possibilities for further development are arguable. Factual evidence to substantiate a carefully pleaded argument for the development of the common law must be properly adduced for assessment. If it is sufficiently cogent, it might well carry the day.” (Para 58)

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