



Oppelt v. Head, Department of Health, Provincial Administration: Western Cape

[2015] ZACC 33

Country: South Africa

Region: Africa

Year: 2015

Court: The Constitutional Court of South Africa

Health Topics: Chronic and noncommunicable diseases, Health care and health services, Hospitals, Medical malpractice

Human Rights: Right to bodily integrity, Right to health

Facts

The Appellant is a 17 year old, who suffered spinal injuries during a rugby match, which left him paralysed below his neck and in a quadriplegic state. Thereafter, he received treatment at three hospitals under the responsibility of the respondent. At the first hospital, he arrived at around 3 pm and was attended to by a junior doctor and a nurse. A training neurological registrar was contacted at the second hospital. He suggested that the appellant should be transported to the second hospital by a helicopter but instead he was transferred by ambulance. An orthopaedic surgery registrar made a call around 8 pm (marked priority) for an urgent transfer of the appellant to a specialised spinal cord injury unit at the third hospital. The ambulance was arranged only after midnight and arrived at the third hospital around 1:30 am and the spinal cord injury was treated at around 4 am.

The appellant filed an action against the respondent stating that all of the three hospitals failed to provide him with prompt and appropriate medical treatment. He further stated that the respondent owed him the legal duty to ensure that he was treated appropriately within the first four hours of the injury. He had relied on Dr. Newton's (Ortho Surgeon) evidence. The High Court found the evidence and method of treatment as provided by Dr. Newton well reasoned and logical and found that delays on part of the hospital staff pointed to the fact that the appellant was not given emergency medical treatment as provided in Article 27(3) of the Constitution ("No one may be refused emergency medical treatment").

The Supreme Court of Appeal reversed the decision of the High Court stating that the Appellant had failed to prove his case on a balance of probabilities and that Dr. Newton's theory was based on a small sample size. Hence, this appeal.

Decision and Reasoning

The Court upheld the appeal and ordered the respondent to pay damages as the applicant may prove to have suffered. It further ordered the respondent to pay 50% of the costs in the High Court and full costs in both Supreme Court of Appeal and in the Constitutional Court.

The Court first allows the leave to appeal as it states that this matter raises constitutional issues of significant public importance such as right to access to healthcare services and emergency medical treatment under Section 27(3) of the Constitution.

The Court stated that in a case of delictual claim, a "but for" test is applied and the question to be answered here is whether the applicant's paralysis would not have occurred or been rendered permanent had the procedure been performed promptly. It stated that Dr. Newton's evidence was reasonable and logical that dislocation of the spinal cord causing obstruction in the spinal canal, which left unattended results in injury of the nerve cells. Dr. Newton's evidence was also supported by numerous articles and his research had been peer-reviewed and accepted for publication in a highly reputed journal. It further stated that the Supreme Court of Appeal's criticism of Dr. Newton's sample size failed to take into account that it was specific study of spinal cord injuries over a period of 12 years. This was the actual number of patients treated at the third hospital. The Court also stated that the appellant should have received emergency medical treatment as

there was an emergency situation, which necessitated remedial treatment. Further the remedial treatment could have averted harm. Failure to comply with these factors points towards wrongfulness. The appellant was sent to the second hospital despite the fact that third hospital which had a specialised Spinal unit was closer to the first hospital shows deviation of protocol and points towards negligent conduct.

The Minority opinion stated that it would not find the medical staff liable for negligence as the appellant failed to prove its case on the balance of probabilities and overall it seemed like the medical staff had taken appropriate steps to provide adequate treatment to the appellant.

Decision Excerpts

“Contrary to the approach adopted in the minority judgment, it appears to me that the most probable inference why the applicant was not sent to Conradie is that it was done in accordance with and because of the existing protocol. In view of the general knowledge that Conradie was the more appropriate treatment centre for acute spinal injuries, the failure by the Department to inform its personnel that the protocol was not inflexible and that direct referral to Conradie should have been done in urgent spinal cord injury cases, amounted to negligence. Had it done so, the available evidence suggests that the applicant could probably have been treated at Conradie within four hours of sustaining the injury and the sad and tragic consequences of that injury could probably have been avoided.” (Para 82)

“The respondent failed to ensure that all reasonable steps were taken to provide the medical treatment that was required to treat the applicant’s spinal cord injuries, namely urgent closed reduction, in order to decompress the ischaemia-causing dislocation. It failed to guard against the eventuation of the harm in the form of permanent paralysis.” (Para 83)

“Reasonable healthcare practitioners in the position of the respondent’s employees, armed with the knowledge that Conradie was the respondent’s specialised unit for spinal cord injuries in the Western Cape, and the knowledge that patients who had suffered spinal cord injuries had to be treated urgently, would have transferred the applicant directly to Conradie. This was not done. The inescapable inference is that the applicant was not treated with the reasonable care and skill required of the respondent’s employees at Wesfleur. The conduct of the respondent’s employees coupled with their slavish adherence to transfer protocols was substantially short of the standard of practice that a member of the public is entitled to expect from a reasonably proficient hospital and reasonably proficient doctors. I am also satisfied that the negligence of the respondent’s employees led to the applicant’s permanent paralysis.” (Para 84)

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