



Links v. Member of the Executive Council, Northern Cape Province

[2016] ZACC 10

Country: South Africa

Region: Africa

Year: 2016

Court: The Constitutional Court of South Africa

Health Topics: Health care and health services, Hospitals, Informed consent, Medical malpractice

Human Rights: Right to bodily integrity

Facts

The applicant worked as a cleaner and dislocated his left thumb. He went to Kimberley Hospital for medical treatment and he was sent home after a plaster of Paris cast was put on his left hand and forearm and was asked to come after 10 days. He returned to the hospital before the stipulated time as he was in pain. He was given pain killers and sent back home and asked to return after five days. He returned earlier as his pain became unbearable. Thereafter he was admitted. He was operated upon under general anaesthesia and his left thumb was amputated.

He alleges that he was not informed that his thumb would need to be amputated nor was he explained the reasons for this step. He was again operated upon for removal of dead or infected tissue. The applicant also stated that he was unaware of the amputation before his discharge from the hospital, which was two months after his operation.

The High Court rejected the applicant's condonation of delay application and further refused the leave to appeal. The Supreme Court of Appeal granted leave to appeal but dismissed the appeal with costs. Hence, this appeal. The question before this court was interpretation of Section 12(3) of the Prescription Act- "A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care."

Decision and Reasoning

The Court allowed the Condonation application and the leave to appeal. Further it upheld the appeal with costs. The Court stated in a case of negligence, causation has two factors: factual and legal. The Applicant lacked the knowledge of the necessary facts to file a case earlier.

The Court stated although the appellant's version that he had no knowledge of the amputation of his thumb was liable to be rejected, the fact remained that he did not have the knowledge of what factors led to the amputation of his thumb. The Court also noticed how poorly the appellant's case was handled by the Legal Aid Centre.

Decision Excerpts

"The High Court and the Full Court appear to have overlooked the question whether the applicant had the full facts necessary for him to institute his claim on or before 5 August 2006. He did not know or have reasonable grounds to suspect that his negligent treatment at the hands of the respondent's personnel had led to the compartment syndrome. Nor did he know that this in turn caused the amputation of his thumb and the loss of function of his left hand. In my view, the High Court and the Full Court erred in not approaching the matter in this way." (Para. 50)

"Both the High Court and the Full Court criticised the manner in which the Legal Aid Centre handled the applicant's matter. We, too, add our voice. The conduct of the people who handled the applicant's matter at the Legal Aid Centre was reprehensible. Those who have authority over the people concerned or over the Centre itself would do well to study the affidavits filed in this matter and to take appropriate action against the personnel concerned. The Centre is supposed to render a service to indigent people who are part of a

vulnerable section of our society to enable them to pursue claims that they otherwise would not be able to pursue for lack of funds. It should not be the Centre that destroys their claims by failing to attend to them with diligence and allowing them to prescribe. If we had reached a contrary conclusion, the Centre may well have been liable for the applicant's damages. Nevertheless, the Centre is responsible for a major part of the delay in the finalisation of this matter and some steps must be taken against those responsible. (Para. 52)

“The delay is not a short delay. However, the respondent had been informed in advance that there could be a delay in the lodgement of the application for leave to appeal. No prejudice has been shown to have been suffered by the respondent as a result of the delay. The issue raised by the matter – namely the interpretation of section 12 of the Prescription Act – is an important issue. It has been shown that the applicant's prospects of success were reasonable. In the circumstances it is in the interests of justice that the applicant be granted condonation. (paras. 56)

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