



Mankayi v. AngloGold Ashanti Ltd.

[2011] ZACC 3; 2011 (5) BCLR 453 (CC) ; 2011 (3) SA 237 (CC) ; [2011] 6 BLLR 527 (CC) ; (2011) 32 ILJ 545 (CC)

Country: South Africa

Region: Africa

Year: 2011

Court: Constitutional Court

Health Topics: Chronic and noncommunicable diseases, Infectious diseases, Occupational health

Human Rights: Right to favorable working conditions, Right to liberty and security of person, Right to social security, Right to work

Facts

Mr Mankayi brought an action for delictual (tort) damages against AngloGold Ashanti Limited (AngloGold). While working as an underground mineworker between January 1979 and September 1995, Mr Mankayi claimed to have been exposed to harmful dusts and gases that led to his contracting tuberculosis and a chronic obstructive airway condition; these ailments rendered him unable to work as a mineworker or in any other occupation.

Mr Mankayi claimed that AngloGold owed him a legal duty arising under both the common law and statute to provide a safe and healthy work environment. Mr Mankayi's ailments were classified as a compensable disease under the Occupational Diseases in Mines and Works Act (ODIMWA), and he received the compensation allocated under the act.

Mr Manyani argued that despite having received compensation under ODIMWA, the compensation was insufficient for the harm he suffered, and he was not precluded from suing the mining company at common law. AngloGold argued that section 35(1) of the Compensation for Occupational Injuries and Diseases Act (COIDA) extinguished the common law right of mineworkers to recover damages for occupational injury or disease from negligent mine owners. Mr Mankayi contended that because he was barred from claiming benefits under COIDA according to section 100(2) of ODIMWA, section 35(1) does not apply to him, and as such, his common law right to recover damages for occupational injury or disease was not extinguished.

Both the South Gauteng High Court and the Supreme Court of Appeal found that section 35(1) of COIDA extinguished mineworkers' common law right to recover damages, even when they are not entitled to benefits under COIDA. Mr Mankayi appealed to the South Africa Constitutional Court.

Decision and Reasoning

The Constitutional Court (the Court) held that section 35(1) of COIDA did not extinguish mineworkers' common law right to recover damages when they were not entitled to benefits under COIDA. For this reason, Mr Mankayi was entitled to exercise his common law right to recover damages for occupational injury or disease.

The Court found that section 35(1) referred only to employees with the potential to benefit from COIDA and did not deal with ODIMWA-compensatable diseases. Because section 100(2) of ODIMWA explicitly barred employees from receiving COIDA benefits when such employees had claims with respect to compensatable diseases under ODIMWA, section 35(1) could not apply to employees such as Mr. Mankayi. The Court also observed that none of the provisions within which section 35(1) was located dealt with ODIMWA-compensatable diseases and that section 35(1) did not specifically mention ODIMWA, despite having been enacted later.

The Court also found that a person whose disease was categorized as compensatable received significantly fewer benefits under ODIMWA than they would under COIDA, and they additionally lost all of the benefits of COIDA, as per ODIMWA, section 100(2). The Court observed that the purpose of this apparent difference in benefits was to reduce the burden on the COIDA fund by converting an occupational disease into a compensatable disease (para. 88). As a result, a person benefitted to a considerably lesser degree from a fund to which the employer made a significantly smaller contribution. The Court found that this severely

disadvantaged those entitled only to ODIMWA compensation,

The Court also emphasized that while there are interrelated provisions in ODIMWA and COIDA, the statutes are distinct. ODIMWA's specific mandate of limiting the impact and spread of infectious diseases contracted in mines was historical, given South Africa's history of mining.

Decision Excerpts

“The basis of his claim is that AngloGold owed him a legal duty arising under both common law and statute to provide a safe and healthy environment in which to work. In breach of this duty, AngloGold failed to apply appropriate and effective control measures.” Paragraph 3.

“As the history of this country painfully reminds us, mineworkers, African mineworkers in particular, have contributed enormously to this country's economic wealth and prosperity, at great cost to themselves and to their health. The impugned legislation affects many vulnerable members of society.” Paragraph 23.

“The differences between the compensatory regimes of COIDA and ODIMWA are quite apparent. A person whose disease is certified as a compensatable disease loses all the benefits of COIDA and receives much less under ODIMWA. The purpose is obviously to reduce the burden on the COIDA fund by converting an occupational disease into a compensatable disease. This means that the person benefits to a considerably lesser degree from another fund to which the employer makes a contribution and a much smaller contribution at that, because of the smaller benefits payable. The saving to the employer arising out of the redefinition of the disease amounts to a reduction in the contribution to the COIDA fund, which exceeds the amounts to be paid to facilitate the lesser compensation under ODIMWA. It must be emphasised that an employee who has a claim under ODIMWA has to be excluded. The drastic reduction in his compensation is obligatory. It is therefore no surprise that ODIMWA is silent on the issue of common law liability.” Paragraph 88.

“The golden thread that runs throughout ODIMWA and its antecedent legislation is that they address and limit the impact and spread of infectious diseases contracted in mines. It is not anomalous or surprising that mineworkers are treated separately. Nor is the conclusion surprising that the legislation deals distinctly with their claims to compensation. The reason for the special statutory treatment is historical. These diseases have been treated distinctly because they merited distinct treatment. They exacted their toll on not only the health of mineworkers and their families, but have posed and continue to pose a danger to the health and welfare of the public.” Paragraphs 108-9

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