



Dudley Lee v. Minister for Correctional Services

[2012] ZACC 30

Country: South Africa

Region: Africa

Year: 2012

Court: Constitutional Court

Health Topics: Diet and nutrition, Health care and health services, Infectious diseases, Prisons

Human Rights: Right to bodily integrity, Right to liberty and security of person, Right to life

Facts

While incarcerated in congested prison with poor hygienic conditions, Dudley Lee was infected with tuberculosis (TB). The responsible prison authorities were aware of the risk of the inmates contracting TB, but did not have a comprehensive system in place to reduce the risk of infection. Rather, the prison authorities relied on a system of inmates self reporting their symptoms.

Mr. Lee sued the Minister for Correctional Services arguing that the prison authorities had negligently failed to (a) take adequate steps to protect him from the risk of TB infection; and (b) provide him with adequate medical treatment and medication once he was infected, in violation of Mr. Lee's rights to protection of physical integrity, dignity, life, freedom and security of person, and humane conditions of detention .

The High Court ruled in Mr. Lee's favor, holding that the responsible authorities had neglected their statutory duty to protect Mr. Lee's rights. It noted that the risk of TB could have been curtailed by introducing certain screening, early diagnosis, and effective treatment and proper nutrition measures.

On appeal, the Supreme Court of Appeal confirmed the High Court's findings that the responsible authorities had failed to adequately protect inmates from TB. However, it held that, in order for Mr. Lee to succeed on his claim he must establish that the negligent conduct caused the infection, using the "but for" test (whether the negligent act or omission of the [respondent] the event giving rise to the harm in question would have occurred.) The Court of Appeal determined that, as Mr. Lee could not pinpoint the source of his infection and as it would have been impossible for the prison authorities to eliminate risk of infection, Mr. Lee was unable to effectively prove causation (i.e., that he had been infected by an inmate whom the responsible authorities could have reasonably known was contagious) and therefore could not prove his claim.

Decision and Reasoning

The Constitutional Court of South Africa reversed the Court of Appeal's decision.

According to the Constitutional Court, the question of causation should be approached by simply by asking whether the factual conditions of Mr. Lee's incarceration were a more probable cause of his tuberculosis, than that which would have been the case had he not been incarcerated in those conditions. The relevant analysis, therefore, was to consider hypothetically what the relevant authorities could have done to prevent a TB infection, and whether such hypothetical action had a better chance of preventing the TB infection than those conditions which Mr. Lee encountered. The practical impossibility of eliminating TB did not lessen the obligation of the responsible authorities to try to reduce the risk.

The Constitutional Court also noted that if the Court of Appeal's formulation of legal causation had been adopted, it would have been practically impossible for a prisoner (already a vulnerable person) to establish his cause of action since he could not prove the authority's omissions were the direct cause of infection.

The concurring judges pointed out that reasonable measures taken by the prison authorities could not eliminate the risk of TB infection and it was just as likely as not that Mr. Lee had been infected by a prisoner whom such authorities could not have known might pass on the disease; thus it would be nearly impossible

for Mr. Lee to have claimed with certainty that he had been infected because of the authorities' negligence. These judges accepted that the Court of Appeal's restrictive formulation of the but-for test represented current South African law but argued that such formulation of the but-for test was inadequate for securing remedies of constitutional violations (citing developments in other common law jurisdictions to achieve more just outcomes). In particular, the concurring judges were concerned that the test applied by the majority might not be sufficient where a claimant cannot identify the source of his/her injury.

Decision Excerpts

[49] What we may glean from *Siman* is that substitution as part of the application of the but-for test may not be apposite where there may be concurrent or supervening causes; that it should not be applied inflexibly; that drawing the line between a positive act and an omission is not always easy to do; and, finally, that even in the application of the but-for test common sense may have to prevail over strict logic.

[55] There was thus nothing in our law that prevented the High Court from approaching the question of causation simply by asking whether the factual conditions of Mr Lee's incarceration were a more probable cause of his tuberculosis, than that which would have been the case had he not been incarcerated in those conditions. That is what the High Court did and there was no reason, based on our law, to interfere with that finding.

[60] Although I accept that a reasonably adequate system may not have altogether eliminated the risk of contagion, I do not think that the practical impossibility of total elimination is a reason for finding that there was no duty at least to reduce the risk of contagion. It seems to me that if a non-negligent system reduced the risk of general contagion, it follows that or at least there is nothing inevitable in logic or common sense to prevent the further inference being made that specific individual contagion within a non-negligent system would be less likely than in a negligent system. It would be enough, I think, to satisfy probable factual causation where the evidence establishes that the plaintiff found himself in the kind of situation where the risk of contagion would have been reduced by proper systemic measures.