CONSTITUTIONAL COURT OF SOUTH AFRICA

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

CCT 185/14

Date of hearing: 26 February 2015
Date of judgment: 14 October 2015

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today the Constitutional Court handed down a judgment determining whether the conduct of health care workers at a provincial hospital was negligent and violated the constitutional right to emergency medical treatment.

On 23 March 2002, the applicant, Mr Oppelt, sustained a spinal cord injury during a rugby match. He was attended to at three hospitals under the control of the respondent, Head: Health, Department of Health Provincial Administration: Western Cape (Department), and was treated approximately 14 hours after the injury. First, he was taken to Wesfleur Hospital, then to Groote Schuur Hospital, where he was examined, and then urgently transferred to the specialised spinal cord injuries unit at Conradie Hospital. Despite the treatment received at Conradie Hospital, the injuries left him quadraplegic. He instituted a delictual claim in the Western Cape High Court, Cape Town (High Court) against the Department and other rugby bodies.

Before the High Court, Mr Oppelt claimed that the hospital personnel acted negligently by failing to promptly treat his spinal cord injuries or failing to treat him within four hours of the injury. Mr Oppelt relied on the evidence of Dr Newton, an orthopaedic surgeon, who stated that if a low velocity spinal cord injury is properly treated within four hours of the injury, recovery is drastically improved. The High Court found this evidence well-reasoned and logical and that no convincing evidence was presented to the contrary. It found the delays were unreasonable and thus concluded that Mr Oppelt was refused emergency medical treatment.

The Department appealed to the Supreme Court of Appeal. In reaching its conclusion, the Court found that Mr Oppelt failed to prove the validity of Dr Newton's evidence related to the treatment. It also found that he had failed to prove a causal link between the conduct of the Department's employees and the injuries sustained by Mr Oppelt. It reversed the High Court decision.

Before this Court, Mr Oppelt argued that his right to emergency medical treatment was infringed. He also argued that the grounds that the Supreme Court of Appeal relied on to reject Dr Newton's theory were in conflict with the principles laid down in an earlier decision by that Court. The Department argued that its employees could not have known about the four-hour theory and that even if they had known, there were protocols that made it impossible to have Mr Oppelt treated at Conradie Hospital within four hours, and thus had not acted negligently.

The majority judgment, authored by Molemela AJ (Mogoeng CJ, Moseneke DCJ, Froneman J, Khampepe J, Madlanga J, Nkabinde J and Theron AJ concurring) found that the criticisms levelled against Dr Newton's theory by the Supreme Court of Appeal were unfounded. It held that Dr Newton's theory was supported and met the test laid down in an earlier decision of the Supreme Court of Appeal. It also held that the strict adherence to a protocol that does not accommodate emergencies was not an excuse for the delays. It found further that the proper treatment was inexpensive and could have been performed promptly. It concluded that given the widespread knowledge about Conradie Hospital's specialisation in the treatment of spinal cord injuries, a reasonable doctor in the Department's employment would have transferred Mr Oppelt directly to Conradie Hospital where he would have probably received the appropriate treatment within four hours of his injuries. On the basis of Dr Newton's evidence, the Court found that Mr Oppelt's quadraplegia could probably have been avoided if he had promptly received appropriate treatment. It concluded that the Department's failure to promptly refer Mr Oppelt to Conradie Hospital was negligent and violated Mr Oppelt's right to emergency medical treatment.

The minority judgment, written by Cameron J (Jappie AJ concurring), agreed in part with the majority judgment's conclusion, but differed in two respects. First, Cameron J reasoned that Mr Oppelt was not refused emergency medical treatment and found that the majority placed insufficient weight on the extremely difficult circumstances in which the medical personnel worked on the day of Mr Oppelt's injury. Second, the minority judgment found that the Department and its personnel were not negligent because Dr Newton's four-hour theory was new, unpublished, and unknown to them. It would only be fair to hold the Department's medical personnel to the standard of the "general level of knowledge" in 2002 – a standard that they met. Cameron J would have dismissed the appeal.