

ANDRE JOHN SANAN v ESKOM HOLDINGS LTD

Case Number: 2010/16004

Date of Judgment: 7 October 2010

SUMMARY

The plaintiff sued the defendant in delict for damages sustained during his employment with the defendant after contracting a compensable disease, malignant epitheloid mesothelioma. – The defendant excepted to the particulars of claim on the ground that section 35 of the Compensation for Occupational Injuries and Diseases Act No 130 of 1993 (COIDA) prohibits an employee's common-law for general damages against his employer. – The question whether the defendant was to raise such defence by way of exception or special plea arose. – Confusion regarding which remedy is appropriate discussed. – Held that how the defence is raised is of lesser importance than the grounds for such defence.