When can employees claim damages direct from an employer?

A recent Supreme Court of Appeal judgment has provided new guidance on COIDA cover and when employers may be exposed to direct claims for damages by employees.

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In a recent judgment[1], the Supreme Court of Appeal (SCA) held that it was possible for an employee to claim from her employer after the employee was injured during protest action whilst at work.

Ordinarily, employees injured on duty would be able to lodge a claim with the Compensation Fund under the Compensation for Occupational Injuries and Diseases Act 13 of 1993 (COIDA). However, given the unique circumstances in this matter, the SCA held that COIDA did not apply and that instead the employee could claim damages from the employer directly.

Facts

Ms Churchill (employee) was employed as the Chief Director: Policy and Research in the office of the Premier of Mpumalanga (employer).

On 5 April 2017, the employee reported for duty at her employer's offices. While she was at work, protest action organised by a trade union occurred at the employer's offices. The employee became caught up with the protestors. She was assaulted and eventually evicted from the offices in a humiliating and degrading manner. The subsequent medical report revealed that the employee suffered physical injuries, including bruises, scratches, and swollen feet. She was also shocked and humiliated and suffered post Traumatic Stress Disorder. The employee tried to return to work but found the situation intolerable and resigned at the end of June 2017.

The employee sued the employer, alleging that her injuries were caused by the employer's negligence. The employee's claim amounted to approximately R7.5 million for past and future medical expenses, general damages, and past and future loss of income.

High Court proceedings

In the High Court, the employer raised a special plea, arguing that the employee's claim was misguided by relying on section 35 of COIDA, which provides that where an employee is entitled to compensation under COIDA, any right of action against the employer is excluded.

The employer argued that the employee's claim should have been directed to the Compensation Commissioner under COIDA. Ultimately, the High Court upheld the special plea.

SCA proceedings

The employee then appealed the High Court's decision at the SCA.

At the outset, the SCA indicated that the issue before the court did not relate to the definition of an "accident" as "almost anything unexpected can be accident". Instead, the issue to be decided was whether the employee's injuries arose out of and in the course of her employment.

The SCA reasoned that if both elements were present in this matter then the employer would be indemnified from liability under section 35 of the COIDA.

While section 35 of COIDA indemnifies employers from paying compensation to employees who suffer injuries or contract diseases at the workplace, the SCA found that the purpose of COIDA was not to exempt employers from liability in cases where an employee's injury (or disease) is peripherally connected to his/her employment. If that was the case, the Compensation Fund would need to provide compensation for all and any injuries or illnesses that are sustained at work or when working.

The SCA then evaluated each of the elements separately.

Element 1: Did the employee's injury occur in the course of the employee's employment?

The Khoza judgment[2] held that an employee will be considered as acting in the course of employment when the injury occurred while the employee was engaged in their basic duties and responsibilities. The SCA found that the Khoza judgment applied to this matter, as the injuries sustained by the employee were caused at the workplace while she was performing her ordinary duties.

Element 2: Did the employee's injury arise out of the employee's employment?

The SCA relied on the Khoza judgment once again to find that there must be "causal connection between the employee's service and the accident" to satisfy this requirement.

The SCA referred to the DN judgment[3] which stated that:

"The closer the link between the injury sustained and the performance of the ordinary duties of the employee, the more likely it will be that they were sustained out of their employment. The further removed from those duties, and the less the likelihood that those duties will bring the employee into a situation where such injuries might be sustained, the less likely that they arose out of their employment."

In assessing this requirement, the SCA confirmed that it is not necessary for the injury to take place at the employee's actual place of employment, although this is a factor that the court would ordinarily consider.

The court said that what needed to be deliberated further was whether this risk was the connection that bound her injury to her employment. In this regard, the SCA found that the employee's injuries were not suffered by means of a risk that could be connected, or was incidental to, her employment. The assault suffered by the employee was not a foreseeable risk that arose out of her employment.

The SCA ultimately found that section 35 of COIDA did not apply, as the employee's injuries did not arise from her employment. The employee was therefore not entitled to claim from COIDA.

In the circumstances, and given that the SCA found that the injuries occurred in the course of the employee's employment, the SCA held the employer liable to compensate the employee for the damages as may be agreed or proven arising out of the injuries suffered by the employee in the course of the protest action at the employer's offices on 5 April 2017.

1. Churchill v Premier, Mpumalanga (889/2019) [2021] ZASCA 16 (4 March 2021)
2. Minister of Justice v Khoza 1996(1) SA 410 (A)
3. MEC for Health, Free State v DN (MEC v DN)[2014] ZASCA 167; 2015 (1) SA 182 (SCA)