



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

***MEC for the Department of Health v De Necker (924/2013) [2014] ZASCA
167 (8 October 2014)***

The Supreme Court of Appeal handed down judgment today in an appeal from the Free State High Court, Bloemfontein. The respondent, a medical doctor, had sought damages from the appellant arising from a rape perpetrated on her by an intruder who had gained access to the hospital premises while she was discharging her duties as a Registrar in order to specialise as a paediatrician, and while she was an employee of the Department of Health.

The appellant had raised a special plea to the respondent's claim, arguing that such a claim was barred by s 35(1) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) which provides that an injury caused by an accident that arose out of and in the course of an employee's employment is compensable only under that Act, by way of a claim to the Compensation Commissioner established thereunder. A claim for damages under the common law, like the one instituted by the respondent, is precluded where the Act is found to be of application.

The high court held that the respondent's rape was not such an injury that arose out of and in the course of the doctor's employment as a Registrar, and that consequently the rape was not

an accident contemplated by s 35. The appellant's special plea was thus dismissed with costs. The appellant appealed against that decision with the leave of that court.

This court analysed the judgments of courts throughout both South Africa and comparative jurisdictions that dealt with both the definition of 'accident' in applicable workers' compensation schemes as well as the concept of an incident 'arising out of' one's employment. In general, the latter concept requires that a causal connection between employment and the accident be established in order for the COIDA to govern and thereby preclude the common law claim. This connection has in general terms been held to be met when the accident occurs at the place where the employee works, alternatively if it occurred and the workman was injured whilst he was busy executing his duties. The causal connection has been held to be severed, inter alia, where the employee was intentionally injured by a stranger and the motive for the assault bore no connection to the injured person's employment.

In application to the instant matter, this court invoked the reference in comparative jurisdictions to terms such as 'necessary risks of employment' or 'risks incidental to employment' as the test for determining whether such a causal connection between employment and the accident has been established. Where the accident is the result of an incident that is not such a 'necessary' or 'incidental' risk of the employee's particular employment, that causal connection has been severed and the COIDA does not apply. This is to be determined in the context of the specific facts of each matter.

With particular reference to the perpetration of rape in the course of one's employment, this court noted that it is highly unlikely that rape, the most egregious invasion of a woman's physical integrity and her mental well-being, could ever be considered to be a risk incidental to employment, and is certainly not so in the case of employment as a medical Registrar. Moreover, our Constitution cannot be said to countenance an argument that rape is a risk inherent in employment in South Africa, thereby precluding a common law claim. The respondent's rape was held not to be an accident arising out of her employment.

Accordingly, the appeal was dismissed with costs, and the respondent's common law claim for damages was held not to be barred by s 35 of the COIDA.