



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Law Society of South Africa and Others v Minister for Transport and Another**

**CCT 38/10**

**Date of Judgment: 25 November 2010**

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### MEDIA SUMMARY

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

On 25 November 2010, the Constitutional Court handed down judgment in an application for leave to appeal against the judgment and order of the North Gauteng High Court. The High Court dismissed a constitutional challenge to certain provisions of the 2005 amendment to the Road Accident Fund Act (Act).

In the Constitutional Court the Law Society of South Africa, the South African Association of Personal Injury Lawyers, the QuadPara Association of South Africa, the National Council for Persons with Physical Disabilities in South Africa and various persons with actionable claims affected by the amendment mounted a constitutional challenge impugning two provisions of the amendment and a regulation made under the Act. They challenged a provision abolishing road accident victims' residual common law right to claim losses which are not compensable under the Act; another provision limiting the amount of compensation that the Road Accident Fund (Fund) is obliged to pay for claims of loss of income or a dependent's loss of support arising from the bodily injury or death of a motor accident victim; and a regulation in which the Minister for Transport (Minister) has prescribed medical tariffs for health services which are to be provided to accident victims by public health establishments.

The core of the constitutional challenge was that the impugned provisions did not comply with the constitutional principle of rationality; and that each of the provisions unjustifiably limits one or more fundamental rights. The specific fundamental rights the applicants sought to enforce were the right to the security of the person, the right not to be arbitrarily deprived of property, the right of access to health care and the right to adequate remedy. The application was opposed by the Minister and the Fund.

In their contentions on rationality, the applicants sought to persuade the Court to apply a "true rationality test" that would render unconstitutional a legislative measure that unfairly deprives people of constitutional protection or is substantively unjust. The Court declined the request to adapt the rationality standard developed and recognised in its jurisprudence. In applying the established standard, the Court found the abolition of a claimant's residual common law claim a necessary and rational part of an interim legislative scheme whose primary thrust is to achieve financial viability and a more effective and equitable platform for the delivery of social security services. The Court found that the state indeed incurs obligations to realise the right to the security of the person of road accident victims. However, it held that the abolition of the common law residual claim is a justifiable limitation of that right. It held that the cap on compensation for the loss of income or of dependents' support does not infringe the right to property as there was no arbitrary deprivation of property by the amendments, and that the right to adequate remedy had not been infringed. Accordingly, the application for leave to appeal was dismissed in as far as these constitutional attacks were concerned.

The applicants' attack on the constitutional validity of the prescribed medical tariff for health services was, however, successful. On the facts, the Court found the tariff to be wholly inadequate and unsuited for paying compensation for the medical treatment of road accident victims in the private health care sector. Accordingly, the Court held that the tariff is irrational because it is incapable of achieving the purpose intended to be achieved, namely to enable innocent road accident victims to obtain the health services they require.

The Court declared the regulation unconstitutional and invalid and made an order obliging the Minister to make a fresh determination. The Court ordered that until the Minister prescribes a new tariff for health services for road accident victims, a third party who has

sustained bodily injury is entitled to compensation or health services as if he or she had been injured before the amendment came into operation.

The Minister and the Fund were ordered to pay one third of the costs of the applicants including costs of two counsel.