



CONSTITUTIONAL COURT OF SOUTH AFRICA

Da Silva v Road Accident Fund and Another

CCT 29/14

Date of judgment: 19 June 2014

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 confirming the order of the Free State High Court in Bloemfontein, declaring section 19(b)(ii) of the Road Accident Fund Act, 1996 (old Act) to be unconstitutional and invalid.

Section 19(b)(ii) of the old Act excludes the Road Accident Fund (RAF) from liability when the claimant is a passenger in a vehicle driven by a member of that claimant's household or when the claimant is responsible in law for the maintenance of the driver. Although the Road Accident Fund Amendment Act, 2005 (Amendment Act) abolished section 19(b)(ii) of the old Act, the amending provision only came into effect on 1 August 2008. Claims which arose before this date continued to fall under the old Act.

In April 2006 Ms da Silva was injured while a passenger in a motor vehicle driven by her husband. It was common cause that the collision was caused solely by the negligence of her husband, who collided with a horse. Since Ms da Silva's accident took place before the amendment came into effect, the exclusion in section 19(b)(ii) of the old Act applied to her claim.

This Court dealt with the continued application of the old Act to claims arising prior to the Amendment Act in *Mvumvu and Others v Minister for Transport and Another* [2011] ZACC 1. The *Mvumvu* case resulted in the passing of the Road Accident Fund (Transitional Provisions) Act 2012 (Transitional Provisions Act) which broadened the categories of claims which could be brought against the RAF. However, the Transitional Provisions Act did not apply to claims under section 19(b)(ii) of the old Act.

Ms da Silva challenged the constitutionality of section 19(b)(ii) of the old Act in the High Court, primarily on the grounds that it violated her right to equality. Following this Court's judgment in *Mvumvu*, the High Court upheld her challenge ordering that all unfinalised claims under section 19(b)(ii) of the old Act should be governed by the Transitional Provisions Act.

Froneman J, writing for a unanimous Court, agreed with the High Court that the restriction in section 19(b)(ii) of the old Act is unconstitutional in that it discriminates unfairly between categories of people, namely those who have a close familial relationship with the driver and those who do not. In particular, because it is more likely to impact the children or spouses of drivers, the provision was found to discriminate against claimants on the basis of their age and marital status. The order of the High Court was therefore upheld.