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Explanatory Note

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

In this case the Constitutional Court was asked to confirm a decision of the Eastern Cape High Court which declared a provision of the Compensation for Occupational Injuries and Diseases Act (the Act) unconstitutional. The provision prevents employees from claiming damages from their employers, except where provided for in the Act. The Constitutional Court declined to confirm the judgment.

Ms Jooste was employed as a cashier at Score Supermarket. She fell and was injured at her workplace. She claimed that her injuries were caused by the negligence of one or more of her fellow workers during the course of their employment. She brought a common law claim for damages against Score Supermarket, who argued that the provision prevented an employee from making such a claim against an employer. Ms Jooste responded that the provision was unconstitutional in that it violated her rights to equality, fair labour practices, and access to courts. Her equality challenge was based on the fact that the provision denies employees their common law right to claim damages from their employers. This, she maintained, places them at a disadvantage in relation to people who are not employees and who retain such a right. The High Court found that the provision violated an employee's right to equal protection and benefit of the law. The matter was then referred to the Constitutional Court for confirmation.

The Constitutional Court said that it was clear that the challenged provision differentiated between employees and non-employees. Was this unconstitutional? The only issue was whether the challenged provision was rationally connected to a legitimate government purpose. In a unanimous judgment written by Justice Yacoob, the Constitutional Court found that the legitimate purpose of the Act is to provide a system of compensation for employees for disability or death caused by injuries or diseases in the workplace. Such a system supplants the common law right of an employee to damages from a negligent employer. Instead, it allows the employee to claim limited compensation from a fund (to which employers are obliged to contribute) even where the employer was not negligent. Therefore, viewed in the context of the Act as a whole, the challenged provision depriving employees of their common law right to damages from their employer was not arbitrary or irrational. Nor did it favour employers only. In other words, it was rationally connected to the legitimate purpose of the Act. The decision of the High Court could not be confirmed.

27 November 1998