CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 168/14

In the matter between:

MINISTER OF DEFENCE AND MILITARY VETERANS Applicant

and

LIESL-LENORE THOMAS Respondent

Neutral citation:	*Minister of Defence and Military Veterans v Thomas* [2015] ZACC 26
Coram:	Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Molemela AJ, Nkabinde J, Theron AJ and Tshiqi AJ
Judgments:	Froneman J (unanimous)
Heard on:	19 May 2015
Decided on:	25 August 2015
Summary:	Compensation for Occupational Injuries and Diseases Act 130 of 1993 — Section 35(1) — "State" as a single employer — right to bodily integrity and security of person underlies common law claim for workplace damages

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ORDER

On appeal from the Supreme Court of Appeal (hearing an appeal from the Western Cape High Court, Cape Town):

1. Leave to appeal is granted.
2. The appeal is dismissed with costs, including the costs of two counsel.

JUDGMENT

FRONEMAN J (Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Molemela AJ, Nkabinde J, Theron AJ and Tshiqi AJ concurring):

[1] The respondent (Dr Thomas) is a medical doctor employed by the Western Cape Provincial Government (provincial government) in its health department. She was injured in an accident while on secondment to a military hospital under the control of the applicant, the Minister of Defence and Military Veterans (Minister). Legislation in the form of the Compensation for Occupational Injuries and Diseases Act,[1] (Compensation Act or Act) governs the compensation she may claim arising from injuries suffered while at work.

[2] Compensation under the Act may come in two guises. The first is for prescribed benefits payable under the Act for occupational injuries sustained as a result of a work accident (occupational injury benefits).[2] It is payable irrespective of any negligence on the part of the employer. The second is for damages, beyond those benefits, that were caused by a third party at the workplace (workplace damages). This is an ordinary delictual claim, dependent on proof of wrongful and negligent

[1] 130 of 1993.

[2] Section 1 of the Act defines "occupational injury" to mean "a personal injury sustained as a result of an accident" and "accident" to mean "an accident arising out of and in the course of an employee's employment and resulting in a personal injury".

conduct by the third party. In contrast, the common law delictual claim against an employer for workplace damages is precluded.

Background

[3] On 28 May 2009, Dr Thomas was working as a medical registrar at the 2 Military Hospital in Wynberg, Cape Town (hospital), where she fell down eight stairs in a stairwell of the hospital. At the time of her fall, Dr Thomas had been seconded to work at the hospital, which was under the control of the Minister as the appropriate representative of national government. As a result of the fall, she sustained injuries to her right ankle, knees, left wrist and thighs and alleged that she had suffered emotional shock.

Litigation history

High Court

[4] Dr Thomas instituted a claim for delictual damages in the Western Cape High Court, Cape Town (High Court) against the Minister, alternatively, against the company responsible for providing the hygiene services at the hospital, Greystone Trading 389 CC t/a Pronto Kleen Cleaning Service, as well as against both parties jointly and severally.

[5] Dr Thomas also lodged a claim against the provincial government under the Compensation Act for occupational injury benefits. There is no dispute that she is entitled to those benefits under the Act. In addition, though, she also claimed delictual workplace damages from the Minister – as a third party – for the alleged negligence of its employees at the hospital where she worked on secondment. The Minister lodged a special plea in which it resisted the workplace damages claim, arguing that Dr Thomas is precluded from claiming against them in terms of section 35(1) of the Act. Section 35(1), entitled "Substitution of compensation for other legal remedies", provides:

> "No action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational injury or disease resulting in the disablement or death of such employee against such employee's employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death."

[6] The Minister argued that for the purposes of determining who her employer under the Compensation Act is, it matters not whether it is the provincial or national government. Both are arms of government, albeit at different spheres, and hence her employer is the overall entity representing government at all spheres, namely the State.

[7] That is the essential issue before us. Who is Dr Thomas's employer: the State as a single employer, or its individual components, in this case the provincial government?

[8] The High Court upheld the Minister's special plea and dismissed Dr Thomas's claim with costs. It held that Dr Thomas was an employee of the State as represented by the South African Government as a single entity, although at the provincial level. It found that the State could not simply be equated with the "national government", or for that matter a provincial government, but was rather the composite of all three political spheres of government.

Supreme Court of Appeal

[9] Leave to appeal was granted to the Supreme Court of Appeal. The Supreme Court of Appeal overturned the High Court order.[3] It dismissed the special plea and remitted the matter to the High Court for trial to determine the merits of Dr Thomas's workplace damages claim against the Minister. In addition, it found that the provincial government was an "employer individually liable" under the Compensation Act, with particular reliance on the provisions of sections 39(2), 84(1) and 88(1) of the

[3] *Thomas v Minister of Defence and Military Veterans* [2014] ZASCA 109; 2015 (1) SA 253 (SCA) (Supreme Court of Appeal judgment).

Act. The Supreme Court of Appeal therefore did not regard "the State" or Government as her employer, but rather the head of the particular provincial government department, as reflected in Dr Thomas's employment contract.

In this Court

Leave to appeal

[10] The Minister now seeks leave to appeal against the decision of the Supreme Court of Appeal. Leave must be granted. The interpretation of the Compensation Act raises constitutional issues of national importance. Dr Thomas's claim involves her fundamental right to security of her person,[4] and the interpretation of the relevant provisions of the Compensation Act "must promote the spirit, purport and objects of the Bill of Rights".[5] It is in the interests of justice to obtain clarity on the responsibility between the different spheres of government under the Act for workplace damages claims.

Issue

[11] The parties' contentions followed the different perspectives of the High Court and Supreme Court of Appeal judgments. As stated earlier, the main issue is this: who is Dr Thomas's employer – the State as a single employer, or its individual components, in this case the provincial government?

Minister's submissions

[12] The Minister relied on the Constitution's provisions relating to the operation of the three spheres of government and its provisions in relation to the employment of public service employees. These provisions, she argued, supported her contention of a single entity, the State, operating at three different levels: national, provincial and local. Reference in the Compensation Act to the State must be understood to mean

[4] See *Mankayi v Anglogold Ashanti* [2011] ZACC 3; 2011 (3) SA 237 (CC); 2011 (5) BCLR 453 (CC) (*Mankayi*) at paras 13-8.

[5] Section 39(2) of the Constitution.

this single entity. The other provisions in the Act referring to the three individual levels of government should be understood as necessary practical arrangements to efficiently administer the compensation scheme under the Act insofar as it applies to the vast state administration at different levels of government. The Minister sought support in other statutes[6] where the State is regarded as a single employer.[7]

Dr Thomas's submissions

[13] Dr Thomas submitted that the Constitution's provisions are inconclusive. She relied on Supreme Court of Appeal authority to the effect that there is no general legal definition or conception of "the State" and that its meaning should be determined in the appropriate context of a particular statute's objects and purpose. Seen in its particular context, the provisions of the Compensation Act – specifically sections 39(2), 81 and 84 – clearly identified the three spheres of government as employers individually liable for compensation, not the State as a single entity comprising them. Dr Thomas also contended that if, however, the statute is capable of two different interpretations, then the interpretation that is least restrictive of her rights must be preferred.

[14] In terms of the Constitution, "government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated".[8] Further, "[a]n organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and

[6] The Minister argued that regard may be given to the construction of the words "the State" and "employer" as contemplated in other statutes. In particular, sections 157(2)(b) and 158(1)(h) of the Labour Relations Act 66 of 1995 show the State acts as a singular employer, performing its functions through various departments. Further, the Basic Conditions of Employment Act 75 of 1997 defines an employee to include someone who works for the State. The Government Employees Pension Law, 1996 defines the employer as the relevant government department for purposes of the management, collection and payment of the pension fund contributions, and the government is also considered as the employer for purposes of that law.

[7] The Minister also sought to advance an alternative argument that, for the purposes of the Compensation Act, the State does not consist of three spheres of government but rather only two spheres, namely national and provincial government. This argument is based on sections 160(1)(d), 196(4)(f) and 197 of the Constitution read with section 8 of the Public Service Act 103 of 1994 (Public Service Act).

[8] Section 40(1).

procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute".[9]

[15] The Constitution also provides for a public service within public administration which must function and be structured in terms of national legislation.[10] Provincial governments "are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service in their administrations within a framework of uniform norms and standards applying to the public service."[11] Municipal councils may "employ personnel that are necessary for the effective performance of its functions."[12]

[16] These provisions do not expressly provide that for all purposes the three different spheres of government must be regarded as one entity. If this were so, section 84(1)(a)(i) of the Act would have read differently.[13] This Court has held that within its constitutional sphere of competence, each sphere of government reigns supreme.[14] And litigation, albeit as a last resort, between organs of state within these spheres of government is competent.[15] Both provincial and local government may employ people in their respective spheres.[16] It was argued that there was significance

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[9] Section 41(3).

[10] Section 197(1).

[11] Section 197(4). Dr Thomas's appointment letter indicates that the Western Cape Department of Health temporarily appointed her.

[12] Section 160(1)(d).

[13] Section 84(1) of the Compensation Act reads as follows:

> "No assessment in favour of the compensation fund shall be payable in respect of employees—
>
> (a) in the employ of—
>
> (i) the national and provincial spheres of government, including Parliament and provincial legislatures".

[14] *Maccsand (Pty) Ltd v City of Cape Town and Others* [2012] ZACC 7; 2012 (4) SA 181 (CC); 2012 (7) BCLR 690 (CC) at para 47 and *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others* [2010] ZACC 11; 2010 (6) SA 182 (CC); 2010 (9) BCLR 859 (CC) at para 42.

[15] See above n 9. See also *Head of Department, Department of Education, Free State Province v Welkom High School and Others* [2013] ZACC 25; 2014 (2) SA 228 (CC); 2013 (9) BCLR 989 (CC) at para 162.

[16] In *Premier, Western Cape v President of the Republic of South Africa* [1999] ZACC 2; 1999 (3) SA 657(CC); 1999 (4) BCLR 383(CC) at para 91, this Court found:

in the different wording in this regard: "employ" for municipal councils, but merely "appointment" for provincial governments. I do not think so. Appointing someone to work is not different from employing someone.

[17] The provisions of the national legislation as required by the Constitution, namely the Public Service Act are also not decisive. The Supreme Court of Appeal relied on some of its provisions in support of its finding that the State is not a single employer for the purposes of the Compensation Act,[17] but in argument the Minister referred to others that point the other way.[18]

[18] There is nothing in the Constitution and the legislative framework mandated by it that compels a conclusion that, for the purposes of interpreting the Compensation Act, there is a general constitutional principle that the State must be regarded as a single employer for all employees working in the three different spheres of government.

[19] It is true that in some other statutes[19] the State appears to be treated as a single entity. In *Holeni*,[20] the Supreme Court of Appeal held:

> "The State as a concept does not have a universal meaning. Its precise meaning always depends on the context within which it is used. Courts have consistently refused to accord it any inherent characteristics and have relied, in any particular case, on practical considerations to determine its scope. In a plethora of legislation no consistency in meaning has been maintained."[21]

> "Functionaries in the provincial administration of the public service are appointed by the provincial government, are answerable to it, and can be promoted, transferred or discharged by it. The right of the Premier and Executive Council to coordinate the functions of the provincial administration and its departments has been preserved."

[17] Supreme Court of Appeal judgment at paras 20-1 and 25.

[18] Sections 5(5)(b), 38(2)(b)(i) and 40 of the Public Service Act.

[19] See above n 6.

[20] *Holeni v Land and Agricultural Development Bank of South Africa* [2009] ZASCA 9; 2009 (4) SA 437 (SCA) (*Holeni*).

[21] Id at para 11.

[20] It is, as a general rule, not permissible to use the meanings attributed to words in other statutes as determinative in the interpretation of a different statute.[22] Where Parliament has defined a word used in a statute, it is taken as an indication that Parliament contemplated a special meaning assigned to the word and not an ordinary meaning.[23] But if the other statutes traverse the same terrain they might be relevant if the meaning of "employer" in them in effect also determines the meaning of "employer" in the Compensation Act. Whether that is the case depends on their respective subject matter.[24]

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[22] In *Greater Johannesburg Transitional Metropolitan Council v Eskom* [1999] ZASCA 95; 2000 (1) SA 866 at para 20, the Supreme Court of Appeal stated, "[i]n Edgar *Craies on Statute Law* 7 ed it is pointed out that in construing a word in an Act caution is necessary in adopting the meaning ascribed to the same word in other Acts. The reason is obvious but that is not to say that in an appropriate case regard cannot be had to a common construction placed on the same word in other statutes."

[23] In *Hoban v ABSA Bank Ltd t/a United Bank and Others* [1999] ZASCA 12; 1999 (2) SA 1036 (*Hoban*) at para 18, the Supreme Court of Appeal cited with approval *Canca v Mount Frere Municipality* 1984 (2) SA 830 (TkSC) at 832 B-G which found:

> "The principle which emerges is that the statutory definition should prevail unless it appears that the Legislature intended otherwise and, in deciding whether the Legislature so intended, the Court has generally asked itself whether the application of the statutory definition would result in such injustice or incongruity or absurdity as to lead to the conclusion that the Legislature could never have intended the statutory definition to apply."

And in *Hoban* at para 20, the Supreme Court of Appeal continued:

> "'Context' includes the entire enactment in which the word or words in contention appear. . . The moment one has to analyse context in order to determine whether a meaning is to be given which differs from the defined meaning one is immediately engaged in ascertaining legislative intention. One remains so engaged until the interpretation process is concluded. It is only concluded when legislative intention is established."

[24] Where the subject matter is not closely related, a search outside the scope of the particular statue will not be of much assistance. In fact, such an external search may lead to a court assigning a meaning other than the one intended by Parliament. The two statutes that come closest to the subject matter of the Compensation Act are the Labour Relations Act and the State Liability Act 20 of 1957. It has been held that, for the purposes of the application of certain provisions of the Labour Relations Act, the State, as a single entity, must be regarded as an employer of employees working in any sphere of government. The State Liability Act provides that, for the purposes of state liability, both the national and provincial governments fall under the auspices of the State. It does not refer to employers or employees but talks of delictual liability arising from acts committed by servants of the State in the course and scope of their authority as such.

Both these statutes deal with employers and employees. But not for the same purpose as the Compensation Act. The Labour Relations Act deals with fair labour practices in the workplace between employers and employees, but it does not purport to cover occupational injury benefits and workplace damages. The State Liability Act sets the requirements for the delictual liability of the State, but does not purport to set out who may lay the claims for workplace damages. These statutes do not determine the meaning of employer for the same purpose as the Compensation Act.

[21] The Minister's defence, to the effect that it is not liable for a civil claim by Dr Thomas, is squarely based on section 35(1) of the Act.[25] This section forbids the recovery of damages in respect of occupational injuries by employees and their dependants from an employer. The section protects employers from civil claims and confines their liability for damages to claims lodged in terms of the Act only. For the defence based on this section to succeed here, it must be established that National Government was the employer of Dr Thomas when she suffered occupational injuries.

[22] The determination of the issue whether National Government was an employer envisaged in section 35(1) takes us to the meaning assigned to the word "employer" by the Act. In the Act "employer" is defined to mean—

> "any person, including the State, who employs an employee, and includes—
> (a) any person controlling the business of an employer;
> (b) if the services of an employee are lent or let or temporarily made available to some other person by his employer, such employer for such period as the employee works for that other person;
> (c) a labour broker who against payment provides a person to a client for the rendering of a service or the performance of work, and for which service or work such person is paid by the labour broker."[26]

[23] What emerges from the language of the definition is that the word "employer" is used in the Act in a sense wider than its ordinary meaning. But what is significant is the fact that the Act identifies the action that qualifies one as an employer. The definition states that a person who employs another person is an employer. It further tells us that employer includes the State when it employs a public servant. The scope of the word "employer" under the Act extends further to include the person who controls the business of an employer, and a labour broker who pays the salary of a worker offered to a third party for specific services.

[25] See above at [5].

[26] Section 1 of the Compensation Act.

[24] In contrast, where the employer seconds an employee to a third party or allows the employee to work for another person for a limited period, the person to whom an employee is seconded does not become an employer in the eyes of the Act. The definition specifically states that throughout the secondment, the person who originally employed the worker continues to be her employer. When applying this part of the definition to the present matter, it means the Western Cape provincial government, which employed Dr Thomas within the State, remained her employer during her secondment to the Department of Defence and Military Veterans.

[25] The Public Service Act is instructive in determining who employed Dr Thomas. Section 9 of this Act provides that persons are appointed to a state department by an executive authority. The term "executive authority" is in turn defined to mean, in the case of a provincial department, the Member of the Executive Council responsible for a particular department. Therefore, in terms of the Public Service Act, the power to appoint Dr Thomas vested in the Provincial Minister for Health in the Western Cape Province. In his representative capacity, the Provincial Minister (MEC) became her employer, and continued to be her employer even when she was seconded to the Department of Defence and Military Veterans.

[26] The argument by the Minister is more nuanced. Her counsel argued that since the Provincial Department of Health that employed Dr Thomas is part of the same State to which the National Department of Defence and Military Veterans belongs, this Court should hold that the Minister cannot be liable for the claim made by Dr Thomas. Counsel urged us to construe the word "State" in the definition as reference to government in its provincial and national spheres, and not the local sphere. The logical consequence of this contention is this: if the Western Cape Provincial Minister for Health was insulated from liability by section 35(1), all parts of the State, including the national Minister, are also exempt from liability by reason of being part of a singular entity, the State.

[27] This argument is not consistent with the structure of our Constitution which establishes a government consisting of three spheres, namely, national, provincial and local. The Constitution also acknowledges that, from time to time, disputes will arise between these spheres and when that happens, certain procedures must be followed in an attempt to resolve the dispute, before courts of law can be approached. By accepting that disputes will sometimes reach the courts, the Constitution affirms that each sphere is separate from the others, even though they are interdependent and interrelated. The Constitution provides for the devolution of power between these spheres and barring concurrent competencies, each sphere enjoys the exclusive exercise of power allocated to it.

[28] The construction advanced by the Minister is also at odds with the Public Service Act which identifies various functionaries as the appointing authority of officials in different State departments at both provincial and national spheres. That interpretation is, in addition, not in line with the other provisions of the Act set out below.

[29] An employee is entitled to claim occupational injury benefits under the Compensation Act for occupational injuries sustained in an accident arising from her employment. This is not a claim for damages under the common law, but for specified benefits under the Act. This is not dependent on proof of any negligence on the part of the employer.[27] An employee may have a workplace damages claim

[27] See above at [5]. See also Section 22 of the Act which states:

> "(1) If an employee meets with an accident resulting in his disablement or death such employee or the dependants of such employee shall, subject to the provisions of this Act, be entitled to the benefits provided for and prescribed in this Act.
>
> (2) No periodical payments shall be made in respect of temporary total disablement or temporary partial disablement which lasts for three days or less.
>
> (3) (a) If an accident is attributable to the serious and wilful misconduct of the employee, no compensation shall be payable in terms of this Act, unless—
>
> (i) the accident results in serious disablement; or
>
> (ii) the employee dies in consequence thereof leaving a dependant wholly financially dependent upon him."
>
> (b) Notwithstanding paragraph (a) the Director General may, and the employer individually liable or mutual association concerned, as the case may be,

against a third party, not the employer, if the occupational injury was caused in circumstances where the third party is liable for damages.[28]

[30] The procedure for claiming occupational injury benefits is set out in Chapter V of the Act.[29] Briefly, it works like this. The employee must give notice of the accident to her employer;[30] the employer must then give notice of the accident to the Director-General;[31] the Director-General investigates the accident;[32] and, after formal requirements relating to the claim are complied with,[33] the Director-General considers and adjudicates the claim.[34] The determination and calculation of the claim is done in accordance with Chapter VI of the Act.[35]

[31] Although the procedure for making the claim is directed at the Director-General, and he decides and adjudicates the claim, the liability for payment of the claim only rests on the Director-General in those instances where employers have to pay assessments which form part of the Compensation Fund.[36] In the case of

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shall, if ordered thereto by the Director General, pay the cost of medical aid or such portion thereof as the Director General may determine.

(4) For the purposes of this Act an accident shall be deemed to have arisen out of and in the course of the employment of an employee notwithstanding that the employee was at the time of the accident acting contrary to any law applicable to his employment or to any order by or on behalf of his employer, or that he was acting without any order of his employer, if the employee was, in the opinion of the Director General, so acting for the purposes of or in the interests of or in connection with the business of his employer.

(5) For the purposes of this Act the conveyance of an employee free of charge to or from his place of employment for the purposes of his employment by means of a vehicle driven by the employer himself or one of his employees and specially provided by his employer for the purpose of such conveyance, shall be deemed to take place in the course of such employee's employment."

[28] Section 36.

[29] Sections 38-46.

[30] Section 38.

[31] Section 39.

[32] Section 40.

[33] Sections 41-3 and 46.

[34] Section 45.

[35] Sections 47-64.

[36] Section 29, read with sections 15, 83 and 86.

an "employer individually liable", the payment has to be made by the "employer individually liable".[37] In terms of the definition of an "employer individually liable", it is "an employer who in terms of section 84(1)(a) is exempt from paying assessments to the compensation fund". To sum up: the Director-General has to make payment of the claim from the Compensation Fund in cases where employers are obliged to pay assessments into the Compensation Fund. Employers who are not obliged to make payment of assessments into that fund have to pay the compensation themselves.

[32] In terms of section 84(1), no assessments need to be paid in respect of employees who are employed in the national and provincial spheres of government, including Parliament and provincial legislatures; local authorities and municipalities with exemptions under certain Acts; and employers who are fully insured for potential liability in terms of the Compensation Act with a mutual association.[38]

[33] Even though these "employers individually liable" need not pay assessments, they are liable to pay the Director-General administration fees as he deems equitable, as well as contributions to losses that may have occurred from payments out of the

[37] Section 29 reads as follows:

> "If an employee is entitled to compensation in terms of this Act, the Director General or the employer individually liable or the mutual association concerned, as the case may be, shall be liable for the payment of such compensation."

[38] Section 84(1) states:

> "No assessment in favour of the compensation fund shall be payable in respect of employees—
>
> (a) in the employ of—
>
> (i) the national and provincial spheres of government, including Parliament and provincial legislatures;
>
> (ii) a local authority which has obtained a certificate of exemption in terms of section 70(1)(a)(ii) of the Workmen's Compensation Act and has notified the Director-General in writing within 30 days after the commencement of this Act that it desires to continue with the arrangements according to the said certificate of exemption;
>
> (iii) a municipality contemplated in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993), to which exemption has been granted in terms of subsection 2;
>
> (b) whose employer has with the approval of the Director-General obtained from a mutual association a policy of insurance for the full extent of his potential liability in terms of this Act to all employees employed by him, for so long as he maintains such policy in force."

Compensation Fund.[39] These provisions do not, however, impose any liability on the Director-General for payment of claims against "employers individually liable".[40]

[34] In addition to the definition of "employers individually liable" in section 84(1), the Supreme Court of Appeal relied on section 39(2) of the Act:

> "For the purposes of subsection (1) an employer referred to in section 84(1)(a)(i) means, in the case of—
>
> (a) the national and provincial spheres of government, the respective heads of departments referred to in section 7(3) of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
>
> (b) Parliament, the Secretary to Parliament;
>
> (c) a provincial legislature, the Secretary of the provincial legislature in question."

[35] The Minister submitted that the Supreme Court of Appeal's reliance on these sections was misplaced. The provisions of section 39(2) of the Act are expressly subject to "the purposes of subsection (1)", which deals with the procedural requirement of giving notice of an accident. Similarly, section 84(1) is part of chapter IX of the Act, which deals with the obligations of employers. Section 84 deals with exemption from assessments under the Act and has little or nothing to do with the individual liability of the entities mentioned in the section. Both these provisions are perfectly compatible with an interpretation of the State as a single employer, because they merely provide for practical means to process claims on behalf of the vast state administration in its many forms. This interpretation, it was argued, would also give proper meaning to the reference "the State" in the definition of "employer", which the interpretation favoured by the Supreme Court of Appeal fails to do.

[39] Section 88(1) and (2).

[40] Section 29, quoted above at n 37.

[36] The Minister also contended that section 39(2) of the Compensation Act is significant for two further reasons. First, it establishes the link between the Public Service Act and the Compensation Act. Second, it follows the Public Service Act in identifying the various employers within the State.

[37] There is merit in this argument. It might be countered by regarding the inclusion of "the State" in the definition of "employer" as merely qualifying "any person", as the State is not considered to be a natural or juristic "person" for definitional purposes. It could merely be an all-encapsulating term for the individual components of the State and to avoid listing each government department or sphere of government in the definition. Section 39(2) of the Act provides that in the case of both the national and provincial spheres, employers referred to in section 84(1) are the respective heads of departments. This is an indication that the Compensation Act does not regard the State as a single employer entity.

[38] These considerations show how the approach in this judgment differs from that of the Supreme Court of Appeal. The textual and contextual arguments counter each other and do not provide sufficient grounds for choosing one reasonable interpretation above the other. The balance must be tilted by looking at which interpretation will best "promote the spirit, purport and objects of the Bill of Rights".[41] In *Bato Star*,[42] this Court held:

> "Indeed, every court 'must promote the spirit, purport and objects of the Bill of Rights' when interpreting any legislation. That is the command of section 39(2). Implicit in this command are two propositions: first, the interpretation that is placed

[41] Section 39(2) of the Constitution provides:

> "When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights."

[42] *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others* [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) at para 72. See also *SATAWU and Others v Moloto and Another NNO* [2012] ZACC 19; 2012 (6) SA 249 (CC); 2012 (11) BCLR 1177 (CC) at para 20 and *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others In re: Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others* [2000] ZACC 12; 2001 (1) SA 545 (CC); 2000 (10) BCLR 1079 (CC) at para 21.

> upon a statute must, where possible, be one that would advance at least an identifiable value enshrined in the Bill of Rights; and second, the statute must be reasonably capable of such interpretation. This flows from the fact that the Bill of Rights 'is a cornerstone of [our constitutional] democracy.' It 'affirms the democratic values of human dignity, equality and freedom.'" (Footnotes omitted.)

[39] At stake is Dr Thomas's fundamental right to bodily integrity and security of her person, a right that underlies her common law claim for workplace damages.[43] The interpretation advocated for by the Minister precludes a further delictual claim and is thus more restrictive of Dr Thomas's rights. On that score the Supreme Court of Appeal's interpretation must be favoured and, therefore, upheld. To deprive her of her full common law entitlement would, in these circumstances, not be justified.

[40] The appeal must thus be dismissed.

Order

[41] The following order is made:

1. Leave to appeal is granted.
2. The appeal is dismissed with costs, including the costs of two counsel.

[43] *Mankayi* above n 4 at para 15.

For the Applicant:	M Albertus SC, R Jaga and G Quixley instructed by the State Attorney
For the Respondent:	M van Heerden SC and S Wagener instructed by Sohn and Wood Attorneys