

Explanatory Note

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.

The matter involved a challenge to the constitutional validity of articles 46(a)(ii) and 47(a) of the schedule to the Multilateral Vehicle Accidents Act 93 of 1989 which was referred to the Constitutional Court by the Transvaal Provincial Division in terms of s 102(1) of the interim Constitution. The provisions were challenged on the basis of the equality clause, s 8 of the interim Constitution, as they limited the damages payable to certain classes of people injured in motor vehicle accidents. The applicants argued that the limitations were arbitrary and therefore unconstitutional.

The Court held that the referral in terms of s 102(1) was not competent on the ground that the issue referred to the Constitutional Court could not be decisive of the case before the court that referred the matter.

In terms of s 102(1) three requirements must be met for a competent referral: (1) the issue referred must be one which falls within the exclusive jurisdiction of the Constitutional Court; (2) the issue must be one which may be decisive for the case and (3) the referring judge must consider the referral to be in the interests of justice which includes a consideration whether the applicant's referral is likely to be successful in the Constitutional Court.

The Court held that the referral did not meet the second condition as the accident in which the applicant was injured occurred before the interim Constitution came into force and the applicant could not therefore rely on the provision of the interim Constitution to found a claim. The liability of the respondent to pay damages was fixed at the time of the accident. The Court acknowledged that there might be exceptional cases where the interim Constitution would apply to a cause of action arising before 27 April 1994 but held this was not such a case.

The Court further held that there were no exceptional circumstances to warrant the grant of direct access to the applicant.

The matter was remitted to the Transvaal Provincial Division.

The judgment of the Court was delivered by O'Regan J and was concurred in by the other members of the Court.