

EMPLOYMENT LAW ALERT

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Hear, hear: Section 65 of COIDA applies! A discussion on the High Court's judgment in the *Knoetze v Rand Mutual* case

The Compensation for Occupational Injuries and Diseases Act No 130 of 1993 (COIDA), was enacted to, amongst other things, provide compensation to employees for disablement caused by occupational injuries or diseases sustained during the course and scope of their employment.



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The Compensation for Occupational Injuries and Diseases Act No 130 of 1993 (COIDA), was enacted to, amongst other things, provide compensation to employees for disablement caused by occupational injuries or diseases sustained during the course and scope of their employment.

In the *Knoetze v Rand Mutual Assurance* (2022) JOL 51923 (GJ) case, the High Court had to determine whether the Appellant's hearing loss was sustained during the course and scope of his employment in gold mines for over 30 years.

In 2019, Mr Knoetze (the Appellant) who was 59 years old at the time, underwent a mandatory hearing assessment and was diagnosed as suffering from moderate bilateral sensorineural hearing loss. As a result, the Appellant was rendered unfit to resume his duties as a foreman due to a condition that was "occupational specific", namely noise-induced hearing loss. The Appellant could not be accommodated elsewhere in the workplace, and was eventually forced to retire prematurely before the age of 65.

The Appellant submitted a claim for compensation caused by occupational diseases to the Rand Mutual Assurance (Respondent), in terms of section 43(1)(a) of COIDA. The Respondent rejected the Appellant's claim, following which the Appellant appealed this decision to

an appeal tribunal which ultimately dismissed the Appellant's appeal. The Appellant then launched an appeal to the High Court.

The High Court held that the central issue was whether the appeal tribunal correctly interpreted section 65 read with section 66 of COIDA, in light of their context and purpose in a manner that gave effect to the spirit, purport and object of the Bill of Rights enshrined in the Constitution of the Republic of South Africa, 1996.

The High Court found that it was common cause that the Appellant sustained a hearing impairment during his long working career on the mines, and that his work ordinarily involved exposure to very loud and even excessive noise. Moreover, the High Court ruled that the evidence provided by the Applicant was corroborated by a medical opinion that the Appellant's hearing loss, which was atypical for certain years, was compatible with noise-induced hearing loss. The High Court reasoned that this was sufficient to trigger the presumption in section 66

of COIDA with the consequence that the burden shifted to the Respondent to prove that the Appellant's hearing loss did not arise out of and in the course of his employment.

Consequently, the High Court rejected the Respondent's submissions that the Appellant had failed to provide evidence on how "the diseases was contracted whilst working in the mines", and found that it was clear that the Appellant's occupational disease, namely the hearing impairment caused by noise, arose as a result of and in the course and scope of his employment and therefore he is entitled to compensation in terms of COIDA.

This judgment serves as a reminder to bodies and tribunals which have been established to adjudicate claims for compensation in terms of COIDA to interpret the provisions of COIDA in light of their purpose and in a manner that gives effect to the spirit and object of the Bill of Rights.

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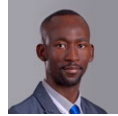
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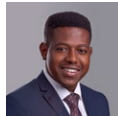
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