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NEWSLETTER

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Dear Reader,

WE WISH YOU A VERY HAPPY XMAS AND A PROSPEROUS NEW YEAR

Value of a wife's services in the home: If a wife and mother is wrongfully killed the value of the services lost is not just the cost of hiring a housemaid, as is far too often taken to be the basis for the claim. The value of a wife and mother's services in the home are worth far more. Thus in *Wood v Santam Insurance* 1976 2 PH J52 (C) it was said that:

> 'This concept should at least include an acknowledgment that a wife and mother does not work set hours and, still less, to rule. She is in constant attendance, save for those hours when she is in fact at work'.

We express the hope that the new year will bring more generous awards for dependants who have lost the services of their wife and mother.

Apportionment of the services of a wife and mother:
The old way: Hand in hand with the narrow view that the services of a wife and mother are to be compensated by the cost actually incurred with employing a 'substitute' is the notion that the claim for the loss of the services lies with the father. This reasoning requires that there be deducted from the father's claim the saving that he enjoys with no longer incurring the cost of supporting his wife. There is also one case where a deduction was made for the father's prospects of remarriage.
The modern way: We do not agree with this antiquated approach which dates from the days when the father claimed *eo nomine* for what he needed for himself and his children. The modern South African law accords each child a separate right of action. Consistent with this approach each child should be allowed to claim *eo nomine* a pro-rata share of the value of their mother's services without deduction for what their father no longer expends on the support of their mother. The father's claim should remain but only for his own pro-rata share of his wife's services in the home. If a wife is killed the husband does not lose her services only for the period that the children would have been dependent (the old way) but for most of his joint lifetime with his wife. Undoubtedly the wife's total contribution will often diminish in value once the children have left home because there will be less work to do. From the value of the services lost by the husband there should, of course, be deducted the saved cost of supporting his wife and also the prospect of remarriage.

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Escalating support payments: It is generally accepted that allowance should be made for future inflation when projecting the future earnings of a deceased victim. However, if the dependants did not live with the deceased it cannot be assumed that they would automatically have received increased support payments whenever their far-away breadwinner received a salary increase. It is extremely common that maintenance orders are not increased at all or increased only after extended intervals. Burman ('African Customary Law' Juta 1991 36-51) records that for the lower-income groups it is usual that fathers do not pay maintenance for their illegitimate children. Due to the difficulties with tracing persons, maintenance orders are unenforceable. In *Muller v The Master* 1992 4 SA 277 (T) it was held that evidence of inflation alone is not sufficient to justify allowance for future inflation-linked increases in an actuarial calculation of the present value of future support payments. If the calculation does include allowance for inflation then a substantial deduction for general contingencies is generally justified in the absence of evidence that prior to his death the deceased regularly increased his payments of maintenance.

Life insurance premiums: When a breadwinner dies he no longer has to pay his life insurance premiums. The family is spared this outlay. It follows that before apportioning the deceased's income between the dependants a deduction should be made for what the breadwinner would have spent on life insurances and retirement annuities (see Newdigate & Honey 'The MVA Handbook' 180; Davel 'Die Dood van 'n Broodwinner as Skade-vergoedingsoorsaak' (Doctoral Thesis) 535-6 575; Reinecke 1976 *TSAR* 26 54). This adjustment would usually be effected by way of an increase to the deduction for general contingencies. In *Groenewald v Snyders* 1966 3 SA 237 (A) it was ruled that no deduction should be made for life insurance premiums, but this was before the Assessment of Damages Act 9 of 1969 had been passed which prohibits the deduction of life insurance and pension benefits payable as a result of the death.

Earning capacity of a breadwinner: In *Van Staden v President Insurance* 1990 4 C&B L2-1 (W) the claim by dependants for loss of support was based on the earning capacity of the deceased without there being direct evidence of actual earnings. When using an earning capacity approach it is essential that regard be had to 'likely earnings' (see *Carstens v Southern Insurance* 1985 3 SA 1010 (C) 1020G). This point is particularly important when having regard to the extent of the right that a widow had to claim support from her deceased husband. Consider a widow who had trained as a teacher but who was a fulltime unemployed housewife at the time of the death. If no regard is had for her likely earnings then her claim for loss of support would be assessed as though she was employed as a teacher. This would clearly be incorrect. On the other hand an inquiry into her likely potential earnings in the future may reveal that she would have returned to teaching once her children started school. Once a woman goes out to work she reduces her dependency on her husband, and may become entirely self-supporting. Because her husband is relieved of the burden of supporting her he is able to devote a much larger proportion of his income to the support of his children. Census data indicates that about 35% of married women go out to work. For graduate wives 70% or more remain in employment.

Readers are invited to keep us informed of unreported judgements and other interesting developments and also suggestions as to topics for comment.

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