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NEWSLETTER

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

Vital statistics:

CAP determination 31 October 2019:	R288935
CPI year-on-year to November 2019:	3,6%
RSA long bond yield Nov 2019:	8,4%
Real rate of return (8,4 less 3,6):	4,8%
FNB Property Index September 2019 (real):	+0,2%

Tertiary education: Hannes Swart, an industrial psychologist, writes that

> "(My) experience over the past 30 years in human resources and even to this day is that as a result of the abundance of tertiary qualifications in some functionalities and more specifically administration, employers are quite selective and would typically opt for graduates at a lower rate of remuneration. Conversely, it is also the writer's experience **that certificates and diplomas from technical colleges do not have a high marketable value**. The point the writer is trying to convey is that the chances would have been very high that the claimant would not have secured a position as office administrator upon completing her diploma. In fact, he regards it as highly unlikely and the chances would have been very good that she would have been compelled to secure a position as unskilled worker and eventually would have progressed, and not necessarily, in office administration" (my ref MOOSK4050).

Cost of extra employee: In *Terblanche v Minister of Safety & Security* 2016 2 SA 109 (SCA) claimant had suffered a back injury which prevented him attending to many tasks on his farm, particularly those requiring the lifting of fairly heavy items. A claim for an expensive farm manager was abandoned but the Court did allow the costs of an unskilled trainable extra employee. In *Rudman v RAF* 2003 2 SA 234 (SCA) the owner of a farming business by way of company shares was distinguished in that Mr Rudman had failed to prove that his shareholding had decreased in value.

Whole person impairment: This is calculated by medical experts for a large proportion of injured claimants. If the percentage exceeds 30% then it ranks as a "serious injury" and general damages are payable by the RAF. Defendants other than the RAF will be liable for general damages even if the percentage is less than 30%. When assessing the general damages payable a useful guide is to take the Rand amount payable in the event of 100% whole person impairment and take an appropriate percentage of that. In current terms a 100% impairment will usually qualify for an award of general damages

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of R2 million or more (quadriplegic, cerebral palsy childbirth). If a victim with less severe injuries is rated as 35% WPI, say, then 35% of R2 million is R700000. This type of approach is particularly useful when assessing general damages for victims with multiple different injuries. It also puts into perspective some of the over-the-top reported awards such as *RAF v Marunga* 2003 5 QOD E3-1 (SCA) where R475000 was awarded for a femur fracture (2019 rand values).

Contractual support: In *Jacobs v RAF* 2019 (2) SA 275 (GP) the deceased had been a married man, separated from his wife. He had been cohabiting with and contractually supporting the claimant and her two children for 6 years prior to his death. The claimant had been unemployed. The Court declared that there had been a duty of support and that compensation should be awarded.

Life insurance benefits: The Assessment of Damages Act 9 of 1969 states that when compensation is claimed due the wrongful killing of a breadwinner then life insurance and pension benefits arising as a result of *the death* are to be ignored when assessing the damages (my emphasis). The words "the death" point to the death giving rise to the claim for compensation. It follows that if the surviving spouse later dies and the children receive life insurance payouts from policies on the life of their mother then such payments are deductible. Prior to the enactment of the Assessment of Damages Act all life insurance payments were deductible when assessing death claims. With personal injury claims insurance privately negotiated by the victim is ignored when assessing the damages. This approach did not apply to claims for loss of support. Were it otherwise the Assessment of Damages Act would not have been needed (passed after SAA aircraft "Rietbok" crashed into the sea off Port Elizabeth in 1967).

Curators for children: There is a web report that Judge Tuchten has ruled that:

> "Advocates will no longer be routinely appointed as curators to assist children in claims against the Road Accident Fund where they add no value and vastly increase the cost of litigation, a high court judge has ruled.
>
> "Judge Neil Tuchten convened a special court and invited the Centre for Child Law to make submissions after he and a number of other judges became uneasy about whether curators were necessary in all cases where children were claiming damages for the injuries they sustained in car accidents or for loss of support.
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> "He turned down applications for the appointment of curators in 15 separate cases where the applicants were the mothers, grandmothers or relatives of children claiming damages from the RAF, stressing that adult family members who were the children's caregivers were competent to assist them in such claims."
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> *https://citizen.co.za/news/south-africa/2019324/no-more-advocates-for-kids-raf-cases-court-rules/*

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