

# KOCH Consulting Actuaries cc

Director: Robert J Koch *BSc LLD FASSA* 4 Myrtle Street PO Box 15613  
VAT 4870191808 E-mail: rjkactuary@gmail.com Gardens Cape Town Vlaeberg 8018  
CK2008/123630/23 Website: www.robertjkoch.com Tel: 021-4624160 Fax: 021-4624109  
Alternative fax numbers: 021-4620712 or 086-5137615 or 086-2316017

## NEWSLETTER

(Number 102 – June 2020)

### Vital statistics:

CAP determination 31 January 2020:	R289957
CPI year-on-year to March 2020:	4,1%
RSA long bond yield June 2020:	7,7%
Real rate of return (8,4 less 3,6):	3,6%
FNB Property Index December 2019 (real):	-0,3%

**Death in a toilet:** “On 20 January 2014 S K (S), who was at the time just five years of age, suffered the most appalling and undignified death when he fell into a pit latrine at his school in Limpopo, and drowned in its sludge and filth.” Roman law subscribed to the rule that the body of a free man has no value. Had SK been a slave a Roman court would have awarded damages to his owner. The court first hearing this matter ruled that no damages could be awarded. On appeal it was held that the close family had suffered severe shock and psychological distress, injuries for which compensation is allowed in our law. Several awards for damages were ordered as well as the costs of future psychotherapy (*R K and Others v Minister of Basic Education and Others* (754/2018 and 1051/2018) [2019] ZASCA 192 (18 December 2019)). The reporting of judgments on the internet is a real boon.

**The lockdown:** The long lockdown has severely disrupted economic activity in South Africa. How now do we deal with calculations of loss of earnings and support? My office takes the view that there will be a fairly speedy recovery to normal economic activity. Our calculations thus assume earnings as though there had been no lockdown. Those who feel that some adjustment is needed should apply an increased deduction for general contingencies.

**The new normal:** Prior to the lockdown several key workers for our office were working from home, so it required little adjustment to allow a few more to work from home. Seems that for us this arrangement will become the “new normal” and keep a few more cars off the road.

**Deaths from covid-19:** Earlier this year we were receiving alarming reports of numerous deaths in Italy flowing from Covid-19 infections. There was talk of a new more virulent mutation of the virus. It sounded scary. In a normal year South Africa experiences some 500000 deaths including 15000 due to motor vehicle accidents and 120000 due to TB and HIV. At 27 May 2020 total Covid deaths are reported to be only 643, and many of these are persons with co-morbidities who may not have lived much longer anyway. Various actuaries and other experts have done mortality prediction models and arrive at figures ranging from 15000 to 50000 total deaths to come, attributable to Covid-19. Of these about one third are deaths that would have occurred anyway. The lockdown merely serves to delay the onset of the deaths, it does not prevent them from happening. Has the lockdown been worth it?

**Liability different from cause of damage:** “The inquiry in RAF actions is best undertaken in Four Stages: First: Did negligence of the insured driver cause the accident? (i.e. the Merits Inquiry) Second: Did the plaintiff sustain the alleged injuries in the accident?; Third: How have these proven injuries affected the plaintiff? (both the First and Second Stages are Causation Inquiries) Fourth: How should the plaintiff be remunerated for the effects of such injuries? ( i.e. the Quantum Determination). It is important to discern where the inquiry as to Causation ends and the evaluation of Quantum begins” (*M S v Road Accident Fund* (10133-2018) [2019] ZAGPJHC 84; [2019] 3 All SA 626 (GJ) (25 March 2019)). I would like to add that one should also distinguish between damage to earning capacity and the loss of earnings that flows from such damage. “Die vraag is nie wat Geldenhuys kon verdien nie, maar wat hy waarskynlik sou verdien” (*Minister van Veiligheid v Geldenhuys* 2004 1 SA 515 (SCA) at 536I).

**Mora interest is not a simple matter:** The calculation of mora interest is by way of simple interest and not compound interest. A fixed amount of debt is a liquidated amount even if expressed in a foreign currency because “the conversion from that amount into South African Rand is also a relatively simple exercise capable of prompt ascertainment.” The *duplum* rule applies to mora interest running on a liquidated debt. That means that if litigation takes an inordinately long time the accumulated mora interest may not exceed the original debt (*Paulsen v Slip Knot Investments 777 (Pty) Ltd* 2015 (3) SA 479 (CC)). The Prescribed Rate of Interest Act 55 of 1975 gives the court a discretion to award what it considers fair, but only for an unliquidated debt. For a liquidated debt the eventual award cannot exceed double the original debt. This then becomes a new “debt” and further mora simple interest then runs on the total amount notwithstanding that it includes pre-judgment interest. (*Morkel & De Villiers Inc v Jennifer Morkel* 2019 (WCD) (unreported 18.04.2019 case 1581/2005).

**Indigency of parents:** The duty of a child to support his or her parents arises when the parents are “indigent”, an inexact word that has caused considerable litigation. In *Fosi v RAF* 2008 (3) SA 560 (C) there is an excellent survey of the issues and cases.

**Remarriage deductions:** The *Quantum Yearbook* provides a table of remarriage deductions. These date from a long time ago when marriage was more prevalent than it is today in our liberalised multicultural society. There remain, however, cultural groups for whom marriage is common (such as Moslems) and groups for whom remarriage is rare (Roman Catholics). The court has a wide discretion to apply such rate as seems appropriate to the circumstances of the case. In one matter reported by Boberg (1964 SALJ 194 218n43) the judge said ‘I devote no time to consideration of the likelihood of a widow with seven children remarrying’. More recently a court has declined to make a deduction due to the outdated nature of the statistics in the *Quantum Yearbook* (*L D v Road Accident Fund* (14606/2016) [2018] ZAGPPHC 181 (5 February 2018)).

**Finis**