NEWSLETTER

(Number 27 - December 1997)

Dear Reader,

Interest on damages: A Natal court has ruled that the 1997 amendment to the Prescribed Rate of Interest Act is not applicable to claims payable by the Road Accident Fund (*Campbell v Sentrasure* 1997 (D) (unreported 29.05.97 case 166/95)). The judgment is extremely terse, without any canvassing of arguments for or against, and one is left wondering to what extent it was a judgment by consent of the parties and to what extent the court was informed of the arguments in support of allowing interest for the period up to date of judgment. In *SA Eagle v Hartley* 1990 4 SA 833 (A), a claim for damages for personal injury, an award by the trial court for loss of buying power on past loss of earnings was disallowed by reason of the "no interest on unliquidated damages" rule. After making its finding the court went on to say:

> 'The result which I have thus reached is not satisfactory. If a plaintiff through no fault of his own has to wait a substantial period of time to establish his claim it seems unfair that he should be paid in depreciated currency. Of course, in respect of many debts this problem is resolved (or partially resolved) by an order for the payment of interest, and the Prescribed Rate of Interest Act 55 of 1975 is flexible enough to permit the Minister of Justice to prescribe rates of interest which reflect the influence of inflation on the level of rates generally.... it is trite law that there can be no *mora*, and accordingly no *mora* interest, in respect of unliquidated claims for damages.... It follows that there is no mechanism by which a court can compensate a plaintiff like the present for the ravages of inflation in respect of monetary losses incurred prior to the trial. In other jurisdictions a statutory power to award interest is used for this purpose.... Whether our courts should have a similar power, and what form it should take, is not, however, something we can lay down. It is essentially a matter of policy which is for the Legislature to decide.... It is comforting to know that the Law Commission is at present considering this topic.'

Retrospective interest: The 1997 amendment to the Prescribed Rate of Interest Act provides that interest on unliquidated damages shall commence to run from the date of demand or summons, whichever date is earlier. Had it been the intention of the legislature to prohibit the running of interest for the period prior to the commencement of Act suitable wording could easily have been inserted. There is a general presumption against retrospectivity. However, in the present instance the defendant will have had the benefit of the use of the money during the pre-trial period and thus cannot complain if he is asked to pay interest on past losses. The unfairness of retrospectivity is to be weighed up against the unfairness of denying compensation for loss of buying power.

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Medico-legal reports: **ATTENTION** all medical experts, therapists, and other experts who prepare reports as regards future expenses to be incurred by an injured victim. Please indicate **on every page of the report** the date of the report. It is also helpful to list your own name and the name of the victim. I am frequently provided with only two or three pages from a bulky report and without the date thereof I cannot make proper adjustment for inflation from date of report to date of assessment.

Past loss of earnings: When a person is injured and some other person, by reason of a duty of support, pays medical expenses then it is that other person who has the claim for compensation for the payments made, and not the victim (see *Schnellen v Rondalia* 1969 1 SA 31 (W)). The payments were not made gratuitously, but in terms of a duty of support. The payments are thus not *res inter alios acta*. It is common that during the pre-trial period a victim has no income and is supported by his wife or his parents or a brother or sister. This support is often rendered in terms of a duty of support and is thus not gratuitous. It follows that the benefit of being supported is a deductible collateral benefit. The person providing the support must bring a separate action *eo nomine* for the expense incurred with providing the support. There is, curiously, not a single reported judgment where this principle has been applied. Does any reader know of an unreported one?

Remarriage rates for black widows: There are no statistics on the subject. There are tables for whites, coloureds and asiatics (see *The Quantum Yearbook* 1998). These reveal that the white population has a remarkably high propensity to remarry compared to other population groups. We may thus conclude with some degree of confidence that the remarriage rates for black widows are probably closer to those for coloureds and asiatics. We know that even amongst the white population there are certain groups (notably Roman Catholics) who have very low remarriage rates. We may deduce from this that the rates for non-catholics are probably higher than the tabular rates. Black widows living under tribal conditions generally do not remarry because, in terms of customary law in many areas, the widow is taken over by the brother of the deceased who is expected to ensure further children for her "house" and also to provide support. This custom probably leads to the family, even under urban conditions, frowning on remarriage. It thus follows that for lower income widows a very low remarriage deduction is appropriate. I have for many years followed the practice of using ½ of the coloured rate. Of course for traditionally oriented blacks there is the contingency that the deceased may have taken a second or third wife.

The fact that a widow has children is not necessarily relevant. The average white widow on which the remarriage tables are based had two children. The average coloured widow had three children. For widows with substantially more children than the average a reduction in the remarriage rate is usually appropriate.

Percentages applied by the courts in reported judgments should be used with caution, if at all, because, apart from the subjective factor of the judge having seen the widow, such judgments date mostly from a time before the latest statistics were available.

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