

# NEWSLETTER

(Number 30 - September 1998)

Dear Reader,

## Financial statistics:

	Inflation (year-on-year)	Interest (long bond yield)	Real rate of return
South Africa	5,2%	18,4%	12,6%
England	3,6%	5,8%	2,2%
Japan	2,0%	1,2%	-0,8%
United States	1,9%	6,0%	4,1%

The above reflect data available at time of publication (RSA=06/98 for CPI, 09/98 for yield; others=05/98).

**Wouldn't it be so nice if** experts preparing medico-legal reports recorded the date of their report and the name of the claimant **on each and every page**, and also their own name. There are still a few experts who do not date their reports at all. What a jumble the actuary has to untangle when attorneys telefax only the last few pages of several medico-legal reports.

**Reform of the Road Accident Fund:** The white paper so much discussed during the last 2 years has been temporarily shelved due to the difficulties with getting comprehensive legislation passed before the general election in 1999. Now that there is not such a rush a judicial commission of inquiry is to be appointed to review the proposed reforms.

**Remarriage deductions and claims for loss of support:** When assessing the damages for a widow it is usual to make a deduction for general contingencies and then a further deduction for the widow's remarriage prospects. As a general rule this deduction will have regard to the likely financial status of any new husband and, if remarriage has actually taken place, will have regard to the actual support provided by the new husband. If this second marriage fails before settlement of the claim (as sometimes happens) then regard will be had to this failure. However, those who litigate subject to rulings in the TPD may not have regard to such equitable considerations (*Glass v Santam* 1992 1 SA 901 (W) ruled that remarriage extinguishes the right to claim for loss of notional support falling after the date of remarriage). The inequity of the *Glass* judgment highlights the dangers of analysing loss of support claims as pure "loss of a right to support". Rights are all well and good for analysing who has a right to bring an action, but the award of damages is concerned with the **financial benefits** attaching to the right to support, not with the right itself.

Now what of the widow who was seriously injured in the same accident in which her husband died? It is common practice to reduce the deduction for remarriage having regard

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to her injuries. This practice, however, may not be good in law: thus if a woman is injured she may claim as part of her financial loss not only loss of earnings but also the value of the chance of her reduced marriage prospects (*Commercial Union v Stanley* 1973 1 SA 699 (A)). This must be claimed by way of a separate action from that by which the damages for loss of support is claimed (*Evins v Shield Insurance* 1980 2 SA 814 (A)). **The claim for loss of support must then be assessed disregarding her injuries**, both as regards earnings and remarriage.

**Costs of *curator bonis* for loss of support awards:** An accident victim who suffers brain damage and is no longer able to attend to his affairs will be awarded, in addition to all other compensation, the costs of appointing a *curator bonis* to attend to the administration of the award. If the victim is killed outright his dependent children have a claim for loss of support. Usually the surviving parent will be competent to look after the awards made to the children. However, it does happen that both parents are killed, or there is no other parent. In such circumstances it may become necessary to appoint a *curator bonis*. There seems to be no good reason why the awards to the children should not be increased to allow for such costs. The funds could be placed in the hands of the Master of the High Court, but the low rates of investment return offered there, and the administrative obstacles to gaining access to the funds, render such an option unattractive.

**Maintenance payments by a surviving parent:** Single parent families often receive maintenance payments from the other parent. If the custodian parent is wrongfully killed then the children have a claim for loss of support having regard to the earnings of the deceased. This is usually assessed as two parts to the deceased and one part to each child. However, if the surviving parent has been paying maintenance then those payments will have boosted the income available to the family, but have been paid specifically for the support of the children. For this reason the awards to the children should be less than if the maintenance payments had not been made. The calculation would proceed as follows: Consider a single-parent family comprising a mother and two children. The mother earns R24000 per year. The father of the children pays maintenance of R3600 per year per child. If the deceased's income is apportioned two parts to the deceased and one part to each child then each child is allocated R6000 per year in the calculation (R24000/4). However, if regard be had to the payments by the father then each child is allocated only R4200 per year  $([R24000+R3600+R3600]/4-R3600)$ . **It is thus most important when assessing single parent claims to have information as to the support payments by the surviving parent.**

**Arbitration Forum:** The RAF in Cape Town has committed itself to arbitration **at the election of the claimant**. Arbitration offers a number of advantages over the formal litigation process notably: speedier resolution of disputes (no waiting for a court date); choice of presiding officer (the arbitrator); no problems with court rolls. It has been suggested that arbitration will be cheaper than litigation, but this remains to be seen. The arbitrator has to be paid by the parties whereas a judge would be paid by the State. Expert witness reports and inspections in loco are still needed.

The conclusion of an arbitration agreement with the RAF interrupts the running of prescription and is thus a procedural alternative to issuing summons.

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