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NEWSLETTER

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Dear Reader,

Consumer price index: Latest reported is June 2001 at 5,8% year on year. The authorities are targetting 6% or less for 2002.

Apportionment of costs of *curator bonis*: The costs of a *curator bonis* are calculated as a percentage of the compensation money. It follows that if the pricipal award has been apportioned for contributory negligence the curator's fees will automatically be reduced in the same proportion. It is thus wholly incorrect to apportion the curator's costs again. That is a double reduction for apportionment. In *Govindsamy v RAF* (D) (unreported 13.04.99 case number 5537/97) the Court ordered that the costs of a *curator bonis* be apportioned. The report on this case in the RAF Newsletter May 2001 does not indicate how the curator costs that were in dispute had been calculated.

Volume 5 of Corbett & Honey: "The Quantum of Damages in Bodily and Fatal Injury Cases" was originally by Corbett & Buchanan. Dudley Honey stepped into the breach with the passing of John Buchanan of Jutas, and volumes 4 and 5 show Corbett & Honey as the authors. In 1985 Adv Gauntlett updated the principles that originally appeared at the beginning of volume 1 and a new binder was issued as a "third edition" by Corbett Buchanan and Gauntlett. A casualty of these developments has been the 550 reported cases covering the period 1948 to 1968. These filled most of the original volume 1 but were not reproduced in the "third edition". The staff at Juta's are too young now to remember what the **real** volume 1 contained and somewhat misleadingly now refer to the "third edition" as volume 1, and sell a so-called "complete set" to newcomers. The missing 1948 to 1968 cases are all listed in the *Quantum Yearbook*. Most High Court and University libraries carry a copy of the original volume 1.

General damages for death of wife and child: There is little doubt that an opinion poll amongst laymen would reveal universal support for the payment of general damages for the killing of a spouse or child. The fact that traditional South African law does not allow such compensation is, in my experience, received with some incredulity by laymen familiar with USA TV programmes. In *Harcourt NO v RAF* 2000 5 C&B B4-29 (NCD) at B4-35 it is stated that:

> 'There can be no doubt that Mr Jonker's tragic loss of his wife and unborn child due to the motor vehicle accident constitutes loss of an amenity of life'.

The Court then proceeded to assess general damages for the injuries to Mr Jonker without further mention as to whether the award of R95000 had been increased for the loss of a wife and child. The brain injury cases listed in support of this award were R85000 and R90000 after adjustment for inflation to the date of the trial. So, at best, the additional award for loss of wife and child, if any, was about R7500.

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Strictly speaking the killing of a wife is a wrong against another for which the action for loss of support is allowed by way of exception. The Roman-law on which this reasoning is based focuses on the individual. Germanic law, on the other hand, recognised wrongs against a group, including the killing of a member of that group. If Parliament cannot get around to legislating for a limited payment to close family members in the event of wrongful killing, then it seems only a matter a time before judges take it upon themselves to fill the gap, and well they would act if they did so.

Insufficient evidence for past loss of earnings: In *Bridgman NO v RAF* 2000 5 C&B B4-1 (C) at B4-22 to 24 the Court ruled that due to the claimant's failure to adduce available evidence that would have assisted the Court with assessing past loss of earnings, no award should be made under this head. As an actuary I am all too well aware of the inadequacy of evidence supplied by many claimant attorneys as regards past loss. The irony is that past loss is the one head of damages where comprehensive evidence should be available. If this ruling will sharpen the wits of claimant attorneys as regards evidence on past loss of earnings then it is to be welcomed. However, I fear it may also be used by unscrupulous claims handlers at the RAF to refuse to pay legitimate claims for past loss of earnings which have been documented as best difficult circumstances allow.

Normal retirement age: In *Marais v RAF* 2000 5 C&B C3-12 (C) the claimant was a married woman with plans for childbearing. The rules of the claimant's pension fund stated that the normal retirement age was 63. The defendant argued that claimant's retirement age should be taken to be 55. The reported judgment reveals no evidence by the defendant in support of using age 55 and the Court ruled that age 63 should be used. Readers are referred to my newsletter of June 2001 in which I protested against the unfounded use of age 55 as a retirement age. It is perhaps significant, however, that the Court applied a very heavy 30% general contingency deduction as regards future earnings.

Parental indigence: When a child is wrongfully killed an "indigent" parent who was supported by that child is entitled to claim damages for loss of support. The ruling in *Burger v POF* 2000 5 C&B L2-1 (OPD) provides a good example of the application of the sometimes-forgotten principle that:

> "In order to succeed a plaintiff is not required to show that she would be reduced to abject poverty or starvation and be a fit candidate for admission to a poor house... The Court must have regard to her status in life, to what she has been used to in the past and the comforts, conveniences and advantages to which she has been accustomed..." (from *Wigham v British Traders* 1963 3 SA 151 (W) at 153).

In fairness to those who take a tough line with parental claims it deserves mention that there is a fairly high incidence of parents claiming as "loss of support" the contribution to household expenses that many parents expect from a working child who remains at home. The provision by the parent of accommodation and food for the child is quietly, and incorrectly, ignored.

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