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# NEWSLETTER

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**Reform of Road Accident Compensation**: The Satchwell Commission has at long last published it's report. The good news is that if the recommendations ever do become law, all old claims will continue to be handled under the old dispensation. The "dinosaurs" (like myself) will be phased out rather than blotted out, as was envisaged by the "White Paper" of Minister Mac Maharaj. That reform is needed is not in issue, but there is substantial disagreement as to direction that such reform should take (even the Satchwell commissioners have different viewpoints). In such circumstances an "Alexander" with some compassion and some vision is needed to cut the "Gordian knot" and get things moving. Action is now more important than content. It can be predicted that organisational change of this magnitude will have unpredictable side effects (social and other) quite apart from drafting errors and maverick interpretations of the legislation. It is most important that Parliament is prepared to make time slots available over several years to pass the additional legislative patches needed to "fine tune" the new system.

**Instalment compensation**: This was possible under the old dispensation until a drafting accident rendered impotent the relevant section (see Coetzee v Guardian National 1993 3 SA 388 (W) - article 43 has since been replaced by the identically worded and equally impotent s17(4)(b)). Correcting legislation has since been blocked by the paralysing shadow of ever-pending reform. An attempt by the RAF Board in 2002 to achieve minor reform was, it seems, scotched by Judge Satchwell, so the Board just used its Parliamentary time slot to put through non-event legislation to reduce the statutory number of Board members (thereby avoiding the need to fill gaps created by resignations). It should be mentioned, however, that the Board's original reform proposals were somewhat soured by provisions requiring the payment of compensation direct to claimants. The same result would have been substantially achieved had the legislation sought to do no more than reinstate payment by instalments. The Board is urged to try again.

In the meanwhile the MVA Fund in Namibia is successfully negotiating settlements by instalments for loss of earnings and loss of support. Namibian legislation was hived off from South Africa prior to the drafting of the abortive article 43 (now s17(4)(b)). Instalment settlements are, however, not without problems: An attempt by the Swedish Government some 40 years ago collapsed due to runaway inflation; administrative nightmares can develop if idealists are allowed to adjust every payment for every detail of unfolding reality. The Nambian Fund has avoided these traps by negotiating payment schedules covering all future years in which even future inflation is predetermined. The claimant must, however, prove that he or she is still alive when each payment falls due.

In Namibia the instalment payments are tax free in the hands of the claimants. In South Africa the Income Tax Act still needs to be amended.

**Single parents**: When assessing damages for loss of support it is usual to apportion the deceased's net after tax income with two parts to the deceased and one part to each child.

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This presumes that the children were living with the deceased. Where the children did not live with the deceased evidence should be provided as to the actual benefits provided by the deceased prior to the death. The action for damages for loss of support is directed at restoring the financial benefits that have been lost. The mere fact that there was a duty of support is not sufficient. The duty must also have had financial value in the sense of the value of the chance of being supported. In many instances the value of this chance is "pressed to extinction by the weight of accumulated contingencies" (per the late Prof Boberg).

Those of us who assess numerous claims for loss of support are aware of the extremely high incidence of claims for the death of a single mother where it is stated that the father of the children has disappeared or has never, and never will, provide support. Such statements notwithstanding it may sometimes be appropriate to increase the deduction for general contingencies to allow for the chance that the father may on occasion have made a contribution. It needs to be borne in mind, however, that Black customary law holds the view that a man acknowledges that he is the father of the child by paying the mother's family the agreed price and takes the child away from the mother forever; this is also a formal acceptance of responsibility to pay for the support of the child. If he does not claim the child then the child remains a responsibility of the mother's family and he views it as "immoral" to expect him to pay for the child's support.

Then there are the claims for loss of support arising from the death of a father who did not live with his children. The affidavits that accompany such claims, if any, usually state that the deceased contributed at a level which remarkably accurately matches a division of his income with two parts to himself and one part to each child (ex-post reconstructions?). However, even when such affidavits are missing there is a strong held view amongst advocates and attorneys that because it is a duty of support that has been lost the actual provision of benefits is irrelevant to the quantification of the claim. The deceased's income is allocated without regard for whether or not support was actually provided. A sensible compromise would be to allocate ½-part to each of such children. Where the children lived with the deceased it is usually arguable that the deceased lived with some woman (particularly where there are recent children) and supported her by way of two parts of his income.

In Van Aardt v Southern Versekerings Ass (unreported 27.2.86 case 523/82 OPD) the deceased was a divorced mine captain who had custody of the three children. His ex-wife had left the country (and died naturally some two years after the accident). The divorced wife was not entitled to maintenance. The deceased was provided by his employer with a a substantial income (R18687 py in 1981: R203000 py adjusted to 2003) plus free housing. A married daughter of the deceased and her husband lived with the deceased. They were self-supporting but she assisted with housekeeping and cooking. The deceased was a generous man who had bought an organ for one family member and helped his ex-father-in-law with buying a car. The deceased had not been socially active and the Court considered his chances of remarriage somewhat low. The Court observed, however, that in time he would need to employ a housekeeper at a cost of roughly 1-part of his income. The Court ruled that 3 parts should be allocated to the deceased and one part to each child.

On the supposed authority of the Van Aardt judgment RAF claims handlers often seek to allocate 3-parts to single mothers earning R10000 to R20000 py in 2003. I express the hope that this practice will cease.

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