

# KOCH & MELVILLE

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## NEWSLETTER

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Dear Reader,

**Business premises:** You will see from the letterhead that there have been some changes. Our offices have been moved to larger premises in Vredehoek. John Melville is taking on increased responsibility.

**Assessments of general damages:** We have introduced a 'certificate of general damages'. A number of attorneys have been using this service but we would be pleased to see many more doing so. Please take note that we do not assess general damages as a matter of course, only when expressly instructed to do so.

**Courier services:** We have considered joining Docex but found this system to be unsuitable for our requirements. We have accordingly opened an account with DHL Couriers - account number 352903600. Urgent bulky documents too large for telefaxing may be sent to us using this service with the expense debited to our account. In order to use this service contact our office who will make the necessary arrangements. DHL will collect from your office.

**C&B:** The Quantum Yearbook 1992 makes frequent use of the abbreviation 'C&B'. This is, of course, a reference to the publication Corbett & Buchanan & Honey 'The Quantum of Damages in Bodily and Fatal Injury Cases' (Jutas looseleaf). The publication now runs to 3 volumes of reported judgments and has become a series of law reports in its own right. Volume 4 is due to be published later in 1992. We have adopted the abridged form of citation whereby we cite the year of the judgment, the volume, the abbreviation 'C&B' followed by the page number and the division of the supreme court. A typical reference in the Quantum Yearbook thus reads:

*Harris v Federated Employers Insurance* 1977 2 C&B 817 (T)

We express the hope that this form of citation will become increasingly popular in years to come.

**Speculative claims:** A claim for an uncertain loss, past or future, will not be rejected merely because the chance of that loss is less than 50%, ie because it is a mere possibility. The award for damages will include the value of the chance of the uncertain loss. Thus if there had been a 25% chance that a claimant would have been promoted with an increase in salary of R10000 per year one would include in the calculation 25% of R10000 per year, that is to say R2500 per year. One particular application for this principle is allowance for the loss of inheritance prospects. Many uncertain medical expenses are compensated on this basis.

**Discount for early death:** Even-handed justice dictates that if there is a 20% chance that an expense will not be incurred then the claimant receives only 80% of the value of that procedure as a certainty. An important contingency affecting medical expenses is the chance

of early death. Suppose a claimant aged 40 has the prospect of a hip replacement with 100% certainty at age 60 costing R20000. For a coloured male aged 40 the chance of survival to age 60 is 64%. It follows that he should be awarded only 64% of the cost of the hip replacement. It would be usual to make a further deduction for the prospect that over the next 20 years investment returns will exceed the rate of escalation in costs by 2,5% per year compound. This would require a further deduction of 38% giving a net present value for the procedure of  $R20000 \times 0,64 \times 0,62 = R7936$ . I am aware of many settlements where this figure of R20000 is thought to be correct. 'Capitalization' includes discounts for the risk of early death.

**Marriage prospects and injury claims:** In *Carstens v Southern Insurance* 1985 3 SA 1010 (C) at 1023-4 1027I-J the court was asked to reduce the damages to allow for the saving that the claimant would now have from not having to support the wife and children. The court rejected an explicit actuarial calculation of the saving but then proceeded to include the value of the chance thereof in the deduction for general contingencies (a deduction of 30% was applied). This deduction was confirmed on appeal in *General Accident v Summers* 1987 3 SA 577 (A) at 617. The learned authors Neethling Potgieter & Visser 'Deliktereg' 2ed at 224n174 maintain that the deduction was disallowed by the appellate division. The learned authors have regrettably overlooked the court's closing words at 617I-J. A single woman who is deprived of marriage prospects will be compensated for the financial value thereof (*Commercial Union Assurance v Stanley* 1985 1 SA 699 (A) 704G). Even-handed justice suggests that what may be added on to one claim may be deducted from another.

**Saved living expenses and injury claims:** The deduction for the saved costs of supporting a wife and family is part of a wider problem on which the judiciary are divided. One school of thought says that the claim is for loss of earnings and what the claimant would have done with those earnings is no concern of the court. The other school says that the claim is for financial loss and thus that compensating advantages such as saved costs of supporting a wife and family should be brought into account. Deprivation of marriage prospects is, of course, the loss of an important amenity of life so although a deduction may be made when assessing patrimonial loss, the award for general damages should be increased. If the action for damages for personal injury were truly a claim for loss of earnings exclusively, then claimants should have no entitlement to damages for medical and paramedical expenses occasioned by the injury. Under the dependants' action it is usual to deduct from the deceased's notional earnings the saving from no longer having the cost of his support.

**Travel costs:** In *Maasberg v Hunt Leuchars & Hepburn* 1944 WLD 2 at 12 the court made a deduction of 9% for the costs that the deceased would have incurred with travelling to and from work. In *Sumesur v Dominion Insurance* 1960 1 C&B 228 (D) at 232-3 the court made a deduction of 7,5% from the notional earnings of an injured claimant for the saving he would now enjoy from no longer travelling to and from work. An add back will often be appropriate to allow for the costs of travelling for medical attention. Of course when the claimant continues to work after the injury or lived at his place of work then this deduction should not be made. Persons of higher income will usually use more expensive forms of transport so much the same percentages of income will remain appropriate. If allowance for saved travel costs are included in the deduction for general contingencies then this deduction should be a minimum of about 8% for past loss and that and more for future loss.