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NEWSLETTER

(Number 107 - December 2022)

WE WISH YOU A VERY HAPPY XMAS AND A PROSPEROUS NEW YEAR

Vital statistics:

CAP determination 30 October 2022:	R336308
CPI year-on-year to October 2022:	7,6%
RSA long bond yield October 2022:	9,3%
Real rate of return (8,5 less 5,9):	1,7%
Lightstone Property Index November 2022 (y/y real):	-4,7%

Apportionment of damages for loss of support: It is trite law that the Apportionment of Damages Act does not apply to claims for loss of support. This does not prevent the RAF claims handlers trying their luck time and again to bamboozle claimants. In *Mfomadi v RAF* (34221/06) [2012] ZAGPPHC 152 the judge records that:

“The parties had agreed that the damages be apportioned 60/40 but apportionment was not applied for dependants’ claims, where only 1 % liability need be proved to succeed with their full damages. The agreement was therefore not binding on the court and the plaintiffs were entitled to their full damages.”

Claimants for loss of support beware.

Contingency for remarriage or “re-partnering”: These days loss of support can be claimed by life partners outside of the conventional husband/wife marriage framework. Thus in *Kriek v RAF* [2020] ZAFSHC 42 one appropriately finds it ruled that attractiveness of the plaintiff is a factor in assessing prospects of **re-partnering**. That the plaintiff is an attractive young lady in her prime and a 40% re-partnering contingency should be applied. The judge did, however, express reservations as to the validity of the re-partnering rates in Koch’s *Quantum Yearbook* based on statistics collected over 70 years ago.

Shock to mother for having a cerebral palsy child: In *MNK v MEC for Health, Gauteng* [2022] ZAGPJHC 175 an amount of R350000 was awarded to the mother of a child who had suffered cerebral palsy as a result of the negligence of the hospital staff. However, in *PM obo TM v MEC for Health, Gauteng* [2017] ZAGPJHC 346 the claim for such general damages for shock was refused it being observed that:

“I have much sympathy for [Lee-Ann’s parents]. The accident and its consequences must have caused them much grief and sorrow. But they do not claim damages for their grief and inevitable bereavement. Nor as a matter of policy, could such a claim ever, I think, be entertained. The social burden would be too great. Whatever the position may be in

England or for that matter in any other country, the funds available in South Africa will not stretch that far. It is common knowledge that the hospital authorities are desperately short of money. Free medical treatment has recently been afforded to all children under the age of six years. . . . All this costs money. The same is true in the case of other public bodies which are defendants in actions arising out of bodily injuries. As sympathetic as I am to Lee-Ann’s parents, I can see no justification for indirectly awarding them damages for their bereavement.”

General contingencies on future expenses: The claims for future living expenses for cerebral palsy victims are substantial. In *PM obo TM v MEC for Health, Gauteng* [2017] ZAGPJHC 346 the trial Court had made several substantial deductions of as much as 25% and 50%. Some of these were removed but the 50% applied to house costs was upheld, it being noted that some of the more esoteric expenses such as a remotely operated ceiling rail track would probably not be incurred. The Court made frequent reference to *Singh v Ebrahim* (8027/2004) [2008] ZAKZHC 112.

Life policy falls outside community assets: The proceeds of life policies do not exist or fall into the joint estate of an insured married in community during his lifetime and fall into his separate estate. This ruling does not discuss the status of ownership of the surrender value of the policy prior to death and may have been coloured by the fact that the widow had forged the will in the face of an intestate deceased (*Maqubela v The Master* [2022] 2018-40955 (GJ)).

The unrepresented RAF: In *RAF v McDonnell* [2022] ZAWCHC 116 the RAF sought to set aside a large award made in the absence of representation by the RAF due to non-renewal of its panel of attorneys. The RAF was seeking to develop the common law on rescission in its favour. The application was dismissed.

Maintenance of Surviving Spouses Act 27 of 1990: The Act provides for an ongoing right to maintenance by the survivor of a marriage. But what of the “survivor” of a stable permanent relationship between two persons of the opposite sex who had not been married to each other during their lifetime, but nevertheless lived a life akin to that of husband and wife? The Constitutional Court has ruled that such “survivors” do not enjoy the protection of the Act (*Volks NO v Robinson* [2005] ZACC 2).

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