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NEWSLETTER

(Number 111 - December 2024)

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

Vital statistics:

CAP determination 31 October 2024:	R368025
CPI year-on-year to September 2024:	3,8%
RSA long bond yield R2030 November 2024:	8,0%
Real rate of return (8,0 less 3.8):	4,2%
Fed St Louis Property Index June 2024 (y/y real):	-4,0%

The primary function of an industrial psychologist (IP): “is to address the plaintiff’s employment prior to, and at the time of the accident, as well as her capabilities after the accident. Expressing an opinion based purely on the verbal information conveyed by the plaintiff is not of assistance as it is no more than speculative hearsay” (*Ejike v Road Accident Fund* [2024] ZAGPJHC 446). The Court declined to make an award for loss of earnings. In this instance there was reason to believe that documentary proof of earnings was available had the effort been made. However, this is not always so. South Africa has a huge informal undocumented economy. In many instances proof of earnings needs to be by way of affidavits by customers or suppliers.

As an actuary I see a large number of IP reports where the sayso of the claimant has been accepted without any attempt at verification. The RAF money is public funds and thus deserving some diligence in verification. There is also some abuse of earnings statistics. The knee-jerk assumption that a lowly earner will by some magic process progress to some median package is not always in accord with the claimant’s known earnings history. Loss of earnings claims paid by the RAF are now some 400% more in real terms than prior to the advent of IP’s. Attorneys and advocates should be diligent to send defective reports back to the IP for proper evidential backing by way of contact with the employer or affidavits by co-workers. The *Quantum Yearbook* includes suitable questionnaire documents (at pages 76 to 82 of QYB 2024). These documents are also available for free download from my website <https://robertjkoch.com/>.

Damages for death of both parents: In the *Monani* case it was ruled that if a child died in the same accident as the breadwinner then the part that would have been consumed by such child must be ignored when calculating notional support for the surviving children. That same logic says that if both parents die in the

same accident then the claim for the loss of support from the death of the father must be calculated as though the mother did not exist. If both parents were working then the loss of support for the death of the mother should be calculated separately as though the father did not exist (*Road Accident Fund v Monani and Another* (241/2008) [2009] ZASCA 18; 2009 (4) SA 327 (SCA) ; [2009] 3 All SA 317 (SCA) (20 March 2009).

Duty of support by step-parents: In a divorce action maintenance was claimed for the step-children. The Court ruled that the children had a right to ongoing parental care from their stepfather [section 28(1)(b) of the Children's Act, 2005 (Act Not 38 of 2005) read with subsection (2) of the Constitution of the Republic of South Africa]. The stepfather was ordered to pay maintenance. It seems likely that in a claim for damages for loss of support the court may be persuaded to award damages to step-children following the wrongful killing of their stepfather ([NM v BM \[2024\] ZAWCHC 254](#)). In *Thibela v Minister van Wet en Orde* 1995 3 SA 147 (T) evidence was led that under customary law the deceased, by reason of the customary marriage, had had a duty to support his stepchildren and that the stepchildren were entitled to compensation for loss of support. In *Kewana v Santam Insurance Co Ltd* 1993 (4) SA 771 (Tk) evidence was led that the deceased had adopted her nephew following the tribal traditions for adoption. There had been no statutory adoption. The Court ruled that the child was entitled to compensation for loss of support.

Foster children also get loss of support: It has been ruled that foster children may claim for loss of support even if they have not been formally adopted (*ZV obo Three Minor Children* [2023] 25411-2017 (GP)).

AI and case headnotes: The internet case reports published by SAFLII come without headnotes or case summaries. It would be so nice if AI could be used to fill the gap. We tried 3 of the readily available AI services such as ChatGPT but the results were so vague as to be useless. There are some expensive legal summary services but the cost put us off even trying. Maybe one of my readers knows a good option?

Maintenance for a surviving spouse: Once upon a time a surviving spouse could not claim maintenance from her spouse's estate. The Maintenance of Surviving Spouses Act was passed 35 years ago allowing a claim provided there was a formal marriage. The Constitutional Court has now ruled that the Act should be amended to cater for long term partnerships which have not been formally registered [*Bwanya v Master of the High Court, Cape Town and Others* (CCT 241/20) [2021] ZACC 51; 2022 (4) BCLR 410 (CC); 2022 (3) SA 250 (CC)]. We hope that Government will not dither too long with getting this amendment passed.

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