ROBERT J KOCH cc *BSc LLB LLD*

Fellow of the Faculty of Actuaries in Scotland 1A Chelsea Avenue PO Box 15613
VAT 4870191808 E-mail: rjkactuary@gmail.com Cape Town Vlaeberg 8018
CK2000/058266/23 Website: www.robertjkoch.com Tel: 021-4624160 Fax: 021-4624109

NEWSLETTER

(Number 86 – June 2012)

Vital statistics:

CAP determination April 2012:	R196636
CPI year-on-year April 2012	6,1%
RSA long bond yield May 2012:	8,4%
Real rate of return (8,4-6,1):	2,3%
ABSA Property Index May 2012	0,3%
Houses less than 140 square meters	-15,1%

Child names: Many and varied are the names of children claiming for loss of support: Fanelesibonge is one of the longest; Gopitsimodo one of the most pleasant sounding, and Tshegofatso and Buhle my favourites. Readers' thoughts on this topic will be much appreciated.

Alternative Robert Koch: My website is *www.robertjkoch.com*. There you will find a variety of pages relevant to the assessment of damages for personal injury and wrongful death. However, if you are one of those who considers actuaries to be boring you may leave out the "j" in the URL and your browser with take you the fortune telling mysteries of Robert A Koch *at www.robertkoch.com* who has recently published a handbook on Vedic fortune telling. Robert A Koch lives in California and is not related to the South African branch of the family.

"The clanking of medieval chains": In *Zimnat Insurance v Chawanda* 1991 2 SA 825 (ZS) it was said:

> "When the ghosts of the past stand in the path of justice clanking their medieval chains the proper course for the judge is to pass through them undeterred".

The Court ruled that the widow of an unregistered customary union has a right of action to claim damages for loss of support. In South Africa the widow of a customary union has been granted a right of action by statute (s31 of Black Laws Amendment Act 76 of 1963).

In *Thibela v Minister van Wet en Orde* 1995 3 SA 147 (T) it was ruled that stepchildren acquire a right to support by virtue of a customary law marriage.

In *BM (born DP) v B and NG* (GSJ) (unreported case 2008/25274 – date of judgment unknown but cited with approval in *Verheem v RAF* 2012 2 SA 409 (GNP)) it was ruled that formal adoption is not needed for there to be a duty of support, provided there

page 2…..

was a contractual undertaking to do so

The right to damages of a common-law wife: In *Verheem v RAF* 2012 2 SA 409 (GNP) it was ruled that the widow of an unmarried couple with two children from the relationship has a right to claim for loss of support. *In casu* she was not working due to his manifest intention to support her and the children, and the parties had intended to get married but financial circumstances had delayed the event.

In *Meyer v RAF* 2006 (TPD) (unreported 28/03/2006 case 209950/2004) it was ruled that the unmarried partner of a heterosexual relationship is not entitled to claim for loss of support.

In *Sibanda v RAF* 2008 (WLD) (unreported 10.10.2008 case 9098/07) it was ruled that a bride-to-be has no action for loss of support.

Seems the two earlier rulings may be distinguished in that with the *Meyer* ruling there was no expressed intention to marry and no proven obstacle to doing so. With the *Sibanda* ruling there was no existing duty of support, only a future prospect.

Deduction of notional tax on lost earnings: Adv John Mullins writes:

> "You might have been informed of a recent judgment by Blignaut J, *Barclay v RAF* 2012 (3) SA 94 (WCC), to the effect that an actuarial calculation for loss of income/earning capacity should not include a deduction of income tax from gross notional earnings.
>
> "With respect, and although most of my work is for the plaintiff so that the case really suits me, that decision is clearly wrong. In this regard, given the acceptance in the judgment of the fact that the award would not be taxable in the plaintiff's hands, an adjustment for income tax clearly had to be made to account for the fact that the income, which the award was intended to replace, would have been taxable in the plaintiff's hands."

My reply was as follows: "I do not understand the *Barclay* judgment to say that income tax should not be deducted. I thought it said that if you do deduct income tax from earnings then you must also deduct it from the investment income, but that investments should be assumed to be substantially in tax neutral investments. In the end judge Blignaut did a thumbsuck R500000 loss of earnings award because there was not enough evidence to make an informed income-tax decision.

The Blignaut J type reasoning goes round in circles and never produces any clear guidance. There are plenty of overseas cases of this ilk but in the end the authorities opt for fixed rates such as 2½% per year as in England. However, there are many jurists overseas who consider it wrong to deduct notional tax from earnings, as is done in South Africa.

Finis