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NEWSLETTER

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Vital statistics:

CAP determination April 2016:	R244405
CPI year-on-year April 2016:	6,2%
RSA long bond yield May 2016:	9,4%
Real rate of return (9,4 less 6,2):	3,2%
ABSA Property Index April 2016:	5,1%
Houses less than 140 square meters:	9,5%

CAP apportionment: In *Nel v RAF* 2016 2 SA 517 (GP) it was ruled that when there is an apportionment of damages due to contributory negligence the apportionment is applied first, and then the CAP to the reduced apportioned damages. The steps for applying the CAP are listed at page 521G of the judgment.

Attendant and househelp expenses: In *Mphirime v Road Accident Fund* (916/2014) [2016] ZAFSHC 24 (25 February 2016) it was ruled that the necessary costs of an attendant or domestic help are not medical expenses and thus not to be paid by way of an RAF undertaking. It follows that such expenses must be estimated in advance and capitalised and be part of the lump-sum award.

Costs of curator bonis: 7½% for curator bonis costs may be added to the total lump-sum award inclusive of general damages. 6% was ordered in *Carstens v Southern Insurance* 1985 3 SA 1010 (C) 1029 but since then Government Gazette R1602 of 1 July 1991 has increased the fee on release of capital from ½% to 2%. Allowance for such costs thus increased from 6% to 7½%. In the event that security must be provided the court may add 18,4% instead of 7½% (see *Webster v Commercial Union* 1994 4 C&B A4-154 (C)).

It is common practice for the RAF to pay curator costs in terms of an undertaking. A claimant is not entitled to both the 7½% and payment in terms of the undertaking. That would be double compensation. Since curator costs are not medical costs it is also arguable that only the 7½% of total capital should be awarded and nil paid in terms of the undertaking.

The 7½% is a capitalised value for expected future curator costs. The curator is entitled to his Gazetted fee as and when he delivers service, not the 7½%. It would, however, be acceptable for a curator to waive his right to the Gazetted fees and accept a 7½% advance payment.

Retirement age for teachers: The official retirement age for Government employees is 60. However, for teachers, the Employment of Educators Act 76 of 1998 applies: the retirement age for teachers is 65. Members of the uniformed services (SAPS, Army, Prisons) retire at age 60 but, unlike normal Government employees, receive a 25% service credit for pensionable service in excess of 10 years.

Beware the unmarried widow: Traditionally the South African courts have taken the view that if the parties were not married then the surviving partner has no claim for loss of support (*Sibanda v Minister of Police* (2011/23229) [2012] ZAGPJHC 200 (23 October 2012 fiancé); *Meyer v Road Accident Fund* 2006 (TPD) (unreported 28/03/2006 case 209950/2004)). However, in *Verheem v RAF* 2012 2 SA 409 (GNP) the family had been an unmarried couple with two children from the relationship. She had not been working due to his manifest intention to support her and the children. There was held to have been a sufficiently enforceable right of support to entitle her to claim damages for loss of support.

Many attorneys lodge claims for loss of support for children of unmarried parents. The usual instruction to the actuary is to ignore the parts consumed by the mother of the children and allocate two parts to the deceased and one part to each child. There is no claim submitted for the mother of the children. After sufficient time her claim then prescribes. There have been recent instances where the RAF invokes the *Verheem* ruling and insists on allocating two parts to the deceased, two parts to the mother of the children, and one part to each child. This substantially reduces the claims of the children. The moral of this story is that one should always submit a claim for the “widow” even if the eventual outcome will be a nil award for her.

Support from a State grant: It is a well-known social reality in South Africa that many families rely for their support on the State pensions of the grandparents or a disability grant or pension received by their own parent. If the receiver of the welfare benefit is wrongfully killed then that person’s dependants are without support. For many years it has been standard RAF practice to pay compensation for such loss of support. However, in *Modibedi v RAF* (45626/13) [2015] ZAGPPHC 767 (18 November 2015) it was ruled that State welfare benefits are not income for purposes of compensation for loss of support. The children were refused compensation for loss of support. This ruling followed *Coughlan v RAF* (CCT160/14) [2015] ZACC 9; 2015 (4) SA 1 (CC) (20 April 2015) which held that child welfare grants and foster grants may not be deducted when assessing loss of support.

However, for claims for loss of earnings due to injury, it seems that a State disability grant remains a deductible benefit.

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