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NEWSLETTER

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Dear Reader,

The Quantum Yearbook 1993: The latest edition of this extremely popular publication is now available. An order form is attached herewith should you wish to obtain a copy.

Escalating support payments: Last month under this heading we had a printer's gremlin and incorrectly cited *Muller v The Master* when we really intended to refer to *Kommissaris van Binnelandse Inkomste v Steyn* 1992 1 SA 110 (A). The *Steyn* case was concerned with a widow who had claimed maintenance from the estate of her deceased husband. The capitalized value of that maintenance was to be deducted when assessing liability for estate duty. The executor had sought to deduct a capitalized value which assumed future increases in line with inflation. The Appellate Division noted that the fact of inflation alone is not sufficient ground for increasing maintenance. Due to the absence of any other evidence to justify allowance for future increases the Appellate Division ordered that the calculation should have no regard to future increases for inflation. In practice this meant that discounting had to be done at a nominal rate of interest of about 15% per year instead of the 2,5% per year that would have been used when making allowance for inflation. The higher the discount rate of interest, the lower the capitalized value. The ruling thus gave rise to a very much reduced deduction for the prospect of future maintenance payments, and thus an increased liability for estate duty.

The MMF is solvent (but only just): Business Day of 9 February 1993 reports the auditor-general as saying that the risk of illiquidity in the MMF is critical with a shortfall of R3 billion. The insurance magazine *Cover* (January 1993 at 49-50) reports actuary W B Swanepoel, acting director of the Fund, as saying that the MMF had paper assets of R180 million with an annual outgo expected for 1993 of just over R800 million, that is to say payments of roughly R70 million per month. If the Fund is receiving petrol money at the rate of roughly R70 million per month then it is assured of sufficient funds to meet claims throughout 1993. So what is all the fuss about? The problem seems to be that claims are increasing at about 20% per year and perhaps faster. This means about R960 million of claims in 1994. If payments from the petrol levy are not increased accordingly the MMF will have to draw on its paper assets and will be unable to meet all claim payments early in 1995. The Minister has appointed Professor Steve Rossouw to investigate funding.

Whiplash injuries: Research has indicated that between 20% and 40% of persons who have suffered a serious whiplash injury continue to have symptoms after compensation has been paid: Gotten 162 (1956) *JAMA* 865-7 reports that out of 100 victims 88% had recovered

a year or more after being compensated (54% with no residual and 34% with minor symptoms not requiring therapy); Hohl 56-A (1974) *Journal of Bone and Joint Surgery* 1675-82 reports symptomatic recovery after 5 years in 57% of 146 victims with degenerative changes in 39%; Maimaris Barnes & Allen 19 (1988) *British Journal of Accident Surgery* 393-6 report that of 102 victims 67% were asymptomatic after 2 years. These figures suggest that as a general rule the allowance made for future loss of earnings or expenditure in respect of whiplash injuries should be reduced by about 70% to allow for the chance that the symptoms will disappear. Gotten reports psychosomatic problems with 85% of victims with rapid improvement after settlement of claims. Seatbelt legislation has much increased the incidence of whiplash injuries.

General damages for shock of death: The dependants' action does not allow compensation to bereaved dependants for the shock and anguish brought about by the death of the breadwinner. However, with the action for personal injury damages for the shock of death have been awarded: In *Boswell v Minister of Police* 1978 3 SA 268 (E) claimant suffered severe shock due to being informed (falsely) that her nephew, whom she had brought up, had died. The court awarded general damages (R6000 in terms of 1993 rand values). This judgment suggests that a dependent who suffers shock by reason of the news of the death of a breadwinner may claim damages. This claim would not be brought under the dependants' action but as a separate action for personal injury. Further support for this view is to be found in *Masiba v Constantia Assurance* 1982 4 SA 333 (C) the deceased died from shock at seeing his car parked across the road hit by another vehicle. The death was held to have been caused by the collision. If death is a foreseeable possible consequence of the wrongful conduct then so too, one would think, is foresight of shock and mental anguish for the victim's family.

Apportionment of death claims: In terms of ss 2(1B) and 2(6)(a) of the Apportionment of Damages Act 34 of 1956 if a breadwinner has by his conduct contributed to bringing about his own death then his estate is a joint wrongdoer and may be called upon to contribute to the damages payable. The legislation prohibits recovery from those assets which have been brought into account when assessing the damages. Life insurance benefits excluded from deduction by the Assessment of Damages Act 9 of 1969 are thus available to satisfy a right of recourse. Some commentators have suggested that there is also a right of recourse against the difference between the full non-life-insurance inheritance and the deduction made for acceleration. This view is incorrect. The deduction for acceleration involves a deduction of the entire inheritance with a separate add back to the loss suffered by the dependant of the value of the chance of inheritance had death occurred at some other time (see *Groenewald v Snyders* 1966 3 SA 237 (A) 248E-F). A dependant may claim for loss of inheritance prospects quite independently of what has been inherited (see *Marine & Trade Insurance v Mariamah* 1978 3 SA 480 (A) 488-9).

Readers are invited to keep us informed of unreported judgements and other interesting developments and also suggestions as to topics for comment.

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