

# KOCH Consulting Actuaries cc

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## NEWSLETTER

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### Vital statistics:

CAP determination 30 April 2023:	R342336
CPI year-on-year to April 2023:	6,8%
RSA long bond yield June 2023:	10,7%
Real rate of return (10,7 less 6,8):	3,9%
Lightstone Property Index April 2023 (y/y real):	-3,6%

**Past caregiving:** Claimant suffered a leg ligament injury, head injury, and hemiparesis on her left side. Her mother assisted her with bathing for 12 months and thereafter doing driving to therapy sessions and assisting with homework and exercise – 47 months in total. The mother was awarded compensation at rate for basic caregivers (R65 an hour). A 5% general contingency was deducted as part of assistance was natural as a mother (*Gianni obo Cato v Road Accident Fund [2022] ZAGPPHC 1003*).

**Interest on general damages:** General damages should be assessed in terms of currency values at the time that the Court makes its award. That is the reason for the inflation adjusted awards listed in *The Quantum Yearbook*. It follows that *mora interest* runs from the date of the Court award and not from some earlier date (the RAF Act suspends the running of *mora interest* until 14 days after the Court award). When an appeal court changes the assessment of the trial court the new figure substitutes for the award of the trial court and *mora interest* runs from the date that the trial court made its award. These principles are clearly enunciated in the recent judgment *Tyabazeka v Road Accident Fund (CA 72/2022) [2023] ZAECMKHC 48 (25 April 2023)*. It is unfortunate that the case reports for appeals generally fail to state the date that the trial court made its award.

These principles notwithstanding there have been a string of awards of general damages where *mora interest* has been ordered to run from earlier dates. Most prominent in this regard is *Zealand v Minister of Justice 2009 JOL 23423 (SE)* where interest was ordered to run from date of service of summons. It is perhaps relevant that by the time summons was served the innocent claimant had already done 5 years in prison.

In other cases there has been less justification: *Manyoni v Minister of Police 2021 (8K6) QOD 132 (GSJ)* where *mora interest* was ordered to run from date of delict but the Court had adjusted past cases for inflation to “date of delict”; *VW v Minister of Police (92 / 2012) [2014] ZASCA 108 (20 August 2014)* where *mora*

*interest* was ordered from “date of demand” (presumably date of service of summons); *De Klerk v Minister of Police* [2019] ZACC 32 where *mora interest* was ordered to run from date of service of summons. It is notable that all these cases concern awards for wrongful arrest and detention.

**COID Capitalisation:** When a victim claims damages from the RAF and also has a claim under the COID Act the Court hearing the RAF claim is required to deduct the capitalized value of the COID award “as determined by the Director-General”. For decades the COID capitalization has been calculated using a net capitalization rate of 4,5% per year. Since about 2019 new factors have been applied by the COID office which make no sense in actuarial terms and are excessively high. The following table illustrates the point:

Male	COID OLD	COID NEW	Normal
Age	4,5% py	???	2,5% py
20.00	19.27	33.93	27.20
30.00	17.96	30.14	24.38
40.00	15.90	26.49	20.78
50.00	13.24	22.19	16.63
60.00	10.31	17.35	12.47
70.00	7.41	12.48	8.82
80.00	4.76	8.09	5.87
90.00	2.57	4.21	3.45
42.00	15.41	25.68	19.99

In *Mienie v RAF* [2023] 457-2019 (NCK) the claimant was 42 years of age. The COID deduction calculated using these new inflated capitalization factors would have reduced the net RAF award for the claimant to close to nil. The Court ordered that the actuary recalculate using the COID basis and thereby achieved a more substantial award for the claimant. The effective net capitalization rate used for Mr Mienie was 0,77% py compared to the 2,5% py normally applied by actuaries (SA Actuarial Journal 22 (2022) 1-28).

For the period 1994 to 2022 COID pension increases have averaged 6,2% py and the CPI 5,9% py which is 0,3% py above the rate of inflation. This suggests that COID capitalization factors should be at a rate of 2,2% py (2,5 less 0,3).

Was the Mienie award fair? For decades the Courts have been deducting COID capitalizations based on 4,5% py without a word being said about the understatement of the deductions for COID awards. Now it goes the other way and the 2,5% py norm gets dumped. The real problem lies with the unreasonable COID capitalization factors. These are the product of an administrative fiat and should thus be open to judicial review on application by the RAF. Summons the COID Director-General to Court to explain.

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