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NEWSLETTER

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

Vital statistics:

CAP determination October 2013:	R213675
CPI year-on-year September 2013	6,0%
RSA long bond yield October 2013:	8,1%
Real rate of return (8,1 less 6,0):	2,1%
ABSA Property Index October 2013	7,3%
Houses less than 140 square meters	9,1%

Trust losses after injury: In *Raath v Nel* 2012 (5) SA 273 (SCA) it was ruled that losses suffered by a family trust by reason of the injuries of the main provider cannot be claimed as damages.

Consent to a second wife: In *MM v MN* 2013 4 SA 415 (CC) it was ruled that for a second customary union the husband-to-be must have the consent of his first wife, failing which the second union is invalid notwithstanding the payment of lobola. Section 1 of the Marriage & Matrimonal Property Law Amendment Act 3 of 1988 provides that a civil marriage concluded during the subsistence of a customary marriage is null and void. This came into effect 2 December 1988. Prior to that date the conclusion of a civil marriage invalidated all prior customary unions.

Apportionment of death claims: In *Mfomadi v RAF* 2012 (NGP unreported 3.8.2012 case 34221/2006) the RAF had persuaded the claimant to agree to an apportionment of the damages for loss of support. The Apportionment of Damages Act does not apply to a death claim (with one rare exception). The Court ruled that such an agreement was unenforceable.

Accrual benefits in estate: For death claims there is sometimes an inheritance and the need to make a deduction for accelerated benefits. What if the estate is subject to accrual? If there is community of property then 50% of the estate is deemed to be property of the widow prior to the death, and only her husband's 50% may be treated as an accelerated benefit. It seems that if there is an accrual then the widow may only be deemed to inherit that part of the estate which her husband owned after adjustment for accrual, and excluding benefits which may be hers by reason of accrual.

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Application of the R160000 CAP: In *Jonosky v RAF* 2013 (SGJ unreported 14.6.2013 case 01220/2010) the Court followed *Sil v RAF* 2013 SA 402 (GSJ) and ruled in favour of a liberal interpretation of the CAP legislation (see newsletter 87 June 2013 available on *www.robertjkoch.com*).

Large awards for general damages: The award of R90000 in *Marine & Trade Insurance v Katz* 1979 3 QOD 1 (A) (1979 4 SA 961 (A) at 982F) was described by the Appellate Division as follows: "The amount awarded is high, I think the highest so far for general damages. Speaking for myself I doubt whether I, as the trial Judge, would have awarded as much. But this is an exceptional and unusual case. For that reason it should not set a new general trend of liberal awards, as defendant's counsel contended it would. For that reason, too, it is the kind of case in which judicial views as to the correct amount to award will differ very widely". The equivalent value in 2013 is R2,25 million. More recently in *Zealand v Minister of Justice* [2009] JOL 23423 (SE) the Court awarded R2 million for ongoing imprisonment of an innocent man; the equivalent value in 2013 is R2,439 million. In *Goba v Road Accident Fund* 2013 JDR 1504 (ECG) the victim had been reduced to an immobilised tetraplegic with complete awareness of her condition, as in the *Katz* case, but with the added complication that she was not able to breath normally and ongoing survival was dependent on a permanent ventilator. The Court awarded R2,3 million in terms of rand values in 2013.

Loss of support: joint deceaseds: It sometimes happens that both the breadwinner and a dependent child die in the same accident. In *RAF v Monani* 2009 (4) SA 327 (SCA) it was ruled that the dead child should be ignored when calculating loss of support. This ruling ran against established practice and the compensation criterion that has regard to what support would have been provided had there been no accident. The death of the child was causally related to the wrongful act and was not a separate unrelated event.

The *Monani* ruling has created some uncertainty as regards compensation calculations because it can now be argued that when both husband and wife die in the same accident then the deceased wife should be ignored when calculating loss of support for the surviving children. If both parents were working then it can be argued that the ruling in *Santam v Fourie* 1997 1 SA 611 (A) should be ignored and the losses for the children calculated for each death as though the other parent did not exist. There is much to be said for confining the *Monani* ruling to deceased children and not extending it to deceased parents, particularly working ones.

When the breadwinner has recently been married, he and his wife had the prospect of further children. Traditionally actuarial calculations would allow for one or more notional children. Sometimes this consideration has been dealt with by way of an increased deduction for general contingencies. With the death of an unmarried breadwinner there is always the contingency that he may have married. The *Monani* ruling can be cited as authority for ignoring such considerations.

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