DAMAGES FOR PERSONAL INJURY AND DEATH
LEGAL ASPECTS RELEVANT TO ACTUARIAL ASSESSMENTS

by R J Koch

1 ABSTRACT

The actuarial assessment of damages for personal injury and death in the context of South African law. The legal framework imposes a variety of calculation rules that need to be born in mind if an actuary is to produce a quality product. This framework is changes with the passage of time. This paper attempts to summarise the current state of affairs and highlight issues deserving of further actuarial discussion.

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3 KEYWORDS

Quantum; damages; loss; support; breadwinner; dependant; earnings; claimant; defendant; differencing; capitalisation; contingencies; accelerated benefits; inheritance; apportionment; two-parts-one-part; MVA; RAF; COID

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5 INTRODUCTION

5.1 In 1974 Milburn-Pyle and Van der Linde presented a paper to this Society documenting the rules and procedures governing actuarial calculations for the assessment of damages for loss of support arising from the wrongful killing of a breadwinner. The full citation for the paper by Milburn-Pyle and Van der Linde is listed in the bibliography at the end of this paper and is referenced as MPVL (1974) in the text below. There have been a number of developments during the years since 1974 and this paper sets out to document the current state of affairs both as regards death claims and claims for personal injury.

5.2 In the text below I shall generally assume a male claimant, and a male-breadwinner household as the norm. I trust the ladies will forgive my failure to adopt unisex vocabulary.

5.3 This Society has set up a damages committee in this field with a view to promoting greater community of practice. This forms part of a general concern by the actuarial profession to ensure quality in the delivery of actuarial services.

5.4 This paper sets out to be a summary of a present state of affairs as regards the actuarial assessment of damages, with an emphasis on the legal as distinct from the actuarial. Related topics such as claims for maintenance from deceased estates and claims for breach of contract have not been fully documented in the anticipation that they will form the subject of a future separate paper. Issues such as discount rates of interest and life tables are also not discussed in any depth and members are invited to produce separate papers or written comments. Mickey Lowther has a primary interest in the general quality of actuarial services and has drafted a separate paper on the subject.[1]

[1]Lowther (2011). This covers ethical and quality issues such as: professional negligence; conduct before and at

5.5 Members are encouraged to bring new judgments to the attention of the Society's damages committee. Robert Koch has a substantial archive of such judgments. Members are encouraged to cite judgments correctly: Each series of published law reports has an official form of citation such as:

Oberholzer v NEG Insurance 1988 4 QOD A3-1 (C) for the Quantum of Damages series publisher by Juta & Co; and

Gallie NO v NEG Insurance 1992 2 SA 731 (C) for the South African law reports published by Juta & Co; and

Unreported judgments should be cited in the form: *Searle v Guardian National Insurance* 1996 (T) (unreported 11.10.96 case 5772/95) showing division handed down, the date thereof, and the case number.

5.6 The South African legal system is adversarial which means that there is a plaintiff (claimant) and a defendant and each presents his version of the facts by way of witnesses and documents. In the event that parties are unable to settle their differences by agreement the judicial officer is required to give a ruling. The actuary will usually and ideally be acting as an impartial expert retained by one of the parties who may be called upon to justify his calculations to the Court and be subjected to cross examination by the advocates representing each party. Under the continental inquisitorial system the witness are cross-examined by the judge and the parties have the onus to present witnesses to assist the judge in arriving at an informed decision.

5.7 For actuaries, the overriding goal is accuracy of calculation and information. For lawyers, the overriding goal is agreement achieved by way of settlement or court ruling. That agreement is the goal of lawyers is not always so obvious while heated negotiations and position taking are under way. Lawyers, including the Courts, may disregard science and logic if this is necessary to achieve agreement. However, the dictates of science and logic are important tools for achieving agreement. Notwithstanding the focus on court procedure the vast majority of damages claims, particularly those against the Road Accident Fund, are settled without being referred to a court.

5.8 The South African courts, unlike those in England, place great weight on actuarial evidence and it is rare for a damages claim for personal injury or death to be settled in or out of court without the benefit of an actuarial report. South African actuaries can be proud of this trust placed in their quantification skills.

6 SOURCES OF THE LAW

6.1 Actuaries wanting to better understand how old authorities, precedent and statute work together should read Hahlo & Kahn "The South African Legal System and its Background" Juta 1968.

The role of judicial precedent can be confusing. A ruling by the Supreme Court of Appeal is generally overriding. The extent to which it becomes binding on subsequent courts depends

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a trial; billing and recovery of fees; content of actuarial reports; inter alia.

on circumstances. Thus a ruling on the apportionment of family income has been treated as binding[2] precedent whereas a ruling on interest and inflation rates, deemed factual issues, is not binding.[3] Some judges, and their rulings, are not taken seriously by the legal fraternity,[4] or else confined in application to the precise circumstances giving rise to the ruling.[5] Reported judgments are generally better known, and more likely to be applied, than unreported judgments. The legal fraternity also has a capacity to forget older rulings. These subtleties are not always obvious to an outsider such as an actuary.

7 LIFE TABLES AND DISCOUNT RATES OF INTEREST

7.1 The scope of this paper does not extend to a discussion of life tables, inflation rates, and discount rates of interest which should form the subject of a future paper.

7.2 However, it is appropriate to record that South African actuaries generally capitalise future earnings and support using a net capitalisation rate of 2,5% to 2,73% per year. Allowance for real increases in earnings and promotions is done explicitly rather than implicitly.6 In England the official net capitalisation rate is 2,5% per year.7

7.3 For future medical expenses there are instances where price escalation above the rate of inflation is assumed and the costs capitalised at rates of 1% per year, 0% per year and even minus rates.[8] There are no fixed rules in this regard and each case depends on the evidence before it.

7.4 The COID Act9 dictates that pensions payable in terms of the Act are capitalised using the Commissioner's tables based on a 4,5% per year net capitalisation rate.10 The calculations do not distinguish between past and future payments. The pension increase for each year is capitalised separately, a somewhat cumbersome approach.

8 GENERAL DAMAGES FOR PAIN AND SUFFERING

8.1 The determination of general damages is a legal issue, but actuaries are commonly called upon to adjust old cases for inflation to present time. The Quantum Yearbook published by Van Zyl Rudd lists most reported cases with the awards adjusted for inflation to present time.

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[2]For instance *Santam v Fourie* 1997 1 SA 611 (A).

[3]*Singh v Ibrahim* (413/09) [2010] ZASCA 145 (2,5% per year for loss of earnings and 1% per year for future *medical* expenses).

[4] *Kotwane v USBIC* 1982 4 SA 458 (O) where the judge did his own actuarial calculations.

[5] *RAF v Monani* 2009 (4) SA 327 (SCA) ruled that the parts consumed by a child who dies in same accident must be ignored. This has not, as yet, been extended to when a wife dies in the same accident.

1.1 [6] More generally see Koch (1993) at 125 to 148.

[7]http://www.gad.gov.uk/services/other%20services/compensation_for_injury_and_death.html. Rate was 4,5% per year prior to July 2001.

[8]*Oberholzer v NEG Insurance*1988 4 QOD A3-1 (C) (1% per year); *Gallie NO v NEG Insurance*1992 2 SA 731 (C) (1,5% per year); *Dusterwald v Santam Insurance*1990 4 QOD A3-45 (C) 60-4 (1% per year); *Ngubane v SATS* 1991 1 SA 756 (A) 781E (3% per year); *Singh v Ibrahim* (413/09) [2010] ZASCA 145 (2,5% per year for loss of earnings and 1% per year for future medical expenses).

[9] The Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COID) replaced the Workmens' Compensation Act (WCA).

[10] Reproduced in the Quantum Yearbook 2011 at page 101.

8.2 The judgment of an appeal court substitutes the judgment of the trial court so the adjustment for inflation should run from the date of the trial court's ruling and not from the date that the appeal court handed down its ruling.11

9 DISCOUNTING TO DATE OF DELICT

9.1 There is a rule of law that damages must be assessed at the date of the delict. This is relevant to claims for damages to a motor car, for example. However, it is not applicable to actuarial assessments for which discounting should be done to the date of trial or settlement.[12]

9.2 Confusion reigns amongst lawyers and actuaries as to the correct approach to capitalising accelerated benefits. Discounting to date of death has been ordered[13]; in another instance the court ordered that nil allowance be made for inflation when projecting future asset values[14]. The problem is exacerbated by the poor understanding that many lawyers, and even judges, have of the problem. A fuller exposition of accelerated benefits appears below with the discussion of claims for loss of support.

9.3 For lost earnings in a foreign currency discounting is usually done using interest and inflation rates appropriate to the foreign country. The resulting capital sum is expressed in terms of the foreign currency and converted to rands at the exchange rate applicable as at the date of settlement or trial.[15] The same holds true for claims for loss of support.

10 MORA INTEREST

10.1 Peter Milburn-Pyle campaigned for interest to be awarded on damages for past loss. The Prescribed Rate of Interest Act was amended by Act 55 of 1975 to allow such interest. The amendment prescribes simple interest from the date of demand (usually taken to be date of service of summons) at the rate applicable at the time that interest starts to run and unchanging thereafter. The issue of summons is necessary to interrupt the running of prescription so it usually takes place fairly soon after the time that the cause of action arose. The rate has been 15,5% per year since 1 August 1989. The RAF Act prohibits the payment of interest on damages until two weeks after date of judgment or settlement, so for MVA (motor vehicle accident) claims there still is no interest on damages. A court is not bound by the calculation rules of the Act and can order interest from any date it chooses and at any rate it chooses. Thus, for instance, past loss of earnings has been assessed by multiplying the rate of pay now by the number of past years without adjusting backwards for inflation.[16]

10.2 It is acceptable to calculate mora interest by applying to the past loss half the rate of

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[11] *Bailey NO v General Accident Insurance* 1987 2 SA 702 (AD). More generally see Koch (1993) at 255 to 261.

[12] *General Accident Insurance Co SA Ltd v Summers; Southern Versekeringsassosiasie Bpk v Carstens NO; General Accident Insurance Co SA Ltd v Nhlumayo* 1987 3 SA 577 (A).

[13] *Mohan v RAF* 2008 (5) SA 305 (D).

[14] *Searle v Guardian National Insurance* 1996 (T) (unreported 11.10.96 case 5772/95).

[15] *Infolsdottir v Mutual and Federal Insurance* 1988 (SWAZI) (unreported 27.5.88 case 1054/86); *Bane v d'Ambrosi* 2010 2 SA 539 (SCA). Some claims involve earnings partly in rands and partly in foreign currencies. For such claims it is usually acceptable to convert all income flows to one currency before doing the capitalisation calculations.

[16] *De Vries (obo Rawoot) v Minister of Safety & Security* (C) (unreported 31.10.2006 case 16058/92).

interest for the whole period or the full rate for half the period.[17] If interest only starts to run some time after the date of the delict then the past loss needs to be split at the "date of demand", the full rate is applied for the full period to the losses accumulated to date of demand, and a half rate applied to the losses after date of demand up to date of discounting.

10.3 Interest is paid on general damages for pain and suffering and loss of the amenities of life. General damages are assessed in terms of rand values at the time of the trial and should thus be calculated as a real rate of return only. However in South Africa's one and only ruling on the subject the full 15,5% was allowed on a general damages award of R2 million for wrongful detention in gaol.[18]

10.4 The medieval rule that interest may not accumulate to more than the original debt still prevails in South Africa.[19] However, the rule does not apply to mora interest calculated in terms of the Prescribed Rate of Interest Act.[20]

11 VALUE OF A CHANCE

11.1 The principle of value of a chance is a legally approved method for dealing with uncertain past and future events.[21] The principle states that if there is, for example, a 30% chance of surgery costing R100000 then the compensation to be awarded is R30000, 30% of R100000.

11.2 Actuaries are trained to use the word "probability" to mean a chance both greater than and less that 50%. For lawyers, the word "probability" means a chance greater than 50%. A chance less than 50% is a "possibility". However, many laymen, and medico-legal experts, use the word "possibility" to mean any chance less than 100%.

11.3 The original actuarial evidence back in the 19th century was directed at the cost of purchasing a life annuity that would provide an income equal to that which had been lost, a very practical approach. Inflation was not discussed, ie it was ignored. From the late 1920's we start to find actuaries explaining their calculations to the courts as being the means to reproduce what is lost by consuming income and capital over the relevant life expectancy, a simple but misleading approach.22 The affirmation in 1980 of the value of a chance as a legally acceptable method of calculation allows actuaries now to explain their calculations correctly as a year-by-year (or month-by-month) application of the values of the chances of death in each period.

11.4 A life expectancy is the sum of the separate chances of survival.[23]

12 PROOF OF EARNINGS

12.1 Traditionally the earnings of a victim have been proved by way of payslip or a

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[17] *Jefford and Another v Gee* [1970] 1 All ER 1202 (CA).

[18] *Zealand v Minister of Justice* [2009] JOL 23423 (SE). Hopefully an isolated instance of such excess.

[19] *LTA Construction v Administrateur, Tvl* 1992 1 SA 473 (A); Otto 1992 *THRHR* 472-80.

[20] *Meyer v Catwalk Investments*2004 6 SA 107 (T); *De Vries (obo Rawoot) v Minister of Safety & Security* (C) (unreported 31.10.2006 case 16058/92).

[21] *Blyth v Van den Heever* 1980 1 SA 191 (A).

[22] see MPVL74 at pages 320 322/323; Koch (1993) at 97 to 111.

[23] "Death by degrees" as it has waggishly been described. It sometimes helps to describe it as the period for which the claimant or deceased has/had a 50% chance of survival.

certificate from the employer. More recently it has become fashionable to make use of industrial psychologists who tend to rely on the corporate earnings surveys (Peromnes & FSA)24.

12.2 The earnings of street vendors and taxi drivers are commonly proved by way of affidavits from persons working the same beat.

12.3 It is acceptable to assume that a child will earn at the same level as a parent (*Southern Insurance v Bailey NO* 1983 QOD 351 (AD) at 360).

12.4 There are emergency occasions, such as imminent prescription, when an actuary may be called upon to provide guidance as to earnings assumptions without the benefit of a report by an industrial psychologist.

13 LOSS OF "EARNING CAPACITY"

13.1 The expression "earning capacity" is thoroughly misleading. The courts have made it clear that compensation for loss of earnings is not directed at the claimant's highest and best use of his ability to work, his optimal earning capacity. The expression means the earnings that the claimant is most likely to generate by using his capacity to work (*Minister van Veiligheid v Geldenhuys* 2004 1 SA 515 (SCA) at 1020G). Thus a trained lawyer may elect to go work as a game ranger; if he is wrongfully injured he will be compensated for earnings as a game ranger, not for what he could have earned as a successful lawyer.

14 CAPPING OF DAMAGES

14.1 The latest RAF legislation[25] has introduced a cap limit of R160000 per year to the level of the loss that can be brought into the actuarial calculation. The cap only applies to claims for which the accident happened after 1 August 2008 and is adjusted quarterly by an RAF board notice published on the RAF website and in the Government Gazette.26 The precise interpretation of this legislation by the courts remains to be seen. In the meanwhile the following approach suggested: The cap applies to the total yearly loss suffered and not to the actual earnings of the claimant or deceased. "The actual loss" before application of the cap is the loss net after application of the ruling in *Santam v Fourie,*[27] and after deduction of all contingencies, including notional taxation and general contingencies. For loss of support claims the losses for all dependants in any one year must be added together before applying the cap. Lump-sum payments and deductions should be spread with an appropriate annuity factor over the lifetime of the claimant or the widow, or the remaining dependency of a child dependant.28 There is much to be said for assessing the normal lump-sum damages and then spreading the result evenly over the lifetime of the claimant, or widow, and then testing that annual amount against the cap. The legislation states that the cap in force at the date of the accident shall apply. In order to avoid absurd results the actuary should assume that

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[24] See *Quantum Yearbook* 2011 at page 107 for estimates of the expected survey results in 2011.

[25] s17(4)(c) of Act 19 of 2005.

[26] www.raf.co.za/Legislation/Documents.

[27] 1997 1 SA 611 (A). See below under discussion of dependants' action.

[28] This approach is based on a 2006 memorandum for the RAF prepared by Schwalb Van Niekerk & Muller. An updated memorandum is currently being prepared and actuaries active in MVA can expect to be circulated and asked for their comments.

this cap amount is regularly notionally increased after date of accident to offset the effects of inflation.29 For long periods of past loss there will in years to come be some difficulties with achieving a fair result.

15 INCOME TAX

15.1 The standard actuarial calculation should deduct the notional taxation that would have been paid had the income been earned.[30] It is usual to assume future adjustment of the tax tables in line with inflation so that for constant real income the average rate of taxation remains the same. Consistent with this approach the capital sums awarded as compensation are viewed by the tax authorities as capital and are thus not subjected to taxation in the hands of the claimant.

15.2 An exception to this rule arises when the income lost is of short duration (such as loss of profits on a contract) and the award constitutes taxable income.[31] For wrongful dismissal claims the parties will often request a calculation net of notional tax and one gross of notional tax. The gross calculation will be tax deductible in the hands of the employer and the claimant may be able to claim tax concessions on the lump-sum payment.

15.3 In circumstances where the claimant had failed to pay tax on his earnings the courts will not deny him compensation but will assess damages on the assumption that tax would have been duly paid on the lost earnings, and then order that a copy of the court record be transmitted to the revenue authorities.[32]

15.4 Pensions payable in terms of the COID Act[33] are not subject to taxation.[34]

16 REDUCED LIFE EXPECTANCY

16.1 If as a result of the accident the life expectancy of the claimant has been reduced his mortality uninjured must be taken to be same as his reduced life expectancy now injured.[35] The logic behind this rule is that the award for loss of earnings is to be applied to meeting his normal living expenses. If he dies early he is spared his living expenses for the years that might otherwise have lived, the so-called "lost years".[36]

The main objection to disallowing a claim for the “lost years” is the financial interest that

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[29] It is to be hoped that the Courts will hand down a rescue ruling as was done for badly worded RAF legislation in *Marine & Trade Ins v Katz* 1979 4 SA 96 (A) at 971H). A legal obstacle to using the annual losses after discount for interest is that it has been ruled that continuing loss comprises the monthly or yearly losses before application of the discount for interest (*SA Eagle Ins v Hartley* 1990 4 SA 833 (A) 838-9).

[30] *Victoria Falls & Transvaal Power Co Ltd v Consolidated Langlaagte Mines Ltd* 1915 AD 1 at page 29.

[31] *Omega Africa Plastics (Pty) Ltd v Swisstool Manufacturing Co (Pty) Ltd* 1978 3 SA 465 (A).

[32] *Santam v Fick* 1982 (A) (unreported 24.05.82 case 282/79/AV); *Twala v RAF* 2006 (TPD) (unreported 08/2006 case 01/15178)

[33] 130 of 1993.

[34] s10(1)(gB) of Income Tax Act 58 of 1962. This section refers to injury claims only, but it is SARS practice to treat as tax free the COID pensions of widows.

[35] Medical experts usually state reduced life expectancy as an explicit number of years reduction to normal life expectancy or as a percentage reduction to normal. In the ensuing actuarial calculation the most common form of adjustment is a percentage extra mortality, but other techniques can be appropriate such as adding years to age for a drastically impaired life.

[36] *Lockhat's Estate v North British & Mercantile Insurance Co Ltd* 1959 3 SA 295 (A) at pages 306/307; *Singh v Ibrahim* (413/09) [2010] ZASCA 145 has re-affirmed this approach.

dependants may have had in the earnings of the victim during those years. South African law, at least in theory, allows a claim to the dependants for loss of support during the "lost years". In practice this requires proving that the victim's death, when it does occur, is causally related to the original wrongful act, a tough assignment 20 or 30 years after the original damage-causing event.[37] A neat solution in the South African context would be to allow an immediate right of action by the dependants so soon as there is proof of reduced life expectancy caused by the damage-causing event.

16.2 Choice of life table and adjustments for AIDS are not covered by this paper and should form the subject of a separate future paper.

17 DIFFERENCING

17.1 The standard approach to calculating loss of earnings is to calculate on one hand the capitalised value of all the earnings that the claimant would have received had he not been injured, and then on the other hand the capitalised value of all that he will receive now injured. The difference between these two values, after adjustment for general contingencies, is the loss he has suffered.[38]

17.2 A more complex version of this differencing process has regard not only to earnings but also to living expenses and underlies the adjustments made under general contingencies for saved living expenses.[39]

MALE VICTIM NOTIONALLY UNINJURED

ASSETS	R1000's	LIABILITIES	R1000's
Gross earnings	900	Taxation	180
Services of wife	150	Own services in home	40
Chance of inheritance	50	Support for self	350
House	200	Support for wife	230
Car	30	Support for children	270
		Bond on house	90
		Net patrimonium	**170**
Total	1330	Total	1330

FEMALE VICTIM NOTIONALLY UNINJURED

ASSETS	R1000's	LIABILITIES	R1000's
Gross earnings	320	Taxation	70
Services of wife	40	Own services in home	150
Chance of inheritance	5	Support for self	350
Support from husband	200	Support for husband	0
Chance of 2nd husband	30	Support for children	30
Car	15	**Net patrimonium**	**70**
Total	670	Total	670

The payment of damages is ideally directed at restoring the net patrimonium to what it was immediately prior to the damage-causing event. In a real world this is, of course, not

[37] For a more comprehensive discussion see Koch (1993) at 347 et seq.
[38] *Dippenaar v Shield Insurance* 1979 2 SA 904 (A) at page 917E.
[39] See Koch (1993) at 233 to 235.

possible, but the ideal does provide a guiding light.

17.3 For death claims the focus is on the support that would have been provided had there been no death. Many alternative sources of support are ignored.[40] Deductions are made, however, for remarriage, inheritance, State welfare payments and COID benefits.

18 GENERAL CONTINGENCIES

18.1 It is useful to look back to the early 19th century judgments and bear in mind that in those days the compensation was based on the cost of purchasing a life annuity:

'She had lost an annuity for the joint lives of herself and her son... The value of the annuity spoken to in the evidence was the value of an annuity on Government or other very good security, and that the annuity lost was that Secured by the personal security of the deceased and, therefore, of much less value'[41]

'When the Fatal Accidents Act, 1846[42], was passed, it was thought for a short time by some that damages might be given "to the full extent of a perfect compensation"... "It would be most unjust" (however) "if whenever an accident occurs, juries were to visit the unfortunate cause of it with the utmost amount which they think an equivalent for the mischief done'[43]

'A thousand circumstances might have prevented him from making that income if he had remained well, and the accident had not happened... the jury would be wrong if they did not consider those circumstances as upon the doctrine of chances'[44]

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18.3 The so-called "normal deductions" are 5% past and 15% future. In practice deductions can range from 0% to 90%. In theory the determination of these deductions is the prerogative of the court. In practice they are often negotiated between the parties. It is not unusual for an actuary experienced with damages claims to be asked by the Court to express an opinion on general contingencies.

18.4 It often happens that a victim continues in employment, but with increased difficulty due to the injuries. Allowance for this "reduced mobility in the job market" is commonly made by applying a larger general contingency percentage to the value of earnings now injured.[45] It was said that `These risks which would have attached to the plaintiff in any event are... more likely to affect him in the future because of his disability'.[46]

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[40] *Groenewald v Snyders*1966 3 SA 237 (A), MPV1974 pages 332/333; Assessment of Damages Act 9 of 1969; *Constantia Versekeringsmaatskappy Bpk v Victor NO* 1986 1 SA 601 (A) (adoption).

[41] *Rowley v London & NW Rail*[1861-73] All ER Rep 823 (Exch) 828.

[42]Until the passing of this Act English law followed the Roman-law rule that the body of a freeman has no value and thus that no damages could be awarded for the killing of a breadwinner. This was a deviation from the medieval English law which allowed a claim for "*wergilt*

[43] *Rowley v London & NW Rail* [1861-73] All ER Rep 823 (Exch) 829-30.

[44] *Phillips v London & SW Rail* [1874-80] All ER Rep 1176 (CA) 1180-1.

[45] *Van Drimmelin v President Versekeringsmpy* 1993 4 QOD E2-19 (T).

[46] *Brijlall v Naidoo* 1961 1 QOD 266 (D) 271. See too *Hutchings v General Accident Insurance* 1986 3 QOD 737 (C) 744 (10% and 20%); *Venter v Mutual & Federal Versekeringsmpy* 1988 3 QOD 749 (T) 759 (10% and 25%); *Brink v The MVA Fund*1991 (C) (unreported 2.8.91 case 6038/89) (15% & 30%). Differential contingencies were rejected in *Shield Insurance v Hall* 1976 4 SA 431 (A) 443-5 due to high risks attaching to the pre-injury occupation.

18.5 The actuarial assumption may be that the victim will never work again. The deduction for general contingencies may then be increased to allow for the chance of some employment. Thus, in one instance, the 10% deduction for earnings uninjured was increased to 35%.[47]

18.6 Medical experts commonly state a percentage permanent impairment or disability or loss of work capacity. Reference is commonly made to the AMA impairment guide.[48] There is no necessary proportional relationship between percentage impairment and loss of earnings. However, because this is often the only solid evidence it is commonly used as basis for compensation, either as an increase to general contingencies or as a proportional loss of uninjured earnings.

18.7 The contingency deduction for past loss is often 5% or more when the risks of unemployment during the period are close to nil. The reason for this substantial deduction can be explained as saved costs of travelling to and from work. In two cases the saving was expressly addressed to arrive at deductions of 7,5% and 9%.[49] The actuarial calculation for past and future loss must include all travel and similar allowances.[50]

18.8 For a victim rendered unmarriageable a deduction has been made for saved costs of supporting a wife and family.[51]

18.9 If the victim would have earned his income outside South Africa in a place where living costs are higher an increased deduction for general contingencies will be made for the saving in living expense by now staying in South Africa.[52]

18.10 A victim who is confined to an institution will thereby be saved living expenses that he would otherwise have had to spend on housing and food.[53]

18.11 More generally see MPVL (1974) at 312/313 371/372)54.

19 COLLATERAL BENEFITS

19.1 Benefits accruing after the accident will not be deducted if they are gratuitous or the

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[47] *Krugell v Shield Versekeringsmpy* 1982 4 SA 95 (T) at 105E.

[48] American Medical Association '*Guides to the Evaluation of Permanent Impairment*'

[49] *Sumesur v Dominion Insurance* 1960 1 QOD 228 (D) 232-3 (7,5% deducted); *Maasberg v Hunt Leuchars & Hepburn* 1944 WLD 2 12 (9% deducted).

[50] *Dhlamini v SA Eagle Insurance* (T) (unreported 01.02.94 case 8951/93).

[51] *Reid v SAR&H* 1965 2 SA 181 (D) 190F-H; *Carstens v Southern Insurance* 1985 3 SA 1010 (C) 1023-4 1027I-J confirmed in *General Accident Insurance Co SA Ltd v Summers; Southern Versekeringsassosiasie Bpk v Carstens NO; General Accident Insurance Co SA Ltd v Nhlumayo* 1987 3 SA 577 (A); *Dusterwald v Santam Ins* 1990 4 QOD A3-45(C) at 60 69. The courts balk at accepting an actuarial quantification of such a contingency, it being preferred to muddle the adjustment into the deduction for general contingencies.

[52] *Bane v d'Ambrosi* 2010 2 SA 539 (SCA). The courts balk at accepting an actuarial quantification of such a contingency, it being preferred to muddle the adjustment into the deduction for general contingencies.

[53] *Shearman v Folland* [1950] 1 All ER 976 (CA); *Lim Poh Choo v C&IAHA* [1979] 2 All ER 910 (HL) 921; *Roberts v Northern Assurance* 1964 4 SA 531 (D) 537G-H; *Marine & Trade Insurance v Katz* 1979 4 SA 961 (A) 979inf (the 50% contingency deduction included allowance for a `domestic element'); *Dyssel v Shield Insurance* 1982 3 SA 1084(C) 1086A-G; *Kontos v General Accident Insurance* 1989 4 QOD A2-1 (T) (50% by agreement between the parties).

[54] and Koch (1993) at 149 to 162.

result of privately negotiated insurances.[55] Benefits that accrue as a part of the contract of employment, such as government service pension benefits, will be deducted.[56]

19.2 State welfare benefits are generally deductible.[57] However, the State foster care grant is not deductible.[58] State welfare benefits are subject to a means test.59 Once the victim has substantial capital by way of an award he will no longer be entitled to the State benefits and it is appropriate to assume termination as from the date of the trial or settlement. For smaller claims the benefit will not fall away and the future payments need to be capitalised and deducted.

19.3 The Assessment of Damages Act[60] provides that life insurance, pension benefits, and a refund of pension contributions, payable as a result of the death must be ignored. This Act does not apply to claims for loss of earnings.

19.4 Where there is an apportionment of damages for contributory negligence, the collateral benefits are deducted before apportionment. COID benefits are an exception to this rule; the COID award is deducted after apportionment.[61] The Apportionment of Damages Act does not apply to death claims for loss of support.62 The RAF commonly makes offers to dependants reduced for a risk discount. This is not an apportionment for contributoty negligence, but a commercial discount for the risk that the dependants may not be able to prove negligence on the part of the insured driver and then get nothing at all.

20 MEDICAL AND OTHER EXTRA LIVING EXPENSES

20.1 A major component of a claim for personal injury is often the additional living expenses which the victim now needs to incur. This may be by way of surgery, or wheelchairs, or the need for a personal attendant. The Road Accident Fund normally provides an undertaking to pay such expenses as and when they are incurred so future expense calculations are not really needed for RAF claims. The actuary is, however, frequently requested to capitalise future expenses for RAF claims for reasons of jurisdiction[63] or because the RAF is agreeable to paying an up-front lump sum for reasons of convenience.

20.2 The actuary is frequently required to do calculations for multiple expert reports with overlapping and duplicated expenses. There is no need for the actuary to adjust for such overlaps and duplications because the legal representatives will themselves make the necessary adjustments, just as they have the final word as regards general contingencies.

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[55] *Santam Versekeringsmpy v Byleveldt*1973 2 SA 146 (A).
[56] *Dippenaar v Shield Insurance* 1979 2 SA 904 (A).
[57] *Zysset v Santam Insurance* 1996 1 SA 273 (C); *Indrani v African Guarantee* 1968 4 SA 606 (D)); *RAF v Timis* 2010 (SCA) (unreported 26.03.2010 case 29/2009).
[58] *Makhuvela v RAF* 1020 1 SA 29 (GSJ).
[59] see Quantum Yearbook 2011 at page 105 for details.
[60] 9 of 1969.
[61] *RAF v Maphiri* 2004 2 SA 258 (SCA).
[62] There is one exception that rarely arises which is when the Assessment of Damages Act has been applied to exclude life insurance and pension benefits. See ss2(1B) 2(6)(a) Apportionment of Damages Act 34 of 1956; Koch (1993) at 342 to 345; for a general discussion of collateral benefits see Koch (1993) at 179 to 212.
[63] A claim worth less than R100000 falls within the jurisdiction of the magistrates' court and costs are then awarded on the lower tariff.

20.3 If hip replacement surgery has a present cost of R120000 and has 25% chance of being needed twenty years from now the claimant will be compensated with the value of the chance of incurring the expense, that is to say 25% of R120000 discounted for the chance of being alive after 20 years and also for the investment return excess/shortfall over the expected rate of escalation in the cost of such surgery. There will also be a calculation for the expected loss of earnings while off work after the surgery. For this latter calculation lawyers prefer that sick leave entitlement be ignored.[64]

20.4 Loss of earnings may take the form of the cost of employing an assistant in the business. Such an expense is usually tax deductible and needs to be reduced for the notional tax relief that the claimant can expect.

20.5 For those with serious brain damage a *curator bonis* may need to be appointed. As a general rule 7,5% will added to the overall award including general damages.[65] In the event that security must be provided add 18,4% instead of 7,5%.[66]

21 LOSS OF SUPPORT

21.1 The calculation for loss of support claims is directed at the support that would have been provided had there been no death. Each dependant has a separate right of action and the actuarial calculation must provide separate values. South Africa, unlike other countries, allocates the net-after-tax earnings of the deceased with two parts to each parent and one part to each child. This convenient algorithm, originally adopted to get around inadequate evidence as to the actual division of household expenditure, is nowadays applied as though it were a rule of law. In the discussion below I shall assume a male breadwinner household as the norm. I trust the ladies will forgive my failure to adopt unisex vocabulary.

21.2 In one instance[67] the deceased had expended a disproportionate amount of his income on himself. The Court ordered that he be allocated 3 parts in the actuarial calculation.

21.3 In another instance[68] the family had been giving regular financial assistance to 3 street children. It was ruled that the cost of such charity was part of normal household expenses and that such amounts should be included in the compensation payable to the legal dependants. In other words, that there should be no deduction for the cost of the granting of charity.

21.4 In circumstances where a breadwinner has a so-called 'common-law wife', or 'houvrou', to whom he is not married but in a permanent relationship, the two parts she consumed

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[64] *In Bosch v Parity Insurance Co Ltd* 1964 2 SA 449 (W) at 452 D/E the actuaries calculated the small value of the chance that the claimant might have needed the sick leave for some other contingency.

[65] *Carstens v Southern Insurance* 1985 3 SA 1010 (C) 1029 allowed 6%; Government Gazette R1602 of 1 July 1991 increased the fee on release of capital from 0,5% to 2%; total allowance for such costs thus increased from 6% to 7,5%. Depending on the assumptions made as regards the mix of interest bearing and growth investments a variety of different percentages will emerge from a calculation. There is much to be said for an Actuarial Society project to produce a table of percentages in a matrix of differing investment mixes.

[66] *Webster v Commercial Union* 1994 4 QOD A4-154 (C). **Security is not necessary for attorneys acting as curators as they are covered by the Attorneys Fidelity Fund**

[67] *Van Aardt NO v Southern Versekerings-Assosiasie Beperk* 1986 (O) (unreported 27.2.86 case 523/82).

[68] *President Versekeringsmpy v Buthelezi* 1977 1 PH J26 (A).

will usually be ignored because there was no duty to render such support.[69] However, when both parents are working then two parts will be allocated to each parent with a view to making proper allowance for the contribution by the surviving parent to the support of the children. This will be done even if the parents do not cohabit.

21.5 If a child is killed in the same accident that killed the deceased then the parts that would have been consumed by that child must be ignored.[70] It remains to be seen whether this same principle will be applied when both mother and father have been killed in the same accident. It is eminently arguable that the parts that would have been consumed by the breadwinner's deceased spouse should be ignored.

21.6 A bride-to-be does not have a claim for loss of support if the bridegroom is killed shortly before the wedding.[71]

21.7 A life partner in a same-sex relationship does have a right to claim for loss of support if the breadwinner is killed.[72]

21.8 However, a life partner in a male-female relationship is not entitled to claim damages if the breadwinner is killed,[73] but is entitled to claim maintenance from the estate of his/her partner provided the relationship has been formally registered.[74]

21.9 When parents of the deceased claim for loss of support it is usual to allocate to each such parent a one-part child's share. Entitlement to a State pension from age 60 is relevant.[75]

21.10 When a breadwinner dies household expenses do not necessarily reduce by two parts. The South African approach using two parts to each adult and excluding the deceased's two parts from the compensation money will, in many instances, undercompensate the dependants. In *Botes'* case[76] the spouses had occupied a flat for which the rental did not reduce after the death. The court ordered that the widow be compensated with only half the rental. The effect of this ruling is that household must be assumed to reduce by two parts even if this is not the reality.

21.11 Some breadwinners receive benefits in kind at work which are not shared with their family. They are personally spared part of their own living expenses and it is appropriate to allocate less than two parts to the breadwinner.

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[69] 3, and sometimes 4 parts, may be allocated to the deceased to allow for the contingency of marriage. There might then also be explicit allowance for the birth of further children. The duty of support extends to grandparents and grandchildren. Between siblings it falls away at age 21, but continues for life between parent and child. Parties to customary marriages, both black and Islamic have a reciprocal duty of support.

[70] *RAF v Monani* 2009 (4) SA 327 (SCA).

[71] *Sibanda v RAF* 2008 (WLD) (unreported 10.10.2008 case 9098/07).

[72] *Du Plessis v RAF* 2004 1 SA 359 (SCA).

[73] *Sibanda v RAF* 2008 (WLD) (unreported 10.10.2008 case 9098/07).

[74] *Robinson v Volks* 2004 6 SA 288(C); *Volks v Robinson* 2009 6 SA 232 (CC); Maintenance of Surviving Spouses Act 27 of 1990 but only for a limited period of two years from 21 February 2005 or until Government passed appropriate amending legislation. The Civil Union Act of 30 November 2006 now applies and requires formal prior registration of a relationship if the surviving partner is to be successful with a claim for maintenance..

[75] R13680 per year since April 2011; R13920 per year from age 75..

[76] *Legal Insurance Co Ltd v Botes* 1963 1 SA 608 (A).

21.12 In the event that a breadwinner was saving part of his earnings the calculation is not based on what he actually expended on keeping his dependants but will include the saved portion of his earnings.[77]

21.13 Black customary law allows a man to have more than one wife and these wives are entitled to claim damages for loss of support. The legislation granting them a right of action[78] provides that when there is more than one widow then the damages payable shall not exceed what would have been payable had there been only one widow. The usual approach to this problem is divide the allowable two parts equally between each widow. Thus if there were 3 widows then each would be allocated 2/3rds of a part.

21.14 Prior to 2 December 1988 the conclusion of a civil marriage nullified all previous customary unions. From that date onwards the position was reversed and a civil marriage concluded during the subsistence of a customary marriage has been null and void.[79] This obscure *volte-face* legislation has been occasion for some unpleasant shocks for widow's armed with marriage certificates.

21.15 It is appropriate to make explicit allowance in the actuarial calculation for contingent events such as the birth of further children or the marriage of a single breadwinner had he lived. These assumptions are really part of general contingencies and a second calculation is usually needed in which such speculation is left out of account.

21.16 When the father of an illegitimate child is killed it is general practice to allocate two parts to the deceased, and one part to each child. This is done even if the deceased had never in his lifetime contributed a single penny to the support of the child. However, in circumstances where there is evidence as to the payments of support by the deceased the calculation will be based on such payments even if the payments are much less than a one-part share. This can mean a monetary handout to a child way in excess of what would have been had there been no death. The child who never received any support should, strictly speaking, get only a nominal amount for the small chance of receiving some support had the breadwinner lived.

22 BOTH SPOUSES WORKING

22.1 If both husband and wife were working then their net after-tax incomes are aggregated and the total combined income apportioned two parts to each parent and one part to each child. To the extent that the wife's earnings exceed her two-part share she is deemed to contribute in equal amounts to the support of the children. If it is the wife who has been killed and her earnings do not exceed her two-parts share then the claim values will be nil.[80] In such circumstances a small award is possible for the chance that the husband would have predeceased his wife, had she lived, and rendered the children dependent on her income alone.[81]

22.2 Quite often these days it is the wife who is the main breadwinner.

22.3 It happens that the deceased breadwinner had employment which did not provide

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[77] *Mariamah v Marine & Trade Ins* 1978 3 SA 480 (A) at pages 488/489).
[78] s31 of Black Laws Amendment Act 76 of 1963.
[79] s1 Marriage & Matrimonial Property Law Amendment Act 3 of 1988.
[80] *Santam Insurance v Fourie* 1997 1 SA 611 (A).
[81] *Cooke & Cooke v Maxwell*1942 SR at 133 136.

pension benefits, whereas his wife is entitled to substantial pension benefits. In later years the wife would have been supporting her husband after his retirement. In general gains are offset against losses so it is appropriate to reduce the widow's claim for the support she would have provided to her husband in future years after his retirement. Not all actuaries share this view and there are no court rulings on the subject.

22.4 In the event that a widow was not employed at the time of the death she is not obliged to go out and seek employment to mitigate her damages.[82] However, the evidence may reveal that even if there had been no death she would nonetheless have gone out to work. It is then appropriate to bring her post-accident earnings into account.

22.5 In the event that the wife is injured in the same accident that killed her husband she has a claim for loss of earnings. This is a separate claim from that for loss of support.[83] It follows that the calculation of her loss of support should assume the earnings she would have received had she not been injured. A separate calculation is then needed for her claim for loss of earnings having regard to her injury. Loss of earnings by a wife who stops working by reason of the death of her husband, be it shock or religious custom, will, strictly speaking, only be compensated if she satisfies the causal requirements for a claim for loss of earnings.

22.6 In the event that a wife is wrongfully killed the husband has a claim for the costs of employing a child minder. A deduction will, however, be made for the saving he has from no longer having to support a wife. It follows that such claims are seldom successful.

22.7 In the event that a sterilisation procedure fails and an unplanned child is born the parents have a claim for the costs of supporting the unplanned child.[84] This is calculated as a one-part share of family income assuming there is no unplanned child. Once the older children have left home the unplanned child is allocated one-half of an adult's share.

22.8 Failure to terminate a pregnancy which will result in a deformed or otherwise handicapped child gives rise to a claim for compensation by the parents for the costs of supporting the child.[85] The child itself has no right of action.[86]

23 REMARRIAGE

23.1 It is appropriate to make a deduction for the surviving spouse's prospects of remarriage. For this purpose it is usual to use the remarriage table produced by Rob Thompson[87] based on South African census statistics. There are no statistics for black persons so the coloured rates are usually used for this purpose. For black persons who subscribe to the old customary law remarriage is discouraged because the widow remains the property of her house and is expected to bear further children by way of *ukungena*, the seeding of a widow by the brother of the deceased. It can thus be appropriate to use a

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[82] *Munarin v Peri-Urban Areas Health Board* 1965 1 SA 545 (W); 1965 3 SA 367 (A); *Nochomowitz v Santam Insurance* 1972 1 SA 718 (T); *Nochomowitz v Santam Insurance* 1972 3 SA 640 (A).
[83] *Evins v Shield Insurance Co Ltd* 1980 2 SA 814 (A).
[84] *Administrator Natal v Edouard* 1990 3 SA 581 (A).
[85] *Sonny v Premier Kwazulu Natal* 2010 1 SA 427 (KZP).
[86] *Stewart v Botha* 2008 6 SA 310 (SCA).
[87] Thompson (1988).

reduced rate, say 50% of the tabular rate. There is reason to believe that remarriage rates are very low in low-income communities. There can also be religious objections to remarriage and it is then appropriate to make little or no deduction.

23.2 The tabular remarriage deduction ipresumes that the new husband will earn at the same level as the deceased. Where the deceased was a big earner it can be appropriate to apply a reduced percentage for remarriage prospects. It is increasingly common in these modern times to find wife breadwinners. If such a breadwinner is wrongfully killed then a remarriage deduction may be appropriate. It is usual to use the Thompson table based on female remarriage rates. This probably overstates the chances for a widowed older man with poor job prospects.

23.3 When a widow has remarried it is usual to terminate her loss of support calculation from the date of the remarriage. It has, however, been ruled that an explicit calculation may be done having regard to the actual earnings of the new husband.[88]

23.4 Nil deduction is made made for the adoption of a child after the death of the breadwinner.[89] When making this ruling the Appellate Division recorded their dissatisfaction with the making of a deduction for remarriage, but acknowledged that the practice was too well established in South African law to permit a judicial retraction thereof. In many overseas jurisdictions there is no deduction for remarriage, notably England from where the South African practice was grafted,.

24 INHERITANCE AND ACCELERATED BENEFITS

24.1 The deduction for inheritance comprises:

1. The actual amount inherited; plus

2. The value of using the inherited assets if the death had not happened; less

3. The value of the chance of inheriting the assets had the deceased lived out his normal lifespan.

24.2 The value of the use of the assets is appropriately done by adding to the deceased's income a real rate of return on the inherited assets. This adjustment for use is central to whether or not a deduction should be made for the family home.[90]

24.3 For small inheritances a detailed calculation is not warranted and it is appropriate to use a robust approach and deduct 50%, say, of the assets inherited.

24.4 The dependency of children usually extends to age 18 or 21. For this reason it has been ruled that 100% of a child's inheritance be deducted.[91]

24.5 Independently of the claim for damages for loss of support, a child has a right to claim maintenance from the estate of his or her deceased parent. If such a claim has been

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[88] *Ongevallekommissaris v Santam Versekeringsmpy* 1999 1 SA 251 (SCA).
[89] *Constantia Versekeringsmaatskappy v Victor NO* 1986 1 SA 601 (A).
[90] see MPVL (1974) at pages 314 to 319.
[91] *Lambrakis v Santam Insurance* 2000 3 SA 1098 (W), 2002 3 SA 710 (SCA).

successfully lodged prior to the finalisation of the concurrent damages claim then 100% of the estate maintenance money is deductible.[92]

24.6 The Assessment of Damages Act[93] states that life insurance and pension benefits payable as a result of the death be ignored. This means that the estate accounts need to be reworked to exclude such payments and a notional inheritance calculated.

24.7 In *Du Toit"s case*[94] the deceased breadwinner was a pensioner. After his death the widow continued to receive part of his pension. The court ordered that the widow's pension be ignored by reason of the Assessment of Damages Act and her loss of support calculated as though there was no such pension.

24.8 Actuaries are divided as to the proper approach to calculating the deduction for inheritance. With a view to achieving some agreement and standardisation the following approach is submitted:

1. Inherited assets are assumed to escalate in line with inflation from date of death subject to explicit evidence to the contrary.[95]

2. Discounting is done to date of trial or settlement.[96]

3. Allowance be made for the widow's survival to date of trial or settlement.

4. The value of the use of non-business assets be added to the deceased's income as a real rate of return on the notional estate in each year.

5. The family home be included with assets subject to an explicit allowance for the use thereof by way of the real rate of return mentioned above.[97]

6. The value of the use of business assets used by the deceased to generate his earnings be excluded from the use calculation if the associated business income has been included in the earnings of the deceased.

24.9 A court will have regard to the factual change in estate asset values between date of death and date of trial. In one instance[98] the widow had trashed the business she had inherited. The court ordered that nil deduction be made for the inheritance thereof. The same would apply to the value to be placed on the family home and other

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[92] *Heyns v SA Eagle Versekeringsmpy* 1988 (T) (unreported 6.7.88 case 13468/86).

[93] Act 9 of 1969.

[94] *Du Toit v General Accident Ins* 1988 3 SA 75 (D).

[95] The general rule is that supervening events will not be ignored. See discussion below of *Santam Insurance v Meredith* 1990 4 SA 265 (Tk).

[96] Discounting to date of trial for claims involving continuing loss is settled law. See *General Accident Insurance Co SA Ltd v Summers; Southern Versekeringsassosiasie Bpk v Carstens NO; General Accident Insurance Co SA Ltd v Nhlumayo* 1987 3 SA 577 (A).

[97] ***This has the effect that for out of community of property there is a deduction for the family home, but for in community of property there is nil deduction. See:*** *Mohan v RAF* 2008 (5) SA 305 (D) - ignore family home - discount rental property to date of delict; *Snyders v Groenewald* 1966 3 SA 785 (C) deduction made for the advantage of having a whole house instead of a shared house; *Maasberg v Hunt, Leuchars & Hepburn Ltd* 1944 WLD 2 family home ignored.

[98] *Santam Insurance v Meredith* 1990 4 SA 265 (Tk).

immovable property if these have been sold between date of death and date of settlement.

24.10 In *Groenewald v Snyders*[99] the deduction for acceleration for the widow's inheritance exceeded the value of her lost support. The Court ordered that the excess should not be deducted from the claims of the children. This decision is authority for the general proposition that a gain by one dependant cannot be offset against the loss of another dependant.

24.11 In *Nochomowitz's case*[100] the Court ordered that a deduction be made for the accelerated value of the inheritance of the deceased's business, but that the income generated from it by the widow should be ignored because, but for the death, she would not have worked.

24.12 Assets placed in trust for a widow can give rise to a deduction for acceleration.[101] The fact that a child's inheritance has been placed in trust does not prevent a deduction for inheritance because application can always be made to release such assets for purposes of the child's support.

25 SUNDRY OBSERVATIONS

25.1 The liability of a parent to maintain a dependent child continues after age 21.[102]

25.2 The duty of support between healthy siblings falls away when the dependent sibling attains age 21.[103]

25.3 The parents of the deceased may claim for loss of support provided they can prove that they were receiving support prior to the death and that they are 'indigent'.[104]

25.4 A parent who owns immovable property may be illiquid but is not 'indigent'.[105] The claim by parents for loss of speculative future support from a deceased unemployed young child will usually be pressed to extinction by the weight of accumulated contingencies.

25.5 Grandparents have a duty to support grandchildren provided the parents of the grandchildren are indigent.[106]

25.6 A divorced woman may claim for loss of support if the divorce agreement provided for her to be paid maintenance.[107]

25.7 Children adopted according to black customary law are entitled to claim for loss of

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[99] 1966 3 SA 237 (A). MPVL (1974) at 332/333.
[100] *Nochomowitz v Santam Insurance Co Ltd* 1972 1 SA 718 (T); *Nochomowitz v Santam Insurance Co Ltd* 1972 3 SA 640 (A).
[101] *Marks v Santam Insurance* 1995 4 QOD L2-26 ©.
[102] *Bursey v Bursey* 1999 3 SA 33 (SCA).
[103] Boberg (1977) at 276; *Seatle v Protea Assurance* 1983 (C) (unreported 6.5.83 case I.77/81).
[104] *Burger v POF* 2000 QOD L2-1 (OFS); *Fosi v RAF* 2007 L2-14(C).
[105] *Volkenborn v Volkenborn* 1946 NPD 76; Boberg (1977) at 268.
[106] *Gliksman v Talekinsky* 1955 4 SA 468 (W).
[107] *RAF v Henery* 1999 3 SA 421 (SCA).

support.[108]

25.8 A widow married by Islamic rites has a claim for loss of support provided her marriage was *de facto* monogamous.[109]

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[108] *Kewana v Santam Insurance* 1993 4 SA 771 (TkAD); *Thibela v Minister van Wet en Orde* 1995 3 SA 147 (T).

[109] *Amod v MMVF* 1999 4 SA 1319 (SCA).

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