

# ***KOCH Consulting Actuaries cc***

Member: Robert J Koch *BSc LLD FASSA*:  
4 Myrtle Street Oranjezicht Cape Town 8001  
Website: [www.robertjkoch.com](http://www.robertjkoch.com)

VAT 4800281984 CK2008/123630/23  
Tel: 021-4624160 Fax: 086-5137615  
E-mail: [rjkactuary@gmail.com](mailto:rjkactuary@gmail.com)

## **NEWSLETTER**

(Number 109 - December 2023)

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

#### **Vital statistics:**

CAP determination 31 October 2023:	R352489
CPI year-on-year to April 2023:	5,4%
RSA long bond yield R2030 November 2023:	10,1%
Real rate of return (10,1 less 5,4):	4,7%
Lightstone Property Index Sep 2023 (y/y real):	-1,6%

**Real inflation:** The RSA long bond yield probably expects a real rate of return of 2½% per year and thus an inflation rate of 7,6% per year.

**STATSSA earnings vs Corporate Survey case ref error:** Newsletter June 2019 cited case reference *Tshazi v RAF* (48702/2017) [2019] ZAGLDJ. The correct internet reference is: *P M obo T M v Road Accident Fund* (1175/2017) [2019] ZASCA 97; [2019] 3 All SA 409 (SCA); 2019 (5) SA 407 (SCA) (18 June 2019). The Court was called upon to choose between the earnings reported in the *Quantum Yearbook* for the survey done by STATSSA and the predicted corporate survey amounts derived from FSA/Peromnes. The Court ruled in favour of the corporate survey earnings but qualified its decision with the words: “My rejection of the tool (table) used by Mr van Aarde does not entail that I must reject his evidence in toto nor, specifically, his criticisms as to the appropriateness of the tools (tables) used by Ms Talmud. “In my view these criticisms should be taken into account when considering the appropriate contingencies to be applied to the plaintiff’s claim.”

**Illegal earnings compensated:** Mr Neves was a foreign national working as a mechanic in South Africa, but did not possess a work permit and was not an asylum seeker. The Court ruled that since the unlawfulness of the employment did not flow from the nature of the specific activity but from the fact that the plaintiff did not possess a work permit, the quantification of the loss of earning capacity can be based on the actuarial calculation, in that the income-generating activity gives an indication of the plaintiff’s income generating capacity. The plaintiff’s income-generating activities can and should be distinguished from scenarios like earning a living through theft or human trafficking, where the income derived from such

activities cannot be used as a basis for quantifying the loss of earning capacity (*Neves v Road Accident Fund* (12843/2020) [2023] ZAGPPHC 1805).

**Going back to basics:** Once upon a time some 40 years ago there were no industrial psychologists to do reports on loss of earnings based on earnings surveys. Back in those days the evidence of lost earnings was by way of a payslip or for promotions having the employer appear in court in person to testify. These days when there is argument about what earnings survey figures should be used it would do no harm to go back to such basics to resolve the issue.

The *Quantum Yearbook* provides useful earnings questionnaires which are sometimes used by diligent industrial psychologists.

**The “Public Health Defence”:** For a cerebral palsy claimant it has been ruled that many of the treatments can be done using a public health facility funded by tax money. To invoke this defence evidence needs to be led that the relevant facilities are adequate for the purpose: “In the final analysis, it is my view that the defendant has tendered extensive and valuable evidence which points ineluctably to the conclusion that both hospitals, working in tandem, are capable of providing BN with the medical services and supplies he requires at a reasonable standard or above. This is even more so in view of the fact that funds have been ring fenced specifically for this purpose. Having studied the evidence closely and in particular that tendered in this regard on behalf of the plaintiff, I am of the view that it does not undermine the strength of the evidence tendered by the defendant. I accordingly conclude that the defendant has established that the hospitals concerned are able to provide these services and supplies at the required standard.” (*TN obo BN v Member of the Executive Council for Health, Eastern Cape* (36/2017) [2023] ZAECBHC 3; 2023 (3) SA 270 (ECB)).

**Failed justice:** The deceased was a student and not gainfully employed. Her child was supported by the grandparents. Compensation for loss of support by the child was refused. The Court observed that “In a loss of support claim, the claimant has to prove that he/she was financially supported by the deceased at the time of death” (*Masoga obo Minor v Road Accident Fund* (1421/2020) [2023] ZALMPPHC 46). This follows the hard-line approach stated in *Van Vuuren v Sam* 1972 2 SA 633 (A) 635D-E “Om in haar aksie te kon slaag, moes die appellante bewys... dat die oorledene tot haar onderhoud bygedra het en dat hy dit gedoen het en sou voortgegaan het om dit te doen omdat hy regtens daartoe verplig was”. There is ample case law for a more generous approach which allows compensation for a prospective loss of support (*Jacobs v Cape Town Municipality* 1935 CPD 474 479; *Petersen v South British Insurance* 1964 2 SA 236 (C) 238E-F ; *Manuel v African Guarantee & Indemnity* 1967 2 SA 417 (R) 419).

**Finis**