

KOCH Consulting Actuaries cc

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NEWSLETTER

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Vital statistics:

CAP determination 31 April 2024:	R361372
CPI year-on-year to April 2024:	5,2%
RSA long bond yield R2030 June 2024:	10,6%
Real rate of return (10,6 less 5,2):	5,4%
Lightstone Property Index March 2024 (y/y real):	-2,4%

New office address: We have moved. During COVID our staff took to working from home. The old office building in Oranjezicht became empty. It has now been sold. Our new office address is: **Unit 503 at 220 Loop Street Cape Town 8001**. Reception security at 220 Loop Street will accept deliveries. The entrance is in Watson Street.

The “Public Health Defence” dismissed: In *Mashinini v MEC for Health, Gauteng* [2023] ZASCA 53 the public healthcare defence was pleaded by defendant and dismissed because: “there is simply no evidence that the same, or an acceptably high, standard would be available through public provision at no cost or for less than that claimed by the plaintiff. What the MEC seeks, in effect, is an unprecedented extension of the public healthcare defence to develop the common law in circumstances where the ordinary application of delictual principles results in it being liable for immediate payment of caregiver support for Sinesipho. To accept the MEC’s position would deprive Sinesipho of a payment to which she is entitled and the independent choice of how to utilise those funds to procure the services she requires.”

Foster children get loss of support: It has been ruled that foster children may claim for loss of support even if they have not been formally adopted (*ZV obo Three Minor Children* [2023] 25411-2017 (GP)).

The primary function of an industrial psychologist (IP): “is to address the plaintiff’s employment prior to, and at the time of the accident, as well as her capabilities after the accident. Expressing an opinion based purely on the verbal information conveyed by the plaintiff is not of assistance as it is no more than speculative hearsay” (*Ejike v Road Accident Fund* [2024] ZAGPJHC 446). The Court declined to make an award for loss of earnings. In this instance there was reason to believe that documentary proof of earnings was available. However,

this is not always so. South Africa has a huge informal undocumented economy. In many instances proof of earnings needs to be by way of affidavits by customers or suppliers. As an actuary I see a large number of IP reports where the sayso of the claimant has been accepted without any attempt at verification. The RAF money is public funds and thus deserving some diligence in verification. There is also some abuse of earnings statistics. The knee-jerk assumption that a lowly earner will by some magic process progress to some median package is not always in accord with the claimant's known earnings history. Loss of earnings claims paid by the RAF are now some 400% more in real terms than prior to the advent of IP's.

Prescribed rate of interest: This is regulated to be 3.5% above the repurchase rate set by the South African Reserve Bank (SARB). When the SARB adjusts the repurchase rate the prescribed rate of interest adjusts automatically. There is no need for the Minister to publish the amended rate (*SN obo AN v Road Accident Fund* [2023] ZAKZPHC 138). The gazetted rate is effective from the first day of the second month following the determination of the repurchase rate.

The notional child: In a recent loss of support matter the actuary was instructed by the Court to allow for a 50% chance of a second child (*LMO v MEC for Roads and Public Works* [2006] 33736-2003 (TPD)).

General damages and reduced life expectancy: When calculating loss of earnings the rule is that the same reduced life expectancy is used for the uninjured and the injured condition. Patrimonial compensation is not awarded for the "lost years" (*Lockhat's Estate v North British & Mercantile Insurance* 1959 3 SA 295 (A)). But what about general damages? Should these not be reduced for reduced life expectancy? The answer is "no" (*MEC for Health, Free State v GAK obo MAK* [2024] ZAFSHC 142). In fact there are good grounds for increasing general damages for the prospect of the "lost years". Less so for victims who have little awareness of their condition. On the other hand it can be argued that by reason of the reduced expectation of life the victim has to endure pain and suffering for less time and thus that general damages should be reduced. Much depends on the particular circumstances of the victim.

General damages increased for delayed compensation: Taking all the injuries into consideration as well as the delay in receiving treatment and unnecessary suffering the plaintiff had to endure for seven years, because the Fund did not issue an undertaking when the claim was lodged, the amount of R1,600,000 is awarded for general damages (*Z obo Plaintiff v Road Accident Fund* [2023] ZAFSHC 54 at [125]-[187]). It seems that had there not been the delays the award would have been R1,400,000.

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