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NEWSLETTER

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Vital statistics:

CAP determination 31 April 2025:	R372824
CPI year-on-year to April 2025:	2,8%
RSA long bond yield R2030 June 2025:	8,0%
Real rate of return (8,0 less 2,8):	5,2%
Lightstone Property Index Dec 2024 (y/y real):	-0,2%

General damages and mora interest: It is standard practice to adjust general damages for inflation to the time that the award is made. It follows that mora interest on such an award should run from the date of the award, otherwise there would be double counting for inflation. With claims against the RAF mora interest does not run until 14 days after the Court makes its award. HOWEVER for all other claims for general damages the Prescribed Rate of Interest Act 55 of 1975 states:

'2A. Interest on unliquidated debts (1)... (2)(a) Subject to any other agreement between the parties and the provisions of the National Credit Act, 2005 the interest contemplated in subsection (1) shall run from the date on which payment of the debt is claimed by the service on the debtor of a demand or summons, whichever date is the earlier.'

It follows that for non-RAF claims for general damages the award should only be adjusted for inflation to the date of "demand or summons". Otherwise there will be double compensation for inflation.

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 for 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.

The in duplum rule: When interest runs on a debt prior to judgment the interest ceases running once it has accumulated to the amount of the original debt (*Blue Crane Route Municipality v Municipal Workers Retirement Fund and Another* (1827/2024) [2025] ZAECMKHC 28 (18 March 2025)). This so regardless of whether the interest is contractual or in terms of the Prescribed Rate of Interest Act. Once judgment has been given mora interest may again start running on the judgment debt including duplum interest (*MEC: Police, Roads and Transport Free State Provincial Government v Bovicon Consulting Engineers CC and Another* (278/2022) [2023] ZASCA 99 (14 June 2023)).

The application of the in duplum rule to interest accumulating during the period of litigation has been questioned:

‘It appears as previously pointed out that the rule is concerned with public interest and protects borrowers from exploitation by lenders who permit interest to accumulate. If that is so, I fail to see how a creditor, who has instituted action can be said to exploit a debtor who, with the assistance of delays inherent in legal proceedings, keeps the creditor out of his money. No principle of public policy is involved in providing the debtor with protection *pendente lite* against interest in excess of the double. Since the rule as formulated by Huber does not serve the public interest, I do not believe that we should consider ourselves bound by it. A creditor can control the institution of litigation and can, by timeously instituting action, prevent the prejudice to the debtor and the application of the rule. The creditor, however, has no control over delays caused by the litigation process’ (*Standard Bank of South Africa Ltd. v Oneanate Investments (Pty) Ltd (in liquidation)* (205/96) [1997] ZASCA 94 at 834 B – F)’ from article ("Interested about the interest in debt? The in duplum rule revisited." *De Rebus*, August 2015: 38 [2015] 139).

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).

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