

NEWSLETTER

(Number 33 - June 1999)

Dear Reader,

Effect of award on compensation: It is generally accepted that a labourer with a percentage permanent disability of 35% or more is effectively unemployable. However, the payment of compensation to such a person provides capital with which to set up an income generating activity which is viable despite the 35% disability. Typical of such an activity would be the purchase of a minibus taxi, either owner driven or employee driven, or the purchase of stock for a spaza shop. However, the likelihood of such an application of the funds depends on the ability of the individual to make the enterprise work. Industrial psychologists who advise on the earning ability of accident victims would do well to comment upon the opportunity benefits of having capital.

The damages payable to a widow will have regard to her prospects of remarriage. In several rulings the Court has had regard to the effect that the award will have on improving the widow's remarriage prospects (see *Roberts v London Assurance* (3) 1948 2 SA 841 (W) at 850; *Trimmel v Williams* 1952 3 SA 786 (C) at 793C-D; *Burns v NEG* 1988 3 SA 355 (C) at 364H).

RAF website: www.RAF.co.za. The site is disappointing. The home page has a spelling error; the white on grey text used in many frames is almost illegible; and data is not up-to-date (Mr B Furniss is still listed as a Cape Town manager despite his transfer to Pretoria several months ago). There are some statistics on claims paid, and still to be paid, but with inadequate headings in certain instances. It would be nice to see on the site: summaries of the latest unreported court rulings, with an index; earnings statistics derived from claim submissions; more information about the new judicial commission of inquiry, the "Satchwell Commission": Who is making representations? When will the report be available?

Department of Statistics website: www.statssa.gov.za/census96/html/default.htm. Lots of information on who has lights and water, and how many rooms in a house. The earnings statistics reveal that in 1996 25% of the population was earning less than R6000 per year (R7350 per year in 1999) while another 25% was earning in excess of R30000 per year (R36750 per year in 1999). Classification by race is still reported: the modal earnings of blacks was R9000 per year (R11000 per year in 1999); for coloureds R15000 per year (R18380 per year in 1999); for asiatics R24000 per year (R29400 per year in 1999); for whites R36000 per year (R44100 per year in 1999). There are no new population life tables so we have to continue to use the old 1984-86 tables (see the *Quantum Yearbook* 1999 for details).

A survey of 40 claim files in my office where the victim was male and described as a "labourer" revealed average earnings of R19133 per year for the Western Cape and Gauteng.

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Earnings for women were excluded from the average, but were noticeably lower, as too were earnings in the Eastern Cape and Kwazulu-Natal. From Mpumalanga I frequently receive earnings certificates showing a monthly salary of R300 and less, with no fringe benefits.

Of the 40 files that fitted the survey criteria only 3 indicated formal sector employment, such as contributes to the salary surveys commonly used by industrial psychologists when giving advice on earnings. There were a further 3 informal sector employers paying at the same rate as the formal sector. An interesting feature was 2 small municipalities who were avoiding paying formal sector rates by employing persons only as casuals, in one instance the situation had persisted for 30 years prior to the accident. These are the sort of statistics that the RAF could provide from the huge earnings database on their claim files.

Damages for divorcees: The RAF Newsletter for May 1999 reports on *Santam v Henery* 1999 (SCA) (unreported 30.03.99 case 333/97) where it was ruled that a divorced woman entitled to maintenance in terms of a divorce order may sue for damages for loss of support if her ex-husband is wrongfully killed. The ruling in *Santam v Fondo* 1960 2 SA 467 (A) was criticised, but not, it seems, overruled.

The remarriage deduction: In my last newsletter (March 1999) I commented upon the SCA ruling in *Ongevallekommisaris v Santam* 1999 1 SA 251 (SCA) that regard may now be had to the earnings of the new spouse. I there observed that a husband who has lost a breadwinner wife, and then remarries a woman with far lower earnings, may claim, it seems, the difference between the 2-parts share of the deceased wife and the lower earnings of the new wife. I have done a loss-of-support calculation in this regard. I am now instructed that the new wife is pregnant and that in order that the husband may continue to support the children of the first marriage at the same level as had the death not occurred it is now necessary to add the entire cost of supporting the new child to the husband's claim for damages. Logic leads in some bizarre directions.

Dependency of children: Unemployment rates in South Africa are very high (about 30% after allowing for informal employment). The rates are highest for school leavers where as few as 5% find formal sector employment. Unemployment rates are higher for women than for men. This means a large number of young adults who remain dependent on their parents long after leaving school, or remain at school until almost age 30. The conventional wisdom applied in claim settlements is that children who do not qualify for tertiary education become self-supporting at age 18. However, it is well-settled law that a child remains dependent for as long as he/she is unemployed. There is a high incidence of unplanned children by young mothers who then also need to be supported by the one or two members of the family who have employment, or State welfare grants of one sort or another. If we were to give effect to the realities in our claim assessments we should be using dependency ages well above age 18, particularly for the lower skilled sector of the population **and, conversely** much older start-work ages for child injury claims.

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