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NEWSLETTER

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Dear Reader,

I WISH YOU A MERRY XMAS AND A HAPPY NEW YEAR

The English Scene: In England actuarial evidence is seldom used for assessing damages for personal injury or loss of support. In one hyperbolic utterance an English judge echoed the mood with the words "the predictions of an actuary could be only a little more likely to be accurate (and would almost certainly be less entertaining) than those of an astrologer" (*Auty v NCB* "The Times" 03/04/84). English lawyers prefer a "thumbsuck" approach whereby a sort of annuity factor (the multiplier) is determined by gut feel and regard for previous judgments. This factor includes allowance for "general contingencies". In South Africa a two-stage approach is used whereby an actuarial value is first determined and then subsequently adjusted for general contingencies.

The Irish Scene: I recently had the pleasure of visiting Dublin where I was hosted by attorney Alan Synott (see photo - Alan on left). Alan retired at age 40, but has recently returned to running MVA claims. Ireland is in the throes of a car boom and motor vehicle accidents are rife. Irish judges, unlike the English, value actuarial evidence. Awards are large by South African standards: general damages have been capped at IP450000 (1 Irish pund=R8,50) and an Irish paraplegic can expect to get IP400000 for general damages alone (compared to R200000 in South Africa).

Quadriplegia - general damages: In *Khumalo v Minister of Law and Order* 1998 4 C&B A-131 (W) an amount of R400000 was awarded to a quadriplegic by way of general damages. This is substantially more than is usual. The Court bore in mind the abject suffering of the claimant during the pre-trial period, deprived of health, money, and proper medical care. The case is a sharp reminder of the wickedness of a legal system that is so locked into the supposed justice of proceduralism that claimants can be left to starve, or rot in their own pressure sores, while suit-and-tie lawyers argue over the finer points of postponing the trial yet again. The RAF in the Western Cape has successfully pioneered arbitration as a means to reduce settlement delays. Steps are now afoot to introduce arbitration to Gauteng.

Drivers for the blind: In *Troost* 1997 4 C&B I3-3 (C) the claimant had lost the sight of both of his eyes. His claim included the capitalised future costs of hiring a fulltime driver. The claim for the driver was refused by the Court, it being noted that this was an expense which should be met out of claimant's award for general damages.

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Divorced women: It has been ruled in *Henery v Santam* 1999 3 SA 421 (SCA) that a divorced woman who was entitled to maintenance from her deceased ex-husband in terms of the divorce settlement is entitled to damages for loss of support. The damages payable are not restricted to her entitlement in terms of the divorce settlement. In Henery's case the couple had since the divorce moved back together, but without formally remarrying. It was held that damages should be assessed using the usual 2-parts-1-part approach having regard to the total net after-tax earnings of the deceased.

Child maintenance: The duty of support by a parent to a child is not confined to the provisions of a divorce settlement both as regards period and amount (*Bursey* 1999 3 SA 33 (SCA)). This judgment does not state anything new from an academic point of view, but the fact that it was run at all is revealing as regards popular views on the subject.

Islamic Widows: The Supreme Court of Appeal in South Africa has now ruled (Amod's case) that the widow of an Islamic marriage is entitled to damages for loss of support in the event of the wrongful killing of her husband. The requirements for such a claim are:
1. A contractual duty of support;
2. A de facto monogamous marriage in accordance with a recognised and accepted faith
3. A duty that deserves recognition and protection for purposes of the dependants' action.

In addition there would be the normal economic requirement that the deceased had provided support prior to his death and was likely to have continued to do so. This ruling is clearly applicable to Hindu marriages.

Black customary unions have for some time already enjoyed statutory protection in terms of s31 of the Black Laws Amendment Act 76 of 1963. In the event of more than one widow this Act restricts the compensation to that which would have been payable had there been only one widow. The Amod ruling emphasises a monogamous relationship. It seems that the widows of a de facto polygamous Islamic or Hindu marriage continue to be precluded from claiming damages for loss of support.

Curator bonis costs of Security: In *Webster v Commercial Union* 1994 4 C&B A4-154 (C) it was ruled that in suitable circumstances compensation should be awarded for the costs not only of the curator bonis, but also for the costs of providing security. The award was increased by 18,4% in lieu of the more usual 7,5% (see commentary in *Quantum Yearbook* 1999 at 68). This ruling has now been confirmed on appeal to a full bench of the CPD. The additional 11% payable for security seems excessive and the RAF would do well to offer the fidelity cover in lieu of paying over the cash.

Raised Shoes: *Duduma v RAF* 1999 4 C&B E4-5 (Bisho) - 4 shoe raises per year recommended by prosthetist - Court ordered compensation for 2 per year having regard to claimant's evidence as to usage.

***Quantum Yearbook* 2000**: This is now available direct from the publisher:
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