

# **ROBERT J KOCH CC BSc LLB LLD**

Fellow of the Faculty of Actuaries in Scotland  
VAT 4870191808 E-mail: rjk@robertjkoch.com  
CK2000/058266/23 Website: www.robertjkoch.com

1A Chelsea Avenue  
Cape Town  
Tel: 021-4624160

PO Box 15613  
Vlaeberg 8018  
Fax: 021-4624109

## **NEWSLETTER**

(Number 60 - December 2005)

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

**Quantum Yearbook 2006:** The *Quantum Yearbook* 2006 is now available from van Zyl Rudd in Port Elizabeth (tel: 041-3734322 fax: 041-3734323).

**The Black Laws Amendment Act and working wives** (s31 of Act 76 of 1963). This archaic bit of legislation (long overdue for repeal) lays down that when there is more than one widow then the compensation payable for the wrongful killing of their breadwinner may not exceed what would have been paid had there been only one widow. In practice actuaries deal with this by allocating one part of the deceased's income to each widow in lieu of the two parts that would have been allocated had there been only one widow.

The allocation of one part to each wife (instead of the usual two parts) has the effect of boosting the child claims above what each child would have received had each widow been allocated two parts.

In the event that one of the wives is working then an adjustment needs to be made. In circumstances where the working wife has substantial earnings compared to those of the deceased breadwinner it is often appropriate to allocate a full two parts to the unemployed wife. The working wife is then also allocated two parts with her earnings in excess of her two-parts share being applied to the support of her own children only. In the end the criterion as regards widow's compensation is what would have been awarded had there been only "one wife" for which one may reasonably read "one **unemployed** wife".

Where both wives are working then it seems best to assume two parts to each and then test the end result against what would have been awarded had there been only one working wife.

I have just done a claim where the deceased had **four** wives. The two parts was allocated with a ½ share to each widow (ie ¼ of two parts each). Talk about the law being an ass.

**Common-law wives (the "houvrou"):** Same-sex life partners are entitled to claim damages for loss of support (*Du Plessis v RAF* 2004 1 SA 359 (SCA)). This ruling generated speculation that unmarried different-sex life partners would be accorded a similar right to claim damages for loss of support. In *Volks v Robinson* (CCT 12/04 21/02/2005) (an appeal from *Robinson v Volks* 2004 6 SA 288 (C)) the Constitutional Court ruled that the common-law different-sex "widow" was not entitled to claim for maintenance from the deceased estate unless Parliament amends Act 27 of 1990 common-law. This ruling suggests that if and when the question does come to court as to the right of a common-law spouse to claim damages for loss of support the finding is going to be that there is no right to claim damages.

Perhaps the most cogent argument for such a result is that different-sex partners at all times could have married. The Constitutional Court noted that such partners should be left to regulate the rights and obligations between them as they saw fit.

**COID compensation is not so inadequate:** There is a popular wisdom that compensation paid by the Workmen's Compensation Commissioner is "inadequate". This is, of course, nonsense: One only has to consult the numerous attorneys who ran MVA claims only to find that the common-law damages were swamped out of existence by a deduction for COID benefits. It is true, of course, that COID compensation does not deal adequately with issues such as future expenses for paraplegia. The basic COID income benefit for 100% disability is 75% of the earnings stated by the employer. This is a far better benefit than it seems because it does not cease at normal retirement age, but continues in payment for the rest of life. The income benefit is tax free. The benefit is escalated each year at rates which since 1991 have averaged 7,1% per year compound compared to CPIX inflation of 8% per year.

For widows the benefit is 40% of 75% of the deceased's stated income. This benefit is payable for life regardless of retirement age of the deceased breadwinner. Child pensions are 50% of the widow's pension and are payable to age 18, regardless of tertiary education needs. As a general rule COID pensions will only be awarded to the 3 youngest children. So for large families there are always a few older children who go uncompensated.

A major factor depressing COID awards is incorrect earnings information reported by the employer who will often state basic salary only without any indication of all the extra benefits by way of overtime, medical aid, and housing that the employee may have been receiving. It is arguable that such an omission by an employer is an actionable wrongful act for which damages may be claimed in the event that Commissioner's office is not prepared to review its award.

Another advantage of COID benefits is that the beneficiary gets the compensation without the need to pay legal and other costs.

**Did you know?:** "At least 90% of patients with BKA (below knee amputation) will successfully use a prosthesis. In contrast there is only a 25% success rate of prosthesis usage in the AKA (above knee amputation) patient" ([http://www.gentili.net/amputations/aka\\_amputation.htm](http://www.gentili.net/amputations/aka_amputation.htm)). This startling statistic needs to be received with caution, however, because the sample populations include numerous amputees due to strokes, diabetes and other problems of the more aged (see <http://moon.ouhsc.edu/dthompo/gait/pobmk/amrehab1.htm>). However, considering the mega-costs claimed for modern state-of-the-art prostheses the substantial likelihood that the prosthesis will be left in a cupboard deserves serious investigation.

**Did you know?:** A count of 30 limbless persons on my last visit to Northern Mozambique showed 28 to be polio victims and only 2 to be victims of violence (land mines or traffic accidents)! By "limbless" I mean missing part of one or both legs.

**Finis**