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NEWSLETTER

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The new CPI: In January 2009 Statistics South Africa changed the naming and composition of headline CPI measures, effectively replacing CPIX as the measure for government inflation targeting. The weighting of items in the basket was also changed, with certain items excluded and new items introduced, and a broader range of prices are collected for individual items. Data for the revamped index had been collected since January 2008 and the new CPI starts at an index of 100 for 2008. www.statssa.gov.za provides a table of new CPI indexes adjusted backwards to 1981. The results from using this new CPI table are usually slightly different from those using CPIX or the old CPI.

Unemployed house-husbands: It is quite common these days for the wife to be the main breadwinner. If she is wrongfully killed her husband has a claim for loss of support. I am usually instructed to assume that the healthy husband would never have worked had his wife lived. That line, however, is a bit of a flying brick because if that husband had been the one who had died it would readily have been assumed that he would have obtained some employment soon after the time he had died. In practice I make a contingency deduction of about 50% for the future chance that the house-husband would have obtained employment.

The deceased child: In some accidents not only is the breadwinner killed but also a child. When calculating the loss of support the deceased child has no claim for loss of support, but the income of the deceased is apportioned as though the child had not been killed. The rationale is that the defendant is liable for the support that would have been provided had there been no wrongful act. Had there been no wrongful act there would have been no deaths and the deceased's income would have been divided between the living and the one child who died in the accident. The deceased child is notionally kept alive for purposes of the calculation. This has been the unchallenged practice for many years.

In *RAF v Monani* 2009 (SCA) (unreported 20/03/2009 case 241/2008) it was ruled the deceased child should not be notionally kept alive and the family income should be divided between the reduced number of dependants. This decision relied on the principle from *Wigham v British Traders Insurance* 1963 3 SA 151 (W) that a court must have regard to supervening events. The very relevant question of causation was not discussed. The death of the child was a supervening event, but by reason of causation it was an event that should, with respect, have been ignored.

Extrapolation of this ruling suggests that if both mother and father have died in the same accident then the two parts consumed by the mother must now be ignored when calculating the losses suffered by the children.

Interest on general damages: In my last newsletter (#73 of March 2009) I commented that there was no South African case law on the subject of mora interest on general damages. Adv Pienaar of Port Elizabeth has referred me to a recently reported judgment *Zealand v Minister of Justice* [2009] JOL 23423 (SE) in which a

general damages award of R2 million was made for wrongful imprisonment for 5½ years with mora interest at the full 15½% per year from date of service of summons. There does not seem to have been any argument or discussion as to the fairness of allowing the full 15½% instead of a real rate of return. It may be relevant that general damages of R10 million had been claimed but not awarded. The Act gives a court a wide discretion when awarding mora interest.

PS: R2 million for 5½ years (1932 days) means R1035 per day.

Overtime: Some actuaries assume that overtime will decline in later years or cease altogether. Such inquiries as I have done to employers have revealed that full normal overtime is worked all the way up to age 65. However, when an employee is promoted the overtime he works may reduce or cease altogether, but the income lost is replaced by an increased salary.

Income tax: When assessing damages for loss of earnings or support the correct procedure is to deduct the notional income tax that would have been paid had the earnings been received. This principle has been part of South African law for a very long time: 'The defendant cannot be called upon to compensate the plaintiff for the loss of such share of its profits as would in any event have been appropriated by the State' (*Victoria Falls & Transvaal Power v Consolidated Langlaagte Mines* 1915 AD 1 at 29). Such a ruling presumes that the lump-sum compensation award is tax-free in the hands of the claimant.

Pity Mr Zuma's wives: If Mr Zuma is taken out in a motor vehicle accident the compensation payable to his wives will be restricted to what would have been payable had he had only one wife (s31 of Black Laws Amendment Act 76 of 1963). This remarkably bigoted bit of legislation has somehow survived unscathed since the apartheid era. Maybe there are too many members of the Womens' League who lack sympathy for polygamy? But maybe we now have a political force with sufficient influence to remove this inappropriate legal anachronism and allow each customary-law wife a full 2 parts share.

Expert report time periods: The Law Society of the Northern Provinces has recommended that the Rules of Court should be changed as regards the time periods for giving notice of expert reports and joint minutes. The submission is that the current notice period of 10 days should be extended to 2 months and the joint minutes of the experts must be ready 6 weeks before the trial. This would affect magistrates' court and high court work. Michael de Broglio (www.lawblog.co.za) has asked for comments. Well this actuary says the proposition is, with respect, absurd. I prepare many urgent reports for submission two and three days before trial date. I seriously doubt that changing the rules will change the realities.

Earnings from spaza shops: Deborah Atkins, industrial psychologist, reports a survey by Ligthelm (2003) "Informal Retail Structures in SA" *SA Business Review* 7(1) 54-63. Average turnover for owners of spaza shops was R4480 per month in 2003. 16,3% reported a turnover of less than R1000 per month, and 17,6% a turnover in excess of R10000 per month. Expenses and cost of stock are not stated but 70% is probably a fair guess. From this data one may make rough earnings estimates in terms of rand values in 2003:

Lower quartile R7000 py; median R18000 py; upper quartile R32000 py
41% said they would not accept employment in the formal sector, even if offered.