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NEWSLETTER

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eMail instructions: A substantial proportion of instructions received by this office come by way of email. eMail is a blessing and a curse. The biggest problem comes from offices where the sending staff do not have proper training with scanning documents. Most documents can be scanned to a size under 500kb. PDF is the preferred format. MS Word documents usually require a conversion process, and should not be used, if that is possible. Incompetent scan artists produce files extending up to 3000kb and more which can take over half-an-hour to download. Such persons should be banned from using email and go back to their fax machines.

Most internet service providers now supply a fax to email service. The fax machine is used as a scanner and the documents sent as an email to the dialled fax-to-email number. The file attachments are modest in size and print very clearly. Persons wishing to send instructions in this manner to Robert J Koch are invited to use our fax-to-email number 0865137615.

As for the incompetent scan artists we will in future refuse to accept emails with excessively large attachments. These will be returned to sender with a request that the documents be sent by telefax.

Another thought on email instructions: Please do not put text into the email apart from a header with a file reference. All comments and instructions should appear in the attachments. This saves us having to print out both the email and the attachments. Remember that none of my staff have email at their work stations. Staff members take turns to visit a separate workstation which does allow email. There they print out the latest emails for distribution to appropriate persons. For us telefax is the most efficient and use-friendly way to receive instructions. We have two telefax numbers: 021-4624109 and 021-4620712.

The engaged couple: If a bridegroom is wrongfully killed may the wife-to-be claim damages for loss of support? There is clearly the loss of a contingent right to support, but no right to support at the time of the death. I have heard mention that in the unreported judgment *Sibanda v RAF* it was ruled that the wife-to-be is not entitled to claim damages. If anyone is able to provide me with a copy of this judgment I would be most grateful.

Weather reports: A weather prophet is well advised to look out the window before finalising his prophecy. Sad to say this little bit of wisdom is not generally applied by industrial psychologists who construct grandiose career scenarios without any regard to the associated numbers. A refreshing exception is Sonia Hill who takes the trouble to look up the earnings associated with her expected career steps and to write these into her report. In *Prinsloo v RAF* 2009 (5) SA 406 (SECLD) the evidence of the industrial psychologist was rejected because of his failure to properly apply his mind to the realities of the likelihood of speculated promotions.

It is settled law that the claim for personal injury has regard to "likely earnings" and not

"earning potential". For a mature worker of age 35 or more the best guide to likely earnings is what the claimant was earning at the time of the accident. There is no rule of economics that everyone will earn at the reported median, let alone upper quartile. Anyone who has worked with large numbers of MVA claims will be aware that many claimants in their 40's and 50's were still earning at the lower levels reported for the informal sector. These days there are also frequent reports of substantially higher earnings in years preceding the accident followed by subsequently reduced earnings **prior to the onset of the accident**. That is one reason why we have a deduction for general contingencies. It is not only to do with total unemployment. It also needs to be remembered that only about 25% of the workforce is employed in the corporate sector that supports the corporate salary surveys. It is also true that the corporate employers prefer to bring in promising younger persons and that entry into the corporate sector in later life is extremely unlikely. There is a high incidence of early retirements for older personnel with a view to making room and motivation for promising younger persons.

Hypothetical support: In *RAF v Monani* 2009 (4) SA 327 (SCA) it was ruled that if a child is killed in the same accident as the breadwinner then the subsequent actuarial calculation must ignore the parts that would have been consumed by that child had there been no accident, no wrongful act. It follows from this reasoning that if all of, say 3, children are killed in the same accident then the widow's loss will be calculated as though the couple had been childless. It also follows that if husband and wife are both killed in the same accident, then the claims of the surviving children should be calculated as though the children had no mother. The two parts consumed by their mother must be ignored. It remains to be seen how the courts will handle a matter where both deceased parents were working breadwinners. Will the ruling in *Santam v Fourie* 1997 1 SA 611 (A) still apply and the joint income be pooled, or will the losses of the children be calculated separately for each parent as though the other parent did not exist? Oh what a tangled web has been woven.

Unfair awards: It is common practice that damages are awarded for loss of support arising from the death of a breadwinner even if, prior to his death, that breadwinner never ever contributed a single penny to the support of the children. The anomaly of this unjustified practice is that for those of his children for whom he did pay support the damages awarded will usually be less than for the unsupported children. Suppose the deceased had fathered two different children by different mothers and that both children are born on the same day. The deceased was earning R60000 per year year. For the one child he pays R500 per month, for the other child he pays nothing. The prevailing practice will award one part of his income to the child that was receiving nil support but only R500 per month to the child who he did support. If he was 40 years old when he died and the children both 10 years of age then the awards become:

Results:	Award
	R
Child with nil support	105717
Child with R500pm support	35745
Total	141462

Looks absurd does it? But this is what is happening every day with RAF settlements. If loss of support awards were restricted to "likely support" then the award to the child who was not being supported would be nil, or at least a very small amount. A substantial contingency deduction will often be appropriate, like 95% or more.

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