

ROBERT J KOCH cc BSc LLB LLD

Fellow of the Faculty of Actuaries in Scotland

VAT 4870191808

CK2000/058266/23

E-mail: rjkactuary@gmail.com

Website: www.robertjkoch.com

1A Chelsea Avenue

Cape Town

Tel: 021-4624160

PO Box 15613

Vlaeberg 8018

Fax: 021-4624109

NEWSLETTER

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

Vital statistics:

CAP determination October 2011:	R191773
CPI year-on-year October 2011	6,0%
RSA long bond yield November 2011:	8,7%
Real rate of return (8,7-6,0):	2,7%

Discounting to date of death: In *General Accident Insurance v Summers; Southern Versekeringsassosiasie v Carstens; General Accident Insurance v Nhlumayo* 1987 3 SA 577 (A) it was ruled that in an action for damages for personal injury or loss of support discounting is done to the date of the trial. A corollary to this principle is that the Court will have regard to supervening events (*Wigham v British Traders Insurance* 1963 3 SA 151 (W); *Summers* loc cit at page 615B/C). Trite law one might say. However, with death claims for loss of support when it comes to calculating the deduction for accelerated benefits the courts have been less than single minded on this issue. In one instance regard was had to supervening events after the widow had trashed her husband's business and the reduced value of the business was used for calculating the deduction for acceleration (*Santam Insurance v Meredith* 1990 4 SA 265 (Tk)). In another instance the Court ruled that no allowance should be made for the estate assets to escalate in line with inflation after the death (*Searle v Guardian National Insurance* 1996 (T) (unreported 11.10.96 case 5772/95)). More recently it was ruled that the value of rental property in the estate should be taken at the date of the death (*Mohan v RAF* 2008 (5) SA 305 (D)). Looks like more judicial votes for date of delict than date of trial. The calculation of the deduction for acceleration is, with respect, not generally well understood. For analysis purposes one needs to identify three separate components (*Groenewald v Snyders* 1966 3 SA 237 (A) at 248E-F):

- **The inheritance:** The value of the assets which have accrued as a result of the death.
- **The use value:** The value of the use of the assets by the family had there been no death.
- **The chance of later inheritance:** The present value of the chance of inheriting at a later date had the death not occurred prematurely.

The “use value” and the “chance of later inheritance” are calculated by actuaries using the same year-by-year techniques as for loss of income. This technical aspect brings these values into the ambit of the general discount-to-date-of-trial rule. The value of

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the actual inheritance would seem to be a proper subject for the rule that one has regard to supervening events. Just as earnings are escalated for inflation after the death so too, one would think, should be the value of the assets inherited. It is not uncommon for evidence to be produced as to the current value of the estate assets. The rule that value be taken at date of trial was handed down in respect of claims for damages for breach of contract (*Philip Robinson Motors v NM Daba* 1975 2 SA 420 (A) at 429H).

Claims for maintenance from deceased estates: The discount-to-date-of-trial law discussed above did not expressly address the question of claims for maintenance against deceased estates. The normal liquidation and distribution account has regard to the value of the assets and liabilities as at the date of the death. For that reason it is arguable that discounting of a claim for monthly maintenance payments should be done to date of death.

However, the Supreme Court of Appeal has ruled that the capital value calculated by actuarial discounting is not a “value” but merely the money needed by investment and consuming interest and capital to reproduce the primary liability which is the stream of separate monthly payments (*SA Eagle Insurance v Hartley* 1990 4 SA 833 (A) at 838/839). If that viewpoint is relevant to the capitalised value of claims for maintenance from deceased estates then, it seems, discounting needs to be done to the date that payment of the capital will be made to the dependant. This so because the primary debts are the monthly payments, not the lump sum.

Corporate earnings surveys: A comparison of corporate earnings surveys reveals some curious anomalies: A nationwide survey by Deloitte's will, for instance, produce significantly different results from a seemingly comparable national survey by PE Corporate Services. The differences in reported earnings can be as much as 15% at some gradings narrowing down to less than 2% at other levels. Another phenomenon is that the tabular entries often reflect raw data and have not been graduated to achieve a smooth progression between the different levels. The jump between one level and the next can be small between B2 and B3 and then large between B4 and B5. A graduated series would have the differences growing in a regular manner. The data in the *Quantum Yearbook* has been smoothed within each band.

This is an appropriate occasion to remind industrial psychologists once again that when preparing an assessment regarding the earnings of an accident victim it is **WRONG WRONG WRONG** to determine job grading by comparing the victim's actual earnings to the reported survey results. The proper procedure is to analyse job content and complexity of decision making and from that to decide on job grading. Some persons work a lot of overtime due to sheer grit and determination. Their resulting substantial earnings does not necessarily mean that they are highly skilled workers. Garment workers are semi-skilled but paid on the unskilled scale due to their weak negotiating power within the industry.

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