

ROBERT J KOCH cc BSc LLB LLD

Fellow of the Faculty of Actuaries in Scotland

VAT 4870191808

E-mail: rjkactuary@gmail.com

CK2000/058266/23

Website: www.robertjkoch.net

4 Myrtle Street

Gardens Cape Town

Tel: 021-4624160

PO Box 15613

Vlaeberg 8018

Fax: 021-4624109

Alternative fax numbers: 021-4613752 or 086-5137615 or 086-2316017

NEWSLETTER

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Vital statistics:

CAP determination April 2014:	R219820
CPI year-on-year April 2014	6,1%
RSA long bond yield June 2014:	8,8%
Real rate of return (8,8 less 6,1):	2,7%
ABSA Property Index February 2014	4,9%
Houses less than 140 square meters	7,8%

Damages for loss of support: In *M v Minister of Police* 2013 5 SA 622 (GNP) it was ruled that the duty of a parent to support a child is now governed by statute and no longer by the common law. The relevant statutes do not mention a parental obligation to show love and affection. It follows that compensation cannot be claimed for loss of parental love and affection and loss in later life of career prospects and related earnings. There seems to be no significant difference between a child's constitutional right to support and the old common-law right to support.

Wrongful entry: In *Marwana v Minister of Police* 2013 (6K6) QOD 154 (ECP) the police, after a wrongful arrest, took the victim to her home and there did a search. The victim had not been informed of her right to refuse permission for such a search. The Court awarded R10000 for wrongful entry.

Illegal earnings: 30 years ago it was common for the then third-party insurers to refuse claims for damages for loss of earnings or loss of support on the grounds that the earnings were "illegal" by way of unlicensed, or derived from illegal activities (*Dhlamini v Protea Assurance* 1974 4 SA 906 (A)). There have since then been many years of silence as regards the illegality argument. In *Heese NO v RAF* 2014 1 SA 357 (WCC) the claimant had misrepresented his earnings to the German tax authorities and was unable to operate legally in South Africa. His future loss of earnings was assessed as nil. As a general rule South African courts will not refuse compensation for earnings not disclosed to the tax authorities but will usually order that a copy of the court record be sent to the Receiver of Revenue (*Santam v Fick* 1982 (A) (unreported 24.05.82 case 282/79/AV); *Twala v RAF* 2006 (TPD) (unreported 08/2006 case 01/15178); my newsletters 63 & 65).

Wrongful arrest: *Alves v LOM Business Solutions (Pty) Ltd* 2011 6 QOD K7-1 (GPH), 2012 (1) SA 399 (GSJ) discusses (at page 5 of the QOD report) the appropriateness of calculating general damages for wrongful arrest by reference to the rate per day implicit to other awards. When calculating the victim's loss of earnings a deduction was made for the saving enjoyed by the victim from being housed and fed at State expense (at page 7).

AIDS/HIV mortality: In *Njoko v Minister of Safety and Security* 2011 (5) SA 512 (KZP); [2011] ZAKZPHC 25; 1565/09 (8 June 2011) the court heard evidence from experts and ruled that because the claimant was taking appropriate medication his life expectancy was normal. In *Seme v RAF* (13917/04) [2008] ZAKZHC 47 the court ordered a life expectancy being the average of worst AIDS 11 years and normal (see Quantum Yearbook 2014 at 95). An internet report by “La Sentinel” webnews notes that only 39% of HIV+ve persons in the United States have achieved viral suppression. The headline to the article reads “Not Enough Blacks Staying in HIV Treatment Programs” (14 February 2014).

Unemployed claimants: ‘Normal contingencies’ as applied generally by the RAF are 5% past and 15% future. This may be reasonable for a claimant who was in employment at the time of the accident. However, if he was unemployed it makes sense to make a larger deduction for general contingencies. Thus in *Gwaxula v RAF* 2013 (SGH unreported 25.09.2013 case 41896/2009) the court ordered a deduction of 30%. In *AA Mutual v Maqula* 1978 1 SA 805 (A) the claimant had a history of frequent job changes. The court ordered a deduction of 50%. These high percentages are also appropriate to death claims, not only when the deceased was unemployed at the time of his death, but also when he had provided little or nil support for his dependants at the time of his death. The mere fact of a right to support does not necessarily mean that support will be provided.

Retirement ages: Industrial psychologists are commonly consulted these days as regards the lost earnings of an injured claimant. Most do little or no research as regards important issues such as retirement age and fringe benefits. The common approach is to say that “retirement will be between 60 and 65 depending on the retirement policy of the company she works for at the time she retires”. Actuaries then use age 62½. The Sanlam Employee Benefit Survey 2010 revealed that the average retirement age is 63 to 65. It would thus be more correct for industrial psychologists and actuaries to use age 64 in the absence of more precise information. A major employer is the Government where the retirement age is 60 for most employees save that non-uniform personnel who joined the pension fund before 1 May 1996 may elect to retire at age 65). For civil servants age 60 is to be preferred in the absence of more precise information.

Fringe benefits: The purpose of a report by an industrial psychologist is to facilitate the calculation of a rand value for the earnings lost by an injured victim. Such earnings will include fringe benefits such as bonus, overtime, medical aid, and housing. If a rand value is to be calculated then a rand value should be stated by the industrial psychologist. Sad to say this is rarely the case and many victims suffer severe financial prejudice due to the failure by the industrial psychologist to allocate proper rand amounts to the fringe benefits. Pension subsidies can range from 3% to 20% of salary. Medical aid subsidies range from a meagre R4800 per year to a whopping R36000 per year. Overtime can be as little as 1% of basic salary to as much as 100% or more. Such large numbers deserve proper research and attention.