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NEWSLETTER

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

Vital statistics:

CAP determination October 2016:	R251990
CPI year-on-year September 2016:	6,1%
RSA long bond yield September 2015:	9,1%
Real rate of return (9,1 less 6,1):	3,0%
ABSA Property Index July 2016:	6,0%
Houses less than 140 square meters:	8,4%

The “Sweatman” CAP: Many calculations for loss of earnings use the earnings packages reported under the FSA and Peromnes salary surveys. The packages include a basic salary plus various extra benefits by way of commission, medical aid, thirteenth cheque, travel allowance, etc. A substantial extra benefit is commonly a pension subsidy by the employer ranging from 4% to over 20%. For Government employees the subsidy is generally taken to be 13% of basic salary, but this is not an actuarially exact figure because the correct actuarial subsidy is lower for younger persons. The benefit from this subsidy is only to be received after retirement in the form of a pension. The CAP calculation as approved in *Sweatman v RAF* 2013 JDR 2821 (CPD), 2015 (6) 186 (SCA) has regard to the actuarially discounted value in each year of the claimant’s expected lifetime. This period usually extends beyond retirement age. It follows that if earnings packages are discounted with nil benefit after retirement they will be inflated by the pension subsidy and the CAP applied more severely than if the calculation allowed for deferment of the pension benefit until after notional retirement.

The “Marikana” wage settlement: The following is a summary from one of my reports: “At the time of the injury claimant was employed by Lonmin Platinum Mines as an underground rock drill operator earning a basic salary of R50400 per year. In addition there was a housing allowance of R21240 per year, a medical aid subsidy of R5436 per year, performance bonuses averaging R20811 per year, and a pension subsidy of 14,83% of the annual basic salary.

“The Marikana wage strike started on 10 August 2012. Had claimant not been injured he would probably have been involved. The shootings took place on 16 August 2012. Agreement on a wage settlement was not concluded until 14 June 2014 with wage increases backdated to 1 October 2013. The strikers received nil pay from January 2014 to May 2014. Having regard to the settlement figures I have assumed even compound increases to a “guaranteed package” of R135372 per year from October 2012; R151752

per year from October 2013; R166224 per year from July 2014; and R180900 per year from July 2015. I have assumed that the “guaranteed package” includes housing, medical aid, and pension. In addition I have assumed performance bonuses of R20811 per year in terms of rand values in 2010.

Intestate minimum for a widow: The widow in an intestate estate is entitled to a child’s share subject to a minimum of R250000. Prior to 24 November 2014 it was a minimum of R125000. This is frequently relevant to claims for loss of support because the Assessment of Damages Act 9 of 1969 requires that life insurance and pension benefits be ignored when calculating the deduction for acceleration. This means that notional inheritances need to be calculated after excluding the life insurance and pension benefits from the calculation. Quite often the notional intestate inheritances of the children reduce to nil and only the widow has a reduced notional inheritance for which the accelerated value needs to be deducted (for more detail see *Quantum Yearbook* 2017 at 103-104).

Death, divorce and remarriage: In *Ongevallekommisaris v Santam* 1999 1 SA 251 (SCA) at 262I it was ruled that “in die geval van weduwees wat reeds weer getroud is ten tye van die verhoor, die werklike voordeel wat hulle uit die tweede huwelik trek in berekening gebring word, terwyl in ander gevalle ‘n bedrag of ‘n persentasie van die bruto verlies afgetrek word wat die moontlikheid van hertroue verteenwoordig.”

Sometimes by the time of trial the widow has remarried and dissolved that remarriage. In such cases there will be a past deduction for remarriage having regard to the actual support she enjoyed, if any, during her brief marriage. There may also be a deduction for her future prospects of concluding a further marriage. Another conclusion from this ruling is that the earnings of the new husband are relevant to the deduction, be they substantial or minimal. Some widows take up gainful employment after the death and then remarry in circumstances where they earn more than their new husband. It seems that her earnings will be ignored as regards the support she expected from her deceased husband (*Nochomowitz v Santam* 1972 1 SA 718 (T); *Nochomowitz v Santam* 1972 3 SA 640 (A)), but will be taken into account as regards the deduction for remarriage.

Support by tacit agreement: In this matter the spouses divorced and then reconciled and were cohabiting at time of his death together with their child O and her child T by another man. It was held that there was a duty of support by the deceased to T by reason of a tacit agreement to provide support. Compensation for loss of support awarded (*Engela v RAF* 2016 (1) SA 214 (GJ)). This ruling is authority to treat all children in the family as equal drawers of support regardless of parentage.

Dating of expert reports: There is an unfortunate practice followed by some expert witnesses whereby a revised or updated report is given the same date as the original report in the matter. Often this is done with no indication that there is a different original report with the same date. This is hugely confusing and leads to some serious errors by parties relying on those reports. I express the hope that this practice will cease.