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NEWSLETTER

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General damages for adultery: In *Wiese v Moolman* 2009 (3) SA 122 (T) it was ruled that damages may be claimed for adultery. I have not been able to trace any judgments that make an award for adultery, and would be most grateful for copies of relevant judgments.

Differential living costs: In *Bane v d'Ambrosi* 2010 2 SA 539 (SCA) the claimant, had he not been injured, would have gone to work in London and earned British pounds. Now, after the injury, he is living and working in South Africa where the cost of living is less. The Court observed that employers in London increase salaries and commissions to compensate for this higher cost of living and that the compensation payable should exclude this cost-of-living premium. The trial Court had ordered a 20% general contingency which had no regard to the cost-of-living premium. The Appeal Court (at 549J) ordered that a further 20% be deducted to allow for the cost-of-living premium. Total deductions from the British pound capital value were thus 20%+20%. The Juta's headnote to the reported judgment is misleading. What the Court did reject was direct abstract economic evidence as to the extent of the difference in living costs. That having been done the Court went on to make a contingency deduction to allow indirectly for what it had refused to allow explicitly. Little wonder that the Jutas editors were confused.

Saved travel costs: In *Bane v d'Ambrosi* the Court (at 548/9) arrived at its decision to make a deduction for the cost-of-living premium by analogy with a travel allowance paid by an employer to assist an employee with travelling to and from work. An employee who, by reason of his injuries, no longer has to travel to and from work is saved his travelling expenses. The correct procedure for making this adjustment, as was done on *Bane v d'Ambrosi*, is to include the travel allowance in the actuarial calculation and then to make allowance for the saving in living expenses by way of the adjustment for general contingencies (*Dlamini v SA Eagle Insurance* 1994 (T) (unreported 01.02.94 case 8951/93)). A number of commentators have questioned why the deduction for past contingencies is usually 5% or more when logic seems to suggest a 0% or 1% deduction. One explanation is that the 5% includes allowance for the saved costs of travelling to and from work. In some instances evidence has been led to quantify the saving (*Sumesur v Dominion Insurance* 1960 1 C&B 228 (D) 232-3 (7,5% deducted); *Maasberg v Hunt Leuchars & Hepburn* 1944 WLD 2 12 (9% deducted)).

Currency conversion: In *Bane v d'Ambrosi* the trial Court had ordered that the conversion from British pounds to South African rands should take place at the date of judgment. The parties, however, had agreed to do the conversion on the day that the compensation was paid to the claimant. The Appeal Court made this agreement part of its order. In *Infolsdottir v Mutual and Federal Insurance* 1988 (SWAZI) (unreported 27.5.88 case 1054/86) the Court ordered that all calculations be done in terms of the currency that the deceased would have earned, and then conversion done at the date of judgment.

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Saved living costs: Although a victim is free to spend his money as he pleases justice dictates that some allowance be made for saved living costs:

> Thus in *Lockhat's Estate v North British & Mercantile Insurance Co Ltd* 1959 3 SA 295 (A) it was ruled that when life expectancy has been reduced then the actuarial calculation for the uninjured condition must be based on the reduced life expectancy having regard to injury. The reason for this approach is that by reason of the reduced life expectancy the victim will be spared his own living costs during the "lost years". His dependants have a separate right of action for loss of support.
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> When a victim is to be confined to an institution he will thereby be spared that part of his living costs which he would otherwise have had to pay for food and housing, the so-called "domestic element". To allow for this the Courts will increase the deduction for general contingencies (*Shearman v Folland* [1950] 1 All ER 976 (CA); *Roberts v Northern Assurance* 1964 4 SA 531 (D) 537G-H; *Marine & Trade Insurance v Katz* 1979 4 SA 961 (A) 979inf (the 50% contingency deduction included allowance for a "domestic element"); *Dyssel v Shield Insurance* 1982 3 SA 1084 (C) 1086A-G; *Kontos v General Accident Insurance* 1989 4 C&B A2-1 (T) (50% by agreement between the parties). In *Lim Poh Choo v C&IAHA* [1979] 2 All ER 910 (HL) at 921 the Court did not make the deduction from the award for loss of earnings but instead made a substantial deduction from the capitalised value of the costs of institutional care.
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> In other instances the Court has increased the deduction for general contingencies to allow for the expenses the claimant will be spared from being rendered by his injuries incapable of marriage and a family (*Carstens v Southern Insurance* 1985 3 SA 1010 (C) 1023-4 1027I-J; see too *Reid v SAR&H* 1965 2 SA 181 (D) 190F-H)).

Child support grant is deductible: In *RAF v Timis* 2010 (SCA) (unreported 26.03.2010 case 29/2009) it was ruled that child support grants paid by Government are deductible when assessing damages for loss of support. However, a foster care grant is not deductible (*Makhuvela v RAF* 1020 1 SA 29 (GSJ)).

Inheritance of the family home: In *Mohan v RAF* 2008 (5) SA 305 (D) the Court ruled that there should be nil deduction for the accelerated inheritance of the family home. The logic for this approach is that the widow still needs a place to stay. In *Snyders v Groenewald* 1966 3 SA 785 (C) it was ruled that some deduction should nonetheless be made for the advantage of having a whole house instead of a shared house; in *Maasberg v Hunt, Leuchars & Hepburn Ltd* 1944 WLD 2 the *Mohan* approach was followed. For a comprehensive discussion of this topic see Koch "Reduced utility of a life plan" at 337 to 339 (free download available from *www.robertjkoch.com*).

Discounting to date of delict: In *Mohan v RAF* the widow received the benefit of rental property. The Court glibly accepted that damages must be assessed at the date of the delict and then ordered that discounting should be done to date of accident when calculating the deduction for acceleration. There is no mention of the definitive ruling against discounting to date of delict (*General Accident Insurance Co SA Ltd v Summers; Southern Versekeringsassosiasie Bpk v Carstens NO; General Accident Insurance Co SA Ltd v Nhlumayo* 1987 3 SA 577 (A)).

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