IN THE HIGH COURT OF SOUTH AFRICA **REPORTABLE**

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: 1976/06

In the matter between:

TESSA VERMAAK Plaintiff

and

ROAD ACCIDENT FUND Defendant

JUDGMENT DELIVERED ON 5 MARCH 2008

CROWE AJ:

[1] In this matter the Plaintiff, in her capacity as the mother and natural guardian of her minor son Sasha Marius Nel who was born on 6 January 1999, claims compensation from the Defendant in terms of the provisions of ss 17(1) of the Road Accident Fund Act No 56 of 1996 ("*the RAF Act*"). Plaintiff claims loss of support for the minor arising from the death of his father, Mr Marius Nel, who was fatally injured in a motor vehicle accident on 15 February 1999.

[2] Per Deed of Settlement dated 13 September 2007 Defendant accepted liability for the Plaintiff's damages and the parties settled the quantum of Plaintiff's claims for the minor's past and future loss of support in the capital sum of R274 109,00. At the trial before me, which commenced on 19 February 2008, it was common cause between the parties that the said capital sum had been calculated by the actuary Dr Robert Koch in a certificate of value dated 30 August

2007 using a valuation date of 29 August 2007. It was also common cause that the said capital sum was made up of past loss of support of R96 153,20 (being R136 204,00 less amounts of R12 810,00 for state welfare grant payments received and R27 240,80 representing a 20% general contingency deduction) and a rounded down figure of R177 955,80 for future loss of support (being R222 445,00 less an amount of R44 489,00 representing a 20% general contingency deduction). It was also common cause that Defendant made an interim payment of R90 000,00 to the Plaintiff on 28 October 2007 and that I should accordingly order Defendant to pay Plaintiff the remaining capital balance of (R274 109, 00 less R90 000,00)= R184 109,00.

[3] In dispute is Plaintiff's claim in terms of the provisions of s 2A of the Prescribed Rate of Interest Act No. 55 of 1975 (*"the PRI Act")* for prescribed interest at the rate of 15,5% per annum, as well as the costs of suit subsequent to 30 August 2007.

[4] Plaintiff claims such interest on the agreed past loss of support of R96 153,20 from 16 November 2005, the date on which the Defendant received a letter of demand from Plaintiff's attorneys date 14 November 2005. For this claim, Plaintiff relies on the provisions of subsections (1), (2)(a) and (5) of s 2A of the PRI Act and the definition of *"demand"* in s 4(ii) thereof.

[5] Plaintiff claims such interest on the aforesaid future loss of support of R177 955,80 from 13 September 2007, the date of the aforesaid Deed of Settlement in which the capital sum of the Plaintiff's claims was agreed. For this claim Plaintiff relies on the provisions of subsection (3) of s 2A of the PRI Act.

[6] The Defendant disputes liability to pay any interest to the Plaintiff in terms of s 2A of the PRI Act. The Defendant contends that the provisions of ss 17(3)(a) of the RAF Act governs its liability for the payment of interest on compensation awarded under that Act and that the

provisions of that subsection override those of s 2A of the PRI Act.

[7] The following provisions of the PRI Act are relevant:

> "*1.* ***Interest on a debt to be calculated at a prescribed rate in certain circumstances***
>
> *(1) If a debt bears interest and the rate at which the interest is to be calculated is not governed by any other law or by an agreement or a trade custom or in any other manner, such interest shall be calculated at the rate prescribed under subsection (2) as at the time when such interest begins to run, unless a court of law, on the ground of special circumstances relating to that debt, orders otherwise.*
>
> *(2) The Minister of Justice may from time to time prescribe a rate of interest*[1] *for the purposes of subsection (1) by notice in the Gazette.*
>
> *…*
>
> *2.* ***Interest on a judgment debt***
>
> *(1) Every judgment debt which, but for the provisions of this subsection, would not bear any interest after the date of the judgment or order by virtue of which it is due, shall bear interest from the day on which such judgment debt is payable, unless the judgment or order provides others.*
>
> *(2) Any interest payable in terms of subsection (1) may be recovered as if it formed part of the judgment debt on which it is due.*
>
> *(3) In this section 'judgment debt' means a sum of money due in terms of a judgment or an order, including an order as to costs, of a court of law, and includes any part of such a sum of money, but does not include any interest not forming part of the principal sum of a judgment debt.*

1 In terms of GN R1814 promulgated in GG 15143 of 1 October 1993 the prescribed rate of interest has been 15,5% per *annum* since that date.

2A ***Interest on unliquidated debts***

(1) *Subject to the provisions of this section the amount of every unliquidated debt as determined by a court of law … or by agreement between the creditor and the debtor, shall bear interest as contemplated in section 1.*

(2) *(a)* *Subject to any other agreement between the parties the interest contemplated in subsection (1) shall run from the date on which payment of the debt is claimed by the service on the debtor of a demand or summons, whichever date is the earlier.*

(b) *…*

(3) *The interest on that part of a debt which consists of the present value of a loss which will occur in the future shall not commence to run until the date upon which the quantum of that part is determined by judgment, arbitration or agreement and any such part determined by arbitration or agreement shall for this purposes of this Act be deemed to be a judgment debt.*

(4) *Where a debtor offers to settle a debt by making a payment into court or a tender and the creditor accepts the payment or tender, or a court of law awards an amount not exceeding such payment or tender, the running of interest shall be interrupted from the date of the payment into court or the tender until the date of the said acceptance or award.*

(5) *Notwithstanding the provisions of this Act but subject to any other law or an agreement between the parties, a court of law … may make such order as appears just in respect of the payment of interest on an unliquidated debt, the rate at which interest shall accrue and the date from which interest shall run.*

(6) *The provisions of section 2(2) shall apply* ***mutatis mutandis*** *to interest recoverable under this section.*

…

4 ***Definitions***

In this Act, unless the context indicates otherwise –

i) *…*

ii) ‘***demand***’ *means a written demand setting out the creditors’ claim in such*

> *a manner as to enable the debtor reasonably to assess the quantum thereof*".

[8] Mr Odendaal, for the Plaintiff, sketched the relevant history and application of s 2A of the PRI Act. He referred me to **Union Government v Jackson & Others 1956 (2) SA 398 (A)** at **412 E – 413 A** where the common law position regarding interest on unliquidated damages was clearly stated to be as follows:

> "*The ordinary rule of our law is that liability for interest does not automatically attach to an unliquidated debt – an obligation which has not yet been reduced to a definite sum of money. That rule was applied in* Victoria Falls & Transvaal Power Co Ltd v Consolidated Langlaagte Mines Ltd *1915 AD 1. I quote from the judgment of Innes CJ at 31, 32:*
>
> > 'The question with which we are concerned is whether in a claim for unliquidated damages only ascertainable as to amount after a long and intricate investigation, the defendant can properly be held liable for interest prior to judgment upon the sum finally assessed. In the present case the defendant was ***in mora*** *insofar as the supply of electric power was concerned, and for that it must pay damages. But was it* ***in mora*** *with regard to those damages, and therefore subject to an order for interest in addition? Under the common law of England and America that question would probably be answered in the negative, on the ground that the party sued did not know what sum he owed, and therefore cannot be in default for not paying. … The civil law did not attribute* ***mora*** *to a debtor who did not know and could not ascertain the amount he had to pay. '****Non potest improbus videri, qui ignorat, quantum solvere debeat****' … and that rule was adopted by the courts of Vriesland … It has also been followed in our own practice. No South African decision was quoted to us, nor have I been able to find any, in which interest before judgment has been awarded upon unliquidated damages. I do not think, therefore, that they can be given here. I do not say that under no circumstances whatever could such damages carry interest. Cases may possibly arise in which though the claim is unliquidated the amount payable might have been ascertainable upon an enquiry which it was reasonable the debtor should have made. Such cases, should they occur, may be left open. But the present matter stands in a different position. It was not possible for the defendant to know or ascertain what damage its breach of contract had caused, and it cannot therefore on the principles of our law be held liable for interest prior to judgment upon the amount of the damage'.* "

[9] The need for the introduction of a provision such as s 2A was recognised by Burger J in his judgment in **Bailey NO v General Accident Insurance Co Ltd 1987 (2) SA 702 (C)** when he stated the following (at **706 A – C**):

> "*… maar ek meen dat die tyd ryp is dat daar … wetlike voorsiening gemaak moet word vir rente betaalbaar op illikwiede eise vir die tydperk na dagvaarding tot by uitspraak. Die feit dat hulle rente op dié wyse spaar, lei ongetwyfeld daartoe dat skuldenaars aangemoedig word om sake te bestry. Dit is klaarblyklik onbillik en moedig onnodige litigasie aan.*"

In similar vein, the following was stated in **SA Eagle Insurance Co Ltd v Hartley 1990 (4) SA 833 (A)** at **841 G – 842 B**:

> "*The result which I have thus reached is not satisfactory. If a plaintiff through no fault of his own has to wait a substantial period of time to establish his claim it seems unfair that he should be paid in depreciated currency. Of course, in respect of many debts this problem is resolved (or partially resolved) by an order for the payment of interest, and the Prescribed Rate of Interest Act … is flexible enough to permit the Minister of Justice to prescribe rates of interest which reflect the influence of inflation on the level of rates generally (see s1(2)). Its application is, however, limited to debts bearing interest (s1(1)); and it is trite law that there can be no* ***mora****, and accordingly no* ***mora*** *interest, in respect of unliquidated claims for damages. See* Victoria Falls & Transvaal Power Co Ltd v Consolidated Langlaagte Mines Ltd *1915 AD 1 at 31-3, a decision which has been consistently applied and followed, also in this Court. It follows that there is no mechanism by which a court can compensate a plaintiff like the present for the ravages of inflation in respect of monetary losses incurred prior to the trial. In other jurisdictions, a statutory power to award interest is used for this purpose … Whether our courts should have a similar power, and what precise form it should take, is not, however, something we can lay down. It is essentially a matter of policy which is for the Legislature to decide. … It is comforting to know that the Law Commission is at present considering this topic*".

[10] s 2A was inserted into the PRI Act by s 1 of Act 7 of 1997 and came into operation on 5 April 1997. In **Adel Builders (Pty) Ltd v Thompson 2000 (4) SA 1027** the SCA commented thereon as follows (at **1031 B – C** and **F – H**):

"*Before the introduction of s 2A no common-law principle or statutory enactment provided for the award of pre-judgment interest on unliquidated damages; in other words, damages whose quantum had to be fixed by the court.*

…

... the court below … observed that … the new section was obviously aimed at alleviating the plight of a plaintiff who has to wait a substantial period of time to establish his claim, through no fault of his own, and is paid in depreciated currency."

[11] In **MV Sea Joy 1998 (1) SA 487 (C)**, Thring J applied the provisions of s 2A as follows (at **507 H – 508 H**):

"*Summons was served in this matter on 8 September 1992 when the Sea Joy was arrested. However, the summons contains only the bare bones of the quantum of the plaintiff's claim. It would not, in my opinion, be just or equitable to hold the defendant liable to pay interest on a claim whose quantum it could not reasonably be expected to assess. Section 2A(2)(a) of Act 7 of 1997 fixes the date from which interest is to run as 'the service on the debtor of a demand or summons, whichever date is the earlier'. It is clear that by 'demand' is meant 'a written demand setting out the creditor's claim in such a manner as to enable the debtor reasonably to assess the quantum thereof' (s 4 sv 'demand'). By 'summons' the legislature must have had in mind a combined summons such as is referred to in Uniform … Rule 17(2)(a), where the claim is not for 'a debt or liquidated demand', to which summons must be annexed particulars of claim which comply,* ***inter alia****, with Rule 18(10), which, in turn, stipulates that a plaintiff suing for damage shall set them out 'in such manner as will enable the defendant reasonably to assess the quantum thereof'. The Plaintiff's damages in this case were so set out in its particulars of claim only on 27 August 1993.*

In terms of s 2A(5) … I have a discretion '[n]otwithstanding the provisions of this Act' (and, therefore, notwithstanding the peremptory terms of s 1(1) …), to make 'such order as appears just in respect of the payment of interest on an unliquidated debt, the rate at which interest shall accrue and the date from which interest shall run'. Whether or not interest should run against the defendant at all before 24 April 1997 is thus in my discretion to order. I am satisfied that it should. The plaintiff has been kept out of its money by the defendant for nearly four years, notwithstanding the due setting out of its damages in its particulars of claim and the defendant's consequent ability to ascertain the quantum thereof by means of an enquiry which it could reasonably have made … I can see no good reason why the plaintiff should

not be compensated by the defendant in this regard. In the exercise of my discretion, I propose to order that interest shall run, but only from 27 August 1993.

Next, the applicable rate of interest. As at 27 August 1993 it was prescribed in terms of the Act at 18,5% per annum. Only about a month later, on 29 September 1993 the prescribed rate was reduced to 15,5% per annum, and it has remained at that level since then. In Davehill (Pty) Limited and others v Community Development Board *1988 (1) SA 290 (A) it was held … that the rate prescribed under s 1(2) … at the time when interest begins to run governs the calculation of interest is fixed at that time and remains constant. Applying that principle to the present case, the rate would be 18,5% per annum. It was held in that case that, because s1(1) … is in peremptory terms, its application is obligatory, not discretionary … However, in my view that is not the case when it comes to interest on an unliquidated debt which is awarded under s 2A of the amending Act 7 of 1997. As I have said, under s 2A(5) … the Court is given a discretion as to,* ***inter alia*** *'the rate at which interest shall accrue'.*

Now, the prescribed rate was 18,5% per annum for only about a month after the date on which interest started to run on this claim. For nearly four years thereafter it has been only 15,5% per annum. I think that justice and fairness to both parties require that I should, in the exercise of my discretion, fix the rate at the lower level".

[12] Regarding the exercise of this discretion, the following was stated in the **Adel Builders** case, *supra*, at **1022 H – J**:

"*Acting in terms of ss (5), it was open to the Court, in fixing the date from which interest was to run, to give effect to its own view of what was just in all the circumstances. No question of onus was raised then or in the notice of appeal. Nor could it have been. The discretion afforded by s 2A(5) was of the nature referred to in a long line of cases in this Court from* Ex Parte Neethling and others *1951 (4) SA 331 (A) onwards. Plainly, if parties wish certain facts and circumstances to be weighed in the exercise of such a discretion they must establish them. But there are no* ***facta probanda****. No enquiry arises as to whether a necessary fact has been successfully proved. Similarly, absence of proof does not result in failure on any issue. Indeed, there are no evidential issues to attract any onus*".

[13] At paragraph 32 of an unreported judgment in **De Vries NO v Minister of Safety & Security** in **Case No 16058/92**, delivered in this Division on 31 October 2006, Blignault J exercised his discretion in terms of ss 2A(5) and awarded interest on a claim for past loss of earnings arising from the unlawful shooting of a person by a policeman. He had regard to the

principle of currency nominalism[2] referred to in the **Hartley** case, *supra*, at **838 F – 840 I** in which the AD considered the time at which claims for past loss of earnings should be calculated and held that a claim for loss of earnings should not be discounted back to the date of the injury, but should properly be determined as at the later date of the trial when the loss "*manifested itself*". He also had regard to the fact that, in computing the past loss of earnings, the actuary had been instructed to discount the assumed current salary of R7 500,00 per month in accordance with past rates of inflation in order to reflect the nominal value of his earnings in past years, which method of calculation is in accordance with the principle of nominalism of currency. In this regard, Blignault J stated the following (at **para 33**):

> "*Given this method of calculation, it seems to me that it would be just to plaintiff to award interest on the amounts representing his loss of past earnings. The reasons for the delay in the prosecution of this action are not clear. The fact of the matter, however, is that plaintiff did not have the use and enjoyment of these monies. It seems to me, therefore, that it would be fair to award interest on the loss of past earnings in order to compensate plaintiff for the loss of the enjoyment of these funds in the past. It would be fair to calculate this interest at the same rates that were used by the actuary in discounting plaintiff's assumed current salary. Interest would thus be allowed on plaintiff's loss of past earnings at the rates of inflation used in calculating that loss.*"

In a subsequent memorandum to the parties dated 18 May 2007 regarding applications for leave to appeal, Blignault J elaborated on his method of calculating this interest as follows (at **para 11**):

> "*For the purpose of the quantification of past losses Dr Koch* [the actuary] *… took the assumed salary of plaintiff at the date of valuation (R7 500,00 per month) as starting point. He then discounted the annual salary at the rate of inflation (an average rate of 7,3% per year was used) to arrive at a notional annual salary for each of the years from 1992 to 2006. Dr Koch next deducted income tax for each of these years in order to arrive at a notional after tax salary for each of the years in question and he then calculated the loss of earnings on this basis. The aggregate amount of these losses amounted to the sum of R705 208,00 which, after a deduction of 5% for contingencies, came to the sum of R669 948,00* [being the sum agreed upon by the parties in respect of past loss of earnings]."

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2 Regarding this principle, see also **Eden v Pienaar 2001 (1) SA 158 (W)** at **165F-167H**.

In paragraphs 12 to 15 of his said memorandum Blignault J explained how he calculated the amount of R345 973,00 (being R364 182,00 less a 5% adjustment for contingencies) which he awarded to the Plaintiff in terms of ss 2A(5) as interest on the said amount of R669 948,00. Firstly, he utilised the amounts of notional after-tax salary calculated by the actuary for each calendar year during the period from 1992 to 2006 which together make up the said sum of R705 208,00. He then added interest at the rate of 7,3% per *annum* to these amounts for each calendar year and then capitalised the interest at the end of each calendar year. He then added up all the amounts of capitalised interest for all of the calendar years and arrived at the said amount of R364 182,00. He then deducted a 5% contingency.

[14] It appears from the aforegoing that our courts readily award interest on unliquidated claims for past damages and past loss of earnings and there is no reason, in principle, why this should not also be done in respect of claims for past loss of support. It also appears that the courts have made liberal use of the discretion afforded to them in terms of ss 2A(5) to tailor these awards of interest to ensure that same are "*just*".

[15] Plaintiff's counsel submits that there is no reason why the RAF, the present Defendant, should not pay interest in terms of s 2A on unliquidated damages just like other defendants, such as the owner of the vessel in which cargo was damaged in the **MV Sea Joy** case, *supra*, or the defendant building contractor in the **Adel Builders** case, *supra*, or the Minister of Safety & Security in the **De Vries NO** matter, *supra*. In this regard, he referred to the equality provision in the Bill of Rights in ss 9(1) of our Constitution[3] which provides that "*everyone is equal before the law and has the right to equal protection and benefit of the law*" and to ss 8(1) thereof which provides that the Bill of Rights applies to all law and binds the legislature, the executive, the

3 The Constitution of the Republic of South Africa at No. 108 of 1996.

judiciary and all organs of state. He also referred to the provisions of ss 39(2) thereof which provides *inter alia* that when interpreting any legislation every court *"must promote the spirit, purport and objects of the Bill of Rights".*

Mr Eia, for the Defendant, submitted that the Plaintiff's claim for interest in terms of s 2A is barred by the provisions of ss 17(3)(a) of the RAF Act.

[16] The history of ss 17(3)(a) of the RAF Act is that it is the fourth re-enactment of a virtually identical interest provision in four successive motor vehicle accident statutes in this country, namely ss 21(1)(a) of the Compulsory Motor Vehicle Insurance Act No 56 of 1972 (it was first inserted therein by way of an amendment during 1978); ss 8(3) of the MVA Act, No 84 of 1986 ("*the 1986 Act*"); Article 42(a) of the Schedule to the Multilateral MVA Fund Act, No 93 of 1989 ("*the 1989 Act*"); and, ss 17(3)(a) of the RAF Act.

In its original form in the first and second of these statutes this interest provision was worded as per ss 8(3) of the 1986 Act, as follows:

> *"No interest shall be payable on the amount of any compensation which a court awards to any third party by virtue of the provisions of subsection (1), unless 14 days have elapsed from the date of the court's relevant order".*

In its last two enactments the interest provision has been in its present form, as per ss 17(3)(a) of the RAF Act, as follows:

> **"** *(3)(a) No interest calculated on the amount of any compensation which a Court awards to any third party by virtue of the provisions of subsection (1) shall be payable unless 14 days have elapsed from the date of the Court's relevant order*".

It is permissible for the court to refer to a similar or related predecessor of a statutory provision in

order to interpret it, provided that it is so-called "*kindred*" legislation that is *in pari materia*[4].

[17] At page 52 of his work "***MVA Practice Under Act 84 of 1986***" (Joan Lötter Publications 1987) the author **DP Honey** commented on the second enactment of this interest provision – in ss 8(3) of the 1986 Act – as follows:

> "*This section is a verbatim repeat of section 21(1)(a) of the 1972 Act. The effect seems to be that interest on compensation awarded by the Court is waived if payment of the compensation is effected within fourteen days from the date of the award. If this interpretation is correct, then it follows that where payment of the compensation is effected after the lapse of a period of fourteen days from the date of the award, interest is recoverable from the date of the award … The section does not appear to prohibit the payment of interest from the date of the claim in those cases where interest is recoverable. The simple explanation as to why this section was introduced into the 1972 Act* [by s 8 of Act 69 of 1978] *appears to have been that a reasonable time should be allowed to the appointed agent to have the cheque processed by its head office, mailed to its attorneys and thereafter transferred to the claimant's attorneys. It was intended to put a stop to an endless number of cases where the claimant's attorneys, upon receipt of the cheque for the amount awarded, notify the company that a further amount is required because interest has accrued between date of judgment and date of receipt*".

This view supports the case of the present Plaintiff.

[18] On the other hand, support for the Defendant's submission is found in an unreported judgment of Broome DPJ delivered on 29 May 1997 in **Campbell v Sentrasure Ltd** in **case number 166/95** in the Durban & Coast Local Division where the court considered and upheld a submission that s 2A of the PRI Act was overridden by the third enactment of this interest provision, namely Article 42(a) of the 1989 Act. The *ratio* for the Court's decision was that s 2A "*is hit*" by the provisions of the said Article 42 which "*clearly restricts any interest on an award in that interest can only run after 14 days after* [sic] *from the date of the court's order*".

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4 LAWSA Vol 25, Part 1, p 405 para 359.

[19] Mr Odendaal submitted that the point was not properly argued before Broome DJP and that ss 17(3)(a) should be interpreted as simply granting the RAF an administrative period after the date of judgment to process payment. He submitted that the two provisions are reconcilable. He argued, in the alternative, that if they are not reconcilable the provisions of s 2A prevail over those of ss 17(3)(a).

[20] The starting point in deciding this issue is the meaning of the word *"compensation"* in ss 17(3)(a). In this regard, ss 17(1) of the RAF Act obliges the RAF:

> **"…** t*o compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person …*".

In the present matter the amount of such compensation was agreed between the parties in their Deed of Settlement dated 13 September 2007 in the "*capital sum*" of R274 109,00 and it is clear that this capital sum constitutes "*the amount of*" an "*unliquidated debt as determined … by agreement between the creditor and the debtor*" as contemplated in ss 2A(1) of the PRI Act. Accordingly, and in terms of such subsection, it "*shall bear interest as contemplated in section 1*", namely at the prescribed rate of interest which has prevailed at all times relevant to this action, namely 15,5% per *annum.*

[21] In order to properly construe the two provisions I must apply the golden or general rule of construction, namely that words of a statute must be given their ordinary, literal and grammatical meaning and if by so doing it is ascertained that the words are clear and unambiguous, then effect should be given to their ordinary meaning unless it is apparent that such a literal construction falls within one of those exceptional cases in which it would be permissible for a court of law to depart from such a literal construction, eg where it leads to a manifest absurdity,

inconsistency, hardship or a result contrary to the legislative intent[5]. I must also bear in mind the equality provisions contained in ss 9(1) of the Bill of Rights and apply the interpretive provisions of ss 39(2) of the Constitution.

[22] ss 17(3)(a) provides that *"no interest … shall be payable"* on the amount of any compensation awarded to a third party *"unless 14 days have elapsed from the date of the court's … order"*. According to the Concise Oxford English Dictionary (Oxford University Press, 10th edition, revised 2002), the word *"payable"* means *"required to be paid"* or "*able to be paid"* and the word *"unless"* means *"except when"* or *"is not".*

It follows that the ordinary grammatical meaning of the subsection is that no interest shall be required/able to be paid on the amount of any compensation awarded to a third party *"except when"* 14 days have elapsed, alternatively *"if"* 14 days have *"not"* elapsed, from the date of the court's order.

In my view, the use of the word *"unless"* in the subsection is ambiguous. If it is taken to mean *"except when"* the subsection means that no interest is *"required"* or *"able"* to be paid on any compensation awarded *"except when"* 14 days have elapsed from the date of the court's order. This first interpretation implies that interest only commences to run on day 15.

However, if the word *"unless"* is taken to mean *"if not"* the subsection means that no interest is *"required"* or *"able"* to be paid on any compensation awarded *"if"* 14 days have *"not"* elapsed. This second interpretation implies that interest is *"required"* or *"able"* to be paid on the compensation awarded after the 14 day period has elapsed and, accordingly (and as per the aforesaid opinion of the author Honey and the submission of Mr. Odendaal), means that interest commences to run

5 **Adampol (Pty) Ltd v Administrator, Transvaal 1989 (3) SA 800 (A)** at **804 B – C**.

on day 1, but that the obligation to pay such interest is suspended during the 14 day period and only arises or commences on day 15.

[23] In my view, the legislature could not have intended the above second interpretation as this would lead to a manifest absurdity and/or a result contrary to what the legislature intended. What purpose would the legislature achieve by suspending the obligation to pay interest for the 14 day period without at the same time suspending the running of interest during that period? There would be no inducement to the RAF to effect payment during the 14 day period as it would neither save interest, nor would it save the administrative burden of having to deal with claimants' attorneys requiring a second payment in respect of interest after the expiry of the 14 day period. On this interpretation the subsection would be meaningless and effectively superfluous, which would offend against the common law presumption that statutes do not contain invalid or purposeless provisions and are meant to be of effect[6]. It would mean that the legislature intended that a claimant who is paid his full compensation on day 13 could wait until the expiry of day 14 and then claim the interest which had accrued on the compensation during the first 13 days.

[24] It follows, in my view, that the above first interpretation of ss 17(3)(a) was intended, namely that interest does not run during the 14 day period after the court's order and only commences to run from day 15.

This interpretation is consistent with the following view of the author **H Daniels** at E – 29 of the loose-leaf work **"*MMF-RAF The Practitioner's Guide*"** (Lexis Nexis Buttherworths):

> *"Section 17(3)(a) simply provides that an award made shall not attract interest (at the mora rate) for a period of 14 days from the date upon which such award is made. It has become the practice to award interest at*

6 LAWSA Vol. 25 Part 1 pg 349 para 330.

the legal rate, to run from a date specified, being 14 days from the date upon which the award is made."

[25] I now consider whether the provisions of ss 17(3)(a) of the RAF Act override those of s 2A of the PRI Act, or whether they can be reconciled.

I do not see how the two provisions can be reconciled. The Plaintiff has asked me to order the Defendant to pay interest at the prescribed rate in terms of s 2A of the PRI Act on the agreed past loss of R96 153,20 from 16 November 2005 (being the date contemplated in ss 2(a) thereof "*on which payment of the debt*" was allegedly "*claimed by the service of a demand or summons, whichever is the earlier*") and on the agreed future loss of R177 955,80 from 13 September 2007 (being the date contemplated in ss (3) thereof "*upon which the quantum of that part*" of the debt "*which consists of the present value of a loss which will occur in the future*" was "*determined by … agreement*"). Both of these dates predate the date on which the court will award compensation to the Plaintiff in this matter.

There is no doubt that these are both claims as contemplated in ss 17(3)(a) of the RAF Act for "*interest calculated on the amount of any compensation which a court awards to any third party by virtue of subsection (1)*".

The problem with these claims is that ss 17(3)(a) expressly provides that no such interest "*shall be payable unless 14 days have elapsed from the date of the court's … order*". As set out above, I have interpreted this to mean that no interest shall be required / able to be paid on the amount of any compensation awarded to a third party except when 14 days have elapsed from the date of the court's order.

It follows, in my view, that the provisions of ss 17(3)(a) bar the payment of the interest claimed by Plaintiff in terms of s 2A and that the two provisions are irreconcilable.

[26] Which statute should prevail?

Plaintiff's counsel sought to rely on the principle of statutory interpretation that a later statute prevails over an earlier one. This principle only applies where the two statutes are *in pari materia*, which is not the case in the present instance. In this regard see **Grove Primary School v Minister of Education 1997 (4) SA 982 (C)** at **1006 D – E**.

Plaintiff's counsel also relied on the principle of statutory interpretation that statute law does not alter the existing law more than is necessary. This submission can also not be upheld as such presumption only applies when considering the effect of statute law on the common law, so as to harmonise statute and common law, and not as between two statutes[7].

There is, however, a presumption of statutory interpretation which is of assistance, namely the maxim *generalia specialibus non derogant* which translates, roughly, as *"generalised provisions will not derogate from specific provisions".* In **Transnet Ltd v Chirwa 2007 (2) SA 198 SCA** at **214 C – 215 A** Conradie JA applied this principle and found that certain matters assigned specially to the Labour Court could not have been repealed by the Promotion of Administrative Justice Act No 3 of 2000 ("*PAJA*"), which was promulgated seven years later, *"without* [PAJA] *expressly saying so*". The learned judge cited with approval a passage from an author who had described the maxim as having application when the legislature *"has given attention to a separate subject and made provision for it"*, in which case the presumption "*is that a subsequent general enactment is not intended to interfere with the special provision, unless it manifests that*

7 LAWSA Vol 25 Part 1 p 341 at para 328.

intention very clearly". The learned judge also cited with approval an English authority to the effect that one is not to hold "*earlier and special legislation*" to be indirectly repealed, altered or derogated from by general words *"without any indication of a particular intention to do so"*.

It is clear, on the application of this principle, that there is no particular or express statement in the later general provisions of s 2A of the PRI that same are intended to prevail over the earlier specific provisions of ss 17(3)(a) of the RAF Act and its 3 predecesors (which have been in existence effectively since 1978).

It follows in my view, on an application of the common law canons of construction, that the provisions of ss 17(3)(a) prevail over those of s 2A.

[27] I have also give careful consideration to the argument that the provisions of the PRI Act should prevail by virtue of the equality provisions in the Bill of Rights and the requirement that, in interpreting legislation, the court must promote the spirit, purport and objects of the Bill of Rights. In this regard, I point out that Plaintiff's counsel pertinently abandoned an argument that ss 17(3)(a) should be struck down as unconstitutional as he recognised that Plaintiff had failed to follow the procedures required to do so – she had failed to join the relevant Minister and she had failed to raise the point in her pleadings. In my view, that would have been the appropriate procedure for the Plaintiff to adopt. The matter could then have been dealt with fairly and squarely on the basis of alleged unconstitutionality, relying on the entrenched right of equality in the Bill of Rights with the appropriate defendants brought before the court to deal specifically with the matters raised in ss 36(1) of the Constitution. In these circumstances, I do not consider that the court's obligation to promote the spirit, purport and objects of the Bill of Rights obliges me to interpret the statute so as to find for the Plaintiff.

[28] In conclusion, I am of the view that the provisions of ss 17(3)(a) of the RAF Act prevail over those of s 2A of the PRI Act and I, accordingly, find that the Plaintiff is not entitled to interest at the prescribed rate in terms of s 2A of the PRI Act.

[29] Regarding costs, the matter could not be heard on the first and second days of the trial, namely 29 and 30 August 2007, as no judge was available to hear the matter. In the Deed of Settlement the Defendant accepted liability for costs up to and including the first day of trial, but disputes liability from the second day onwards. Friday 31 August 2007 was not a court day. On that day Plaintiff's attorneys sent Defendant's attorneys a letter in which Plaintiff accepted R274 109,00 as the capital sum of the Plaintiff's damages. In that letter, and for the first time, Plaintiff's attorneys formally claimed payment of interest in terms of s 2A of the PRI Act. The Defendant was thereby placed in an invidious position as no such claim had previously been made on the pleadings or in the correspondence. Until then interest had simply been claimed on the capital sum claimed *"at a rate of 15.5% per annum to date of payment*". I am of the view that the Plaintiff ought, properly, to have pleaded the specific claim for interest under s 2A of the PRI and that its failure to formally raise this issue timeously has escalated the costs in this matter. On the third day of the trial, namely Monday 3 September 2007, a judge became available to hear the matter but the parties did not proceed to trial. It is apparent that the parties had settled all quantum issues between them by that stage and that the matter would probably have been settled on 31 August had the Plaintiff not belatedly raised her claim for interest in terms of s 2A. The parties remained locked in negotiations from 3 to 13 September 2007, when the Deed of Settlement was eventually signed and the matter was subsequently postponed for hearing on 19 February 2008 on the s 2A interest claim. Having regard to these facts, and in the exercise of my discretion, I intend to order Defendant to pay Plaintiff's costs of suit up to 31 August and Plaintiff to pay Defendant's costs of suit thereafter. By agreement, the present matter was heard together with a related opposed application under case number 4481/07 in which Plaintiff's attorneys appeared for the Applicant and the same counsel

appeared for both parties. That matter occupied the whole of the hearing before me on 19 February 2008 until 15h00, when this matter commenced. As counsels fees for that day have already been accommodated in that matter, I do not anticipate that either counsel will raise another fee in this matter in respect of that day. In order to cater for that circumstance, I intend to order that each party shall bear their own respective costs of counsel in respect of the short hearing of this matter on 19 February 2008. I was also requested by the Defendant to disallow the costs of certain reports of the Plaintiff's actuary, but decline to do so as I consider this to be a function of the Taxing Master.

[30] In the result, I make the following order:

30.1 Defendant is ordered to pay Plaintiff an amount of R184 109,00 (being the agreed capital sum of R274 109,00 less the interim payment of R90 000,00 made on 28 October 2007) together with interest thereon at the rate of 15,5% per *annum* from a date 14 days after judgment herein to date of payment;

30.2 Regarding costs:

a) Defendant is ordered to pay Plaintiff's costs of suit up to and including 31 August 2007;

b) Save that each party shall bear their own respective costs of counsel in respect of the short hearing of this matter on 19 February 2008, Plaintiff shall pay Defendant's costs of suit after 31 August 2007;

c) Defendant shall pay the reasonable fees and disbursements of the Plaintiff's expert witness, the consulting actuary Dr R Koch.

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CROWE, AJ