Death and calculating support claims by G.A. Whittaker
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When assessing the loss of support due to dependants following a wrongful death, the assessment is directed at placing each dependant in the same position as he or she would have been had it not been for the death. Each dependant has a separate right of action and actuarial calculations therefore provide separate values in respect of the loss of support suffered by each member of the family. In South Africa, calculations have proceeded on the basis of allocating 2 shares of the deceased's net income to an adult and one share of the deceased's net income to each child. This method has been applied as if it was law.

The main reason advanced for not deviating from the above "two-parts, one-part" method and hence the main reason why no challenge has been mounted as to what has become standard practice, is that there is inadequate evidence on the division of household expenditure. However, it is a fact that certain household expenditure is indivisible. For example, poorer families cannot be expected to move to a smaller house and hence incur lower rental expenses. Rates and taxes will not reduce as they are independent of the number of occupants of a home. One cannot buy a fraction of an electrical appliance.

Australia has developed a method that represents a significant improvement on the "two-parts, one-part" method. Under the Australian method, total disposable income is split into "housing" (for example, home loan repayments, electricity, and so on); "adults only" (for example, tobacco and alcohol – typically small components of total household expenditure) and "other" based on the Australian Bureau of Statistics survey on Household Expenditure.

"Housing" is deemed to be incurred by all members of the household in equal proportions. "Adults only" is deemed to be incurred only by the adults of the household. "Other" is deemed to be incurred on the basis of two parts to each adult and one part to each child. Upon the death of an adult, the above apportionment is repeated, with the reduced household income and one less adult. Each individual can then be directly assessed to determine the loss of benefit deriving from the household's reduced income.

Whilst the above method sounds complicated, tables can be generated that allow for the quick lookup of values especially in common situations such as a 2-parent household. The method can also cater for the relative income of the spouse. Set out below is a summary of the key findings of Statistics South Africa's Income and Expenditure of Households for 2005/2006 (Statistical Release P0100):

Main expenditure & income group (average estimated consumption expenditure of R 56,152 per household in 2005/2006 money values)	Percentage Contribution	Suggested classification
Food and non-alcoholic beverages	14.4%	Other
Alcoholic beverages and tobacco	1.2%	Adult
Clothing and footwear	5.0%	Other
Housing, water, electricity, gas and other fuels	23.6%	Housing
Furnishings, household equipment & routine maintenance of dwelling	6.9%	Housing
Health	1.7%	Other
Transport	19.9%	Other
Communication	3.5%	Other
Recreation and culture	4.6%	Other
Education	2.4%	Other
Restaurants and hotels	2.2%	Other
Miscellaneous goods and services	14.4%	Other
Other unclassified expenses	0.2%	Other
Total:	100.0%	

The 2010/2011 Income and Expenditure Survey was conducted over September 2010 until August 2011. The results of that survey are not yet available.

On the basis of the above classifications from the 2005/2006 survey, we observe that "housing" constitutes 30.5%; "adults only" constitutes 1.2% and "other" constitutes 68.3% to total expenditure.

We now make the following assumptions:
(1)   Expenditure on housing, water, electricity, gas and other fuels; furnishings, household equipment & routine maintenance of dwelling will be the same regardless of the number of members of the household.
(2)   Expenditure on alcohol and tobacco relates only to adults, in equal shares.
(3)   All other expenditure relates to all members of the household, twice as much being expended on each adult as on one child.
(4)   Expenditure on housing, water, electricity, gas and other fuels; furnishings, household equipment & routine maintenance of dwelling will be shared equally between surviving members of the household (this assumption is relevant only for the purpose of determining shares between surviving members).

The following tables have been constructed using the above data, noting that the dependency percentages are estimates of the percentage of the deceased's after tax income needed to restore the survivors to their former financial positions:

Table 1: Dependency of a surviving parent who is a claimant

Income of spouse as a percentage of deceased's income	Number of children	Dependency percentage for the surviving parent
0%	0	65.3%
0%	1	43.2%
0%	2	33.5%
0%	3	27.7%
0%	4	23.8%
0%	5	20.9%
Income of spouse as a percentage of deceased's income	Number of children	Dependency percentage for the surviving parent
100%	0	30.5%
100%	1	24.4%
100%	2	21.6%
100%	3	19.3%
100%	4	17.5%
100%	5	15.9%

For example, the dependency of an adult in a household with 2 adults and 3 children, where the surviving spouse has no income, is estimated by the following formula:

1/4th of housing expenditure + one half of the adult expenditure + 2/7ths of other expenditure

When the surviving spouse has income equal to that of the deceased, the surviving spouse's percentage is estimated from the following formula:

[(1/4)th of half of housing expenditure + (2/5)th of (half less 2/7ths) of other expenditure] divided by [deceased's income as a percentage of household income]

The following table has been constructed for child dependants:

Table 2: Dependency for each child where parent is a claimant

Income of spouse as a percentage of deceased's income	Number of children	Dependency percentage for each child
0%	1	28.9%
0%	2	21.6%
0%	3	17.4%
0%	4	14.6%
0%	5	12.7%
Income of spouse as a percentage of deceased's income	Number of children	Dependency percentage for each child
100%	1	19.8%
100%	2	15.9%
100%	3	13.5%
100%	4	11.8%
100%	5	10.5%

For example, the dependency percentage for a child in a household with 2 adults and 3 children, where the surviving spouse has no income, is determined from the following formula:

1/4th of housing expenditure + 1/7th of other expenditure

When the surviving spouse has income equal to that of the deceased, the child's percentage is estimated from the following formula:

[(1/4)th of half of housing expenditure + (1/5)th of (half less 2/7ths) of other expenditure] divided by [deceased's income as a percentage of household income]

The above tables are additive. That is, for a loss of support claim where the deceased left behind a wife and 2 children the total percentage of the deceased's income allocated to the dependants (where the surviving spouse has no income) is calculated as follows:

33.5% + 21.6% + 21.6% = 76.7%

Under the "two-parts, one-part" method, 66.7% of the deceased's income would have been allocated to the dependants whilst the spouse and 2 children were dependent.

Where the spouse's income is some percentage between 0% and 100% of the deceased's income, the dependency percentages can be determined by linear interpolation.

The estimated increase in support by number of dependants (in matters where the surviving spouse has no income) is estimated as follows:

Table 3: Estimated increase in support by number of dependants

Number of dependants	Percentage of deceased's income allocated to the dependants using "two-parts, 1-part" method	Percentage of deceased's income allocated to the dependants using new recommended method	Increase in loss of support over the period for which the number of dependants is applicable
Spouse only	50.0%	65.3%	30.5%
Spouse + one child	60.0%	72.1%	20.1%
Spouse + 2 children	66.7%	76.6%	15.0%
Spouse + 3 children	71.4%	79.9%	11.8%
Spouse + 4 children	75.0%	82.3%	9.8%
Spouse + 5 children	77.8%	84.2%	8.3%

The Statistics South Africa Income and Expenditure of Households for 2005/2006 provided data for 10 expenditure deciles. The average annual expenditure at the lower decile, second decile, third decile, fourth decile, fifth decile, sixth decile, seventh decile, eighth decile, ninth decile and upper decile were respectively R 5,749; R 9,784; R 13,185; R 16,691; R 20,831; R 26,536; R 35,581; R 53,788; R 96,851 and R 282,119. The afore-mentioned annual expenditure is assumed to be in 1 March 2006 money terms, mid-way through the sample period.

There were no major variations in expenditure patterns between deciles. It is therefore proposed that for incomes that result in expenditure of up to R 282,119 per annum in 1 March 2006 money terms or an estimated R 425,881 per annum in 2012 money terms; the above approach be adopted.

It is not possible to comment on expenditure patterns above the average expenditure in the upper decile. Hence, caution must be exercised in applying the above approach to such cases. For especially wealthy households, where for example property is not bonded and "other" expenditure is a significant portion of total expenditure; the above formula-based approach will tend to the "two-parts, one-part" method.

The above approach attempts to use an objective expenditure survey coupled with reasonable assumptions to produce a formula so as to dispense with evidence concerning "indivisible expenses." Whilst the Courts have acknowledged the existence of indivisible expenses [see *Legal Insurance Co. Limited v Botes* 1963 (1) SA 608 (A) and *Nochomowitz v Santam Insurance Co. Limited* 1972 (3) SA 640 (A)], there has been a general reluctance to accept anything other than the "two-parts, one-part" method due to unreliable evidence concerning these expenses.

Failure to deny some adjustment to the "two-parts, one-part" method for indivisible expenses, is failure to place each dependant in the same financial position as they would have been had the wrongful death not occurred.