PATRIMONIAL DAMAGE REVISITED

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PATRIMONIUM

- HIEMSTRA : ESTATE/ PROPERTY
- VERMOË (lett vaderlike erfgoed)
- UNIVERSTAS OF RIGHTS, DUTIES, OBLIGATIONS AND EXPECTATIONS
- POSITIVE AND NEGATIVE ELEMENTS
- POSITIVE: PATRIMONIAL RIGHTS/EXPECTATIONS/BENEFITS
- NEGATIVE: PATRIMONIAL DEBTS/EXPECTATIONS

PATRIMONIAL DAMAGE

- **REDUCTION IN PATRIMONIUM**
- DIMUNITION OF UTILITY VALUE OF A POSITIVE ELEMENT
- OF PATRIMONIUM
- OR CREATION OR INCREASE OF A DEBT
- LOSS OR REDUCTION IN VALUE OF PATRIMONIUM
- **DAMAGE** IS INFRINGEMENT OF PATRIMONIUM
- WRONGFUL ACT

PATRIMONIAL DAMAGE

- COMPARISON OF EXISTING PATRIMONIAL POSITION
- WITH PATRIMONIAL POSITION THAT WOULD HAVE EXISTED WITHOUT THE WRONGFUL ACT / OMISSION
- **WRONGFUL ACT / OMISSION**: INFRINGEMENT OF A RIGHT
- OR BREACH OF A DUTY
- WITHOUT LEGAL JUSTIFICATION
- CRITERION OF OBJECTIVE REASONABLENESS: BONI MORES
- WHAT SOCIETY CONSIDER REASONABLE, FAIR AND JUST

PATRIMONIAL DAMAGE

- WHY IS IT IMPORTANT TO KNOW ABOUT THIS IN MEDICO-LEGAL REPORTING ?
- IT`S CRITICAL AS IT FORMS THE OBJECTIVE, QUANTIFIABLE FOUNDATION OF A CLAIMANT`S RECOVERY
- IT DIRECTS THE QUANTIFIABLE CALCULUS OF THE CLAIM
- THE MEDICO-LEGAL EXPERT`S REPORT ACT AS THE RAW DATA FOR LEGAL PRACTITIONERS AND ACTUARIES TO CALCULATE EXACT FIGURES

PATRIMONIAL DAMAGE

- COURT DECIDES ON BASIS OF OBJECTIVE CROSS-REFERENCED DATA.
- NO VAGUE ASSERTIONS
- ONLY CLEAR CLINICAL EVIDENCE
- BASED ON PRESENT ASSESSMENT AND PRECISE PROGNOSIS
- EXPERT PROVIDES COURT WITH NECESSARY FACTS
- ACCURATELY RESTORE THE PLAINTIFF`S PATRIMONIUM / ESTATE
- POSITION IT WOULD HAVE BEEN HAD THE WRONGFUL ACT NOT OCCURRED

PATRIMONIAL DAMAGE WORKED OUT



SUM-FORMULA APPROACH

CONTRASTING 2 SCENARIOS

CLAIMANTS CURRENT COMPROMISED FINACIAL POSITION POST INJURY

HYPOTHETICAL POSITION THE CLAIMANT WOULD HAVE ENJOYED BUT FOR THE INJURY

RELEVANT LEGISLATION

RAF ACT 56/96 – SOCIAL SECURITY FOR MVA VICTIMS – FAULT BASED PROTECTION

COIDA ACT 130/93 – OCCUPATIONAL INJURIES – NO FAULT PROTECTION

CONSUMER PROTECTION ACT 68/08 – INJURY CAUSED BY DEFECTIVE PRODUCT – NO NEED TO PROVE NEGLIGENCE

VICTIM CHARTER - CHARTER OF RIGHTS (PARLIAMENT 2004 – SECTION 234 CONSTITUTION) – INJURIES CAUSED BY CRIME)

WHAT TO ASK BY MEDICO-LEGAL

PRACTIOTIONER COMPOSING REPORT ABOUT EXPENSES

PAST EXPENSES – REASONABLE

TRANSPORT TO HOSPITAL – AMBULANCE, HELICOPTER

TRANSPORT COSTS FOR FOLLOW-UP VISITS

HOSPITAL COSTS

CO-PAYMENTS

DEBT – DOCTORS, PHYSIOTHERAPY, ADDITIONAL HELP

WHAT TO ASK ABOUT WORK ?

LOSS OF EARNINGS

TEMPORARY DISABILITY PERIOD

FINANCIAL COMPENSATIO N RECEIVED

LIKE - **SALARY** PART OR FULL

SICK LEAVE PERIOD

UIF - HOW MANY PAYMENTS

SASSA - HOW LONG

INSURANCE POLICIES PAID OUT

IOD 75% FOR 3 MONTHS

WHAT TO ASK ?

LOSS OF EARNINGS



ARE THEY ABLE TO DO THE SAME TYPE OF WORK ?



IS LIGHT DUTY ADVISED UNDER CIRCUMSTANCES ?



HOW LONG DID THEY STAY OF WORK ?



SALARY THE SAME OR LESS AFTER THE INJURY ?



DECIDE HOW LONG WAS **REASONABLE SICK LEAVE PERIOD** ON ACCOUNT OF CLINICAL PICTURE AND YOUR EXPERIENCE

WHAT TO ASK ?

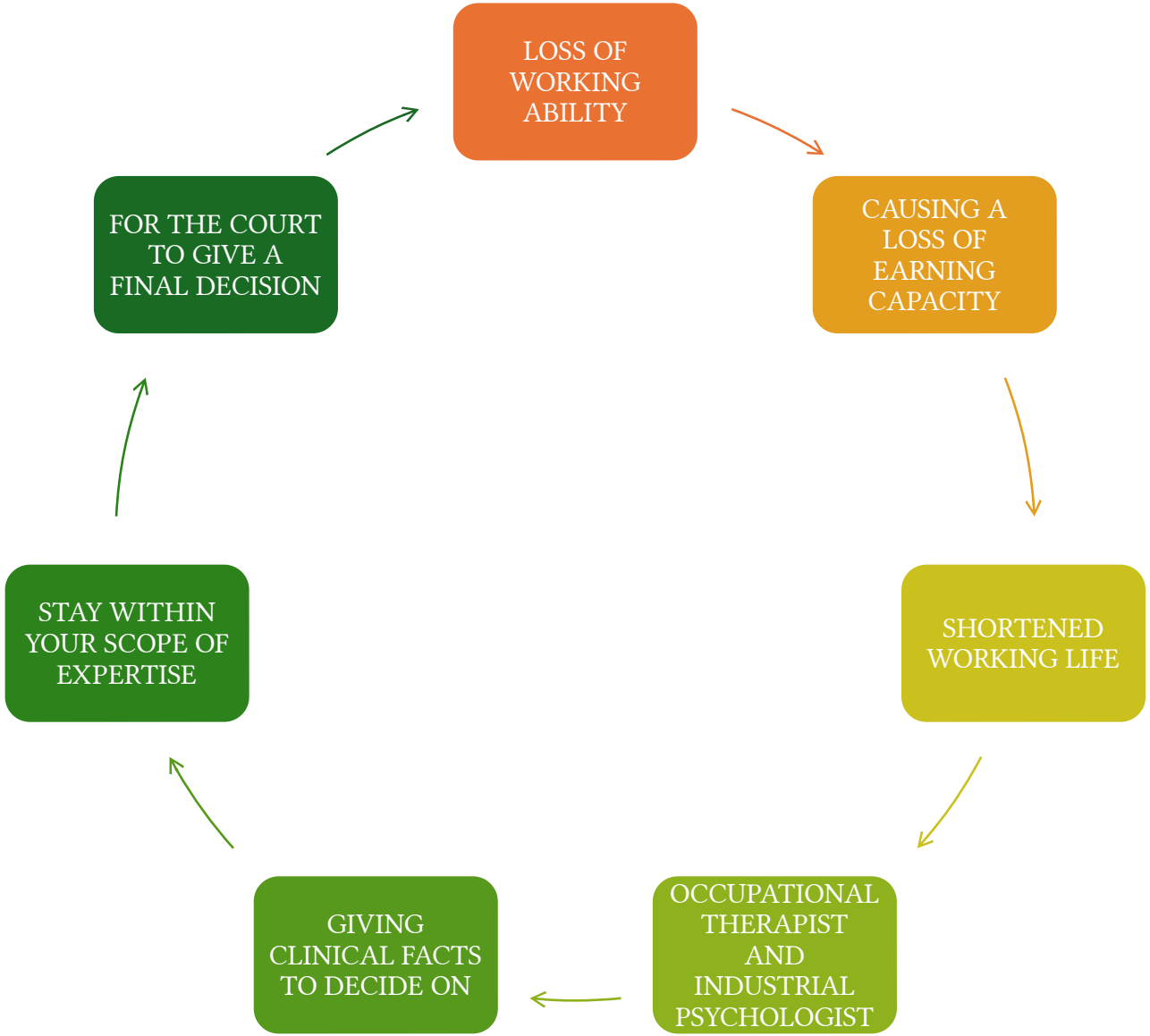
FUTURE LOSS OF EARNINGS

DURING MEDICAL TREATMENT

OPERATIONS – HOW LONG OFF DUTY

WHAT TO DECIDE

LOSS OF WORKING ABILITY



WHAT TO DECIDE

FUTURE MEDICAL EXPENSES

- SPECIAL INVESTIGATIONS
- CONSULTATIONS OTHER SPECIALISTS
- YOUR FEES APROXIMATE
- PHYSIOTHERAPY
- OCCUPATIONAL THERAPY
- ORTHOTIST/PROSTHETIST
- DIETICIAN

WHAT TO DECIDE

OPERATIONS

- YOUR FEE
- TYPE OF OPERATIONS
- ORIGINAL ONES ,REVISIONS AND FOLLOW UP PROCEDURES
- WILL IT IMPROVE THE PATIENT`S CONDITION
- PAIN AND SUFFERING WITH THESE OPERATIONS
- FUTURE LOSS OF INCOME EACH OPERATION
- CHANGE IN WHOLE PERSON IMPAIREMENT
- ESTIMATED COST PER OPERATION

CONCLUSION

- PROPER DOCUMENTS STUDY
- PROPER INTERROGATION
- PROPER INVESTIGATION
- PROPER PROFESSIONAL CONCLUSIONS
- BASIS TO WORK OUT FOR OTHER PROFESSIONALS WHAT THE DAMAGES ARE
- SUM FORMULA TO WORK OUT PATRIMONIAL DAMAGE
- WORK OUT COMPENSATION

COURT DECIDES

APPELLANT`S CASE

DEFENDANT`S CASE

AMOUNT OF MONITARY VALUE

PATRIMONIAL DAMAGE

PECUNIA NON OLET

- **MONEY DOESN`T SMELL**
- VESPASIANUS SAID TO HIS SON TITUS

- TAX MONEY COLLECTED OF URINE OF ROME`S PUBLIC TOILETS
- TITUS FOUND IT DISGUSTING AND BENEATH HIS DIGNITY
- VESPASIANUS ASKED TITUS TO SMELL A GOLD COIN
- ASKED IF IT SMELLED BAD
- TITUS REPLIED: IT DIDN'T
- VESPASIANUS: **ATQUI EX LOTIO EST**
- YET IT COMES FROM URINE

THANK YOU

