

**DISTINGUISHING BETWEEN PRIVATE LAW AND SOCIAL-SECURITY LAW IN  
DEDUCTING SOCIAL GRANTS FROM CLAIMS FOR LOSS OF SUPPORT**

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**SUMMARY**

This article attempts to highlight the potential danger in applying private-law principles to social-security law in deciding whether or not social grants should be deducted from awards for damages. Typically, this issue comes to the fore where a damage-causing event, such as death, sets into motion a system that provides for the payment of social benefits, damages or both. In social-security law, the receipt of more than one social benefit is called "double dipping", whereas in private law the problem of double compensation is addressed by applying the collateral-source rule. In some instances the applicable legislation clearly prescribes the deduction or not of the social benefit, but unfortunately our legislation is not always clear on this issue and this can best be illustrated by two recent conflicting decisions in *Makhuvela* (SGHC) and *Timis* (SCA). In *Makhuvela* the court held that a foster-care grant should be disregarded in calculating the award for damages, *inter alia* because the child will never have a claim to the grant. In *Timis* the SCA distinguished the facts from *Makhuvela* and held that the child-support grants received by the mother after the father's death are directly linked to the death of the father and should therefore be deducted from her claim for loss of support. It is submitted that although the outcome of the *Timis* decision is correct, the court should have incorporated the means test into the process of deciding if the grant should be deducted from the compensation. A two-phase approach is suggested: first determine if

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the receipt of the grant is directly linked to the death of the breadwinner, and secondly determine how the grant and the subsequent settlement paid by a wrongdoer will affect the *circumstances of a particular individual* or family. The objectives in social-security law differ from the objectives in the law of damages and therefore the principles applied in cases of double dipping cannot be equated with those applied in cases of collateral benefits.

**KEYWORDS:** social-security law; social grants; child-support grant; foster-care grant; double dipping; double compensation; compensating advantages; collateral-source rule.