
MOTOR VEHICLE ACCIDENTS

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Introduction

There are many risks involved in driving motor vehicles. There is the risk of injuries to the drivers of the vehicles, the passengers in the cars and pedestrians, as well as the risk of damage to the vehicles or things inside the vehicles.

If a person has suffered damages to their property (to the vehicle or things inside the vehicle) as a result of a motor vehicle accident, then they can claim compensation from the driver of the vehicle who allegedly caused the accident. If a person is injured or a breadwinner of a family dies in an accident they can claim against the Road Accident Fund (RAF). The person making the claim will have to prove that the driver of the vehicle was negligent and that this negligence caused the motor vehicle accident. So, people involved in a motor vehicle accident could have the following claims:

- A claim for damages to the vehicle and property. In this case the person must claim from the driver whose negligence caused the accident or from the driver's private insurance (if the driver was insured)
- Drivers, passengers and pedestrians who were injured in the motor vehicle accident caused by someone's negligence can claim damages from the Road Accident Fund (RAF) in terms of the *Road Accident Fund Act*.

THE ROAD ACCIDENT FUND (RAF)

The RAF is a fund set up in terms of the *Road Accident Fund Act 56 of 1996, (as amended by Act 19 of 2005)*. It is funded by a levy/tax which is included in the price of petrol and diesel which is sold in South Africa. This is known as a fuel levy. Everyone who buys petrol or diesel pays a little extra for each litre of fuel and this levy goes to the RAF.

CLAIMS FOR PHYSICAL INJURIES TO PEOPLE

Road accidents in all vehicles are automatically covered by the *Road Accident Fund Act*. In terms of the Act, the RAF covers motor cars and motorcycles but not trains or bicycles.

The Road Accident Fund is a Fund that has been established by the *Road Accident Fund Act*. The main purpose of the Fund is to limit the liability of the negligent driver of a motor vehicle. The Fund steps into the shoes of the person who has negligently caused the accident and pays any compensation owing to road accident victims.

Note: The Fund is only liable for *bodily injuries* to either a driver, passenger and in some cases a pedestrian.

A claim can only be made against the Fund if the person who caused the accident was negligent and at fault. Therefore, if a person is injured and they are not to blame for the accident, (in other words, the person injured was not the negligent driver), then they can claim compensation from the RAF.

If the breadwinner of a family is injured or dies in an accident caused by the negligent driving of a motor vehicle by another person, the dependants of the breadwinner can also claim against the Fund for loss of support. There are however cases where the claim for compensation can be limited in respect of the dependants.

CLAIMS FOR DAMAGE TO VEHICLES OR GOODS

The Road Accident Fund does not cover damage to vehicles or things inside the vehicles, such as clothes or watches. Damages for vehicle repairs or broken things must be claimed from the person who caused the accident, or their insurance company.

Extra motor vehicle insurance that you buy from a private insurance company is not automatic. You choose whether you want to pay for extra insurance, for example, fire and theft insurance, balance of third party, and comprehensive insurance. You can

then claim from your own insurance company for your own losses, if somebody else caused the accident. If you cause an accident and you have insurance, you can ask the insurance company to pay someone else for the loss that you have caused to them.

Third party claims

WHAT IS A THIRD PARTY CLAIM?

A third party claim is a claim by a person, or the dependants of a person, who suffered a bodily injury or who died as a result of a motor vehicle accident caused by the negligent driving of a motor vehicle. Third party claims are made to the Road Accident Fund, which then automatically steps into the shoes of the negligent driver who caused the accident and pays the injured person for any injuries suffered.

WHO CAN CLAIM COMPENSATION FROM THE ROAD ACCIDENT FUND?

You can claim compensation from the Road Accident Fund if:

- You are injured as a result of a motor vehicle accident caused by the negligent driving of a motor vehicle driven by another person
- You are the dependant of a person (the breadwinner) who was injured or died in a motor vehicle accident caused by the negligent driving of a motor vehicle by another person
- You are a close relative of the deceased in respect of funeral expenses
- You are under 21 years but you must have the support of a parent or legal guardian

You can claim if you were involved in an accident as a driver or a passenger in a motor vehicle or motorcycle, or if you were a pedestrian.

NEGLIGENCE

However, you will only get money from the Fund if you did not cause the accident. If you and the other driver were equally to blame for the accident, you will only be paid half of your damages. In the event that both drivers were negligent then the Fund will take into account the *Apportionment of Damages Act (No 34 of 1956)*. This Act allows the Fund to divide (also called apportion) the compensation so that it is a just and equitable amount that is awarded to the injured party.

If the accident was caused solely by your own negligence, you will not be entitled to claim from the Fund. This includes accidents where you were the only person and vehicle involved, for example if you drove into a pole.

You have to prove that somebody else was driving negligently before your claim will be paid. A driver will be negligent if you can prove on a 'balance of probabilities' that he or she did not drive the vehicle in a way in which a reasonable driver would have driven in the same circumstances.

In other words, if you suffered damages caused partly by your own fault and partly by the fault of another person, the court will reduce the amount of damages in its award equal to the percentage that it feels you contributed to the accident.

Sometimes it is not the driver of the vehicle who was negligent but rather the owner of the vehicle. Owners of vehicles should make sure that everything on the vehicle is working properly. If they do not and an accident happens because of this, then they are negligent. In this case, the driver has a third party claim.

EXAMPLE

Thami borrowed his employer's car to take some people to the town. The car had bad brakes but Thami didn't know about this. When Thami got to a stop street in the town he put on brakes, but the brakes didn't work. As a result Thami crashed into a lorry in front of him. Three people in the car and the driver of the lorry were injured. These people can all make third-party claims, because the owner of the car was negligent for not keeping the car in a roadworthy condition.

WHAT CAN YOU CLAIM FOR?

CLAIMS FOR BODILY INJURIES

If you are injured in an accident, you can claim for:

- *Your medical expenses*: money you paid for doctors and hospitals to treat you
- *Compensation* for pain, suffering and disfigurement (if your body is scarred by the accident)
- *Loss of earnings*, if you have not been able to work after the accident

CLAIMS FOR LOSS OF SUPPORT

If the breadwinner in the family dies in an accident caused by someone else, then the dependants of that person can claim for *loss of support*.

A *dependant* is someone who depends on someone else for food, clothes, shelter, and so on. You will only succeed with a third party claim as a dependant if the breadwinner had a legal duty to support you. For example, the widow of someone who dies could claim compensation for herself and the minor children of the deceased. But you wouldn't be considered a dependant of your friend who helps you with money every month.

WHO DO YOU CLAIM FROM?

The claim is against the Road Accident Fund (RAF). The Fund has offices in Pretoria, Randburg, Durban and Cape Town. A third party claim is not against the negligent driver nor the owner of the vehicle. The RAF 'steps into the shoes' of the driver/owner and pays on their behalf.

USING AN ATTORNEY

The RAF employs information officers at all branch offices of the RAF to help people with their claims free of charge. However if you wish to use an attorney they will charge for their services. If the attorney thinks that the claim will succeed, they might ask you for a deposit to cover the first costs. If the claim is successful, you can pay the attorney with some of your claim money. The RAF will also contribute towards the legal costs if your claim is successful. If the attorney thinks that the claim will not succeed, he or she should advise you not to go ahead with the claim. Then you only have to pay for the first consultation with the attorney.

At the first consultation with your attorney you should enquire about the legal costs involved. Don't wait until the end of the court case or settlement to consult with your attorney about how you are going to pay and how much it will cost you. If you think you cannot afford the legal costs involved, you should approach Legal Aid South Africa to apply for legal aid. Your attorney can help you to apply. You can also apply to the Law Society in your province and the law society will recommend that an attorney handle the matter on a pro bono basis (for free).

(See page 159 Applying for legal aid)

THE CLAIMS PROCEDURE

TIME LIMITS/PRESCRIPTION PERIODS

You must lodge the claim within three years from the date of the accident, if you know who caused the accident. If you don't know who caused the accident you have two years to claim. Whatever the case, your claim must reach the Road Accident Fund in time, or you will lose the right to claim. If the attorney leaves the claim too late, and you did not cause any delays, then you can institute an action against the attorney for not sticking to the time limits which resulted in your claim prescribing.

PREPARING TO CONSULT AN ATTORNEY

It will speed things up if you have certain details ready before you go to an attorney. These are:

- Your identity document (ID)
- The registration number of the car that caused the accident
- The police case number
- Details of the driver or the owner of the car
- Details of any witnesses to the accident, for example names and addresses, statements, and so on
- A hospital patient number

If the claim is by a dependant of the breadwinner who was killed in an accident, the following documents will also be needed:

- ID of the deceased
- Death certificate of the deceased
- Copy of inquiry, if available
- Copy of latest payslip
- Funeral expenses

DOCUMENTS YOU WILL NEED

If the attorney agrees to take the case, then you can help the attorney to get some of the necessary documents:

- A *medical report*, or if a person was killed in the accident you must get an inquest record (this is a record of a court enquiry into someone's death).
- A *charge sheet* from the police
- All *accounts, receipts and vouchers* to prove medical expenses and hospital expenses
- A *letter from the doctor*; the doctor will say how much you will pay for medical expenses in the future, because of the accident
- A *rough sketch* (drawing) of the scene of the accident
- The *name of the police station* where the accident was reported, the *police case number* and the *police report*
- A *letter from your employer* to say how much money you lost through unpaid wages, this is known as a loss of earnings certificate
- A *power of attorney from you* - this is a legal letter where you give permission for the attorney to make the claim on your behalf
- *Written consent* to the hospital (this gives your permission to the attorney and the Fund to look at your hospital records)

- An *affidavit* from the person who is claiming
- *Affidavits from witnesses* (people who saw the accident), if there are any
- *Salary advice slip and employment certificate* from the employer if you suffered a loss of income as a result of not working while you were recovering or if you were permanently disabled by your injuries

If you are claiming or are a witness, do not give a signed statement to anyone except your attorney.

WHAT COMPENSATION CAN YOU GET?

If your third party claim succeeds, you will be paid a certain amount of money by the Fund. The Fund pays 'special damages' and 'general damages'.

SPECIAL DAMAGES

This is money to pay for things that cost you money, for example:

- Hospital and medical accounts for treatment that you received since the date of the accident
- Hospital and medical accounts for treatment that you will need in the future (the RAF might undertake to 'pay' these costs in the future when you undergo medical treatment; you therefore pay up front and then claim from them)
- Wages/earnings that you already lost as a result of your injuries
- Wages/earnings that you will lose in the future as a result of your injuries
- Cost of someone to take care of you if you cannot do this yourself
- Financial support that you already lost because a breadwinner died
- Travelling expenses
- Financial support that you will lose in the future because a breadwinner is dead
- Funeral expenses (if the dependants of someone who died in a motor vehicle accident are claiming)

Damages for loss and support are limited to R228 430 per year, in respect of each deceased breadwinner, in the case of a claim for loss of support.

Damages for loss of income are limited to R228 430 per year.

This amount of damages paid for loss of support and loss of income is adjusted quarterly to keep up with inflation.

GENERAL DAMAGES

This is not money to pay accounts. This is money to try to make up for your suffering because of someone else's fault.

For example you can get general damages:

- For pain and suffering
- For shock
- Because you now have a disability as a result of the accident
- Because your face or your body was badly scarred (disfigured)
- Because you cannot do things that you could do before the accident, like play sport, have children (loss of amenities of life)
- Because your life may now be shorter (shorter life expectancy)

The claim for general damages is limited to 'serious injuries'. A registered medical practitioner will assess claims for general damages for pain, suffering and disfigurement in the case of bodily injuries to see whether they fall into the category of a 'serious injury'.

The RAF does not pay compensation for 'secondary emotional shock', for example, if you were not involved in the accident but you witnessed it. You do, however, still have a common law right to claim against the 'wrongdoer' in cases like this and you can go to an attorney or Legal Aid to exercise this right.

PASSENGERS

Passengers injured in a motor vehicle or motorcycle accident can claim for special and general damages from the RAF and there is no limit (as in the past) to what they can claim.

HOW LONG DOES IT TAKE TO PROCESS A CLAIM?

An attorney can issue a summons after 120 days have passed since the claim was lodged with the RAF. This gives the person handling the claim 120 days to finalise all the investigations.

When a summons is served on the RAF, the person handling the claim will usually ask your attorney for an extension of time which will be used to see if the claim can be settled without having to go to court. The time that it takes to finalise a claim often depends on how complicated the claim is and whether all the necessary information is available.

If the RAF decides to pay out a claim, they will make an offer to the attorney. The attorney has to get your consent before agreeing to the amount offered. If the offer is not accepted the matter will be negotiated or go to court. If the offer is accepted, a discharge form will be used which says how much is to be paid. You will have to sign the discharge form and only once the RAF has received this will it make the payment.

WHAT IS AN UNDERTAKING?

The RAF may issue you with an Undertaking which says it will compensate you for future medical and related expenses. These can be paid directly to you or to the medical service provider who is treating you.

Damage to your property

A third party claim does not cover damages to your property, such as:

- Damage to your car
- Damage to your other things, such as your watch, your clothes, or your suitcase
- Damage to your fence or to your house when someone drives off the road and into your house

If you want to claim money because your property is damaged, you must claim separately from the negligent driver or his or her insurance company and not from the RAF.

The *Compensation for Occupational Injuries and Diseases Act* says that you cannot sue your employer in a civil court for damages if you are injured on the job. But if your employer caused injury to you while you were not on the job, you can sue him or her. (See page 245 *Compensation Fund*)

WHAT HAPPENS IF YOU ARE NOT INSURED?

If you are not insured you will personally have to claim from the person who caused the damage to your vehicle or things. If your claim is for less than R15 000 then you can claim it in the Small Claims Court if there is one in your area.

(See page 122 *Small Claims Court*)

(See page 599 *Problem 2: A person's car is not insured and it is damaged in an accident*)

You may also institute a claim in the Magistrates' Court, it should however be remembered that you may only claim for a maximum of R200 00 in the Magistrates' Court. A claim in excess of R200 00 has to be instituted in the High Court. You will need an attorney to help you. *(See page 146 Civil claims)*

COMPREHENSIVE INSURANCE

Many people pay regular amounts of money (called 'premiums') to an insurance company (the 'insurer') which is used to pay insurance claims. Such insurance usually covers damage to motor vehicles and personal things such as clothes, bags and watches. You choose whether you want to pay for private insurance to cover things like fire, theft and damage to a vehicle. The damage can be a result of the driver of the vehicle which caused the accident being negligent, or of any other person being negligent.

For example, if you are involved in an accident and another person is at fault, then you can claim the cost of repairs for your vehicle from your insurance company. The insurance company might then claim from the person who caused the accident. If the person who caused the accident was also insured, then your insurance company will claim from that person's insurance company.

If the person who caused the accident was not insured, then your insurance company will claim the damages from the person him- or herself. If the uninsured person cannot afford to pay, then your insurance company will have to bear the loss.

If you cause an accident and you have insurance, you can also ask the insurance company to pay someone else for the loss that you have caused.

Motor vehicle accidents during the course and scope of your employment

If a motor vehicle accident happens while you are doing your job, then you can get compensation in terms of the *Compensation for Occupational Injuries and Diseases Act (COIDA)*. But if you are injured in a motor vehicle accident caused by someone else's negligent or unlawful driving, even if this is during his or her employment duties, then you can also lodge a third party claim with the Road Accident Fund. The money that you receive from the COIDA will be deducted from the third party payment. For example, if the RAF agrees to pay damages of R15 000, but the COIDA has already paid R10 000, then you will only get R5 000 damages from the Fund.

(See page 593 Third party claims)

Note: COIDA says you cannot sue your employer for damages if you are injured while on duty. (But if your employer caused injury to you while you were not acting during the course and scope of employment, you can sue him or her.) Therefore if a motor vehicle collision occurs while you are acting during the course and scope of your employment you will not be entitled to sue your employer in a civil court.

(See page 245 Compensation Fund)

PROBLEMS

1. Third party claim

Jeffrey is hurt in an accident while he was a passenger in a minibus taxi. In the accident he broke his leg. He was employed as a driver but now he is not able to do his job so he is dismissed. The accident was not the fault of the driver of the minibus in which Jeffrey was riding but it was caused by the negligence of another car which collided with the minibus taxi. Jeffrey wants to claim damages from the driver who caused the accident. What must he do?

WHAT DOES THE LAW SAY?

Jeffrey will have a third party claim for damages. *(See page 593 Third party claims)*

The claim will be for injuries to his body. He can claim special damages, such as a claim for hospital and medical expenses for the injury, a claim for wages that he lost, and a claim for wages that he will lose in the future.

He can also claim general damages, such as a claim for pain and suffering, and a claim for shock.

WHAT CAN HE DO?

1. Jeffrey must consult with an attorney as soon as possible so that the claim can be lodged with the Road Accident Fund. *(See page 158 Using an attorney)*
2. The claim must reach the Fund within three years after the accident if he knows the details of the driver who caused the accident, or within two years if he doesn't know who the driver was.
3. He must take the following information with him when he goes to see an attorney:
 - His ID document
 - The registration number of the car that caused the accident
 - The police case number
 - The name and address of the driver of the car
 - The names and addresses of any witnesses
 - His hospital patient number
 - Salary advice slip with information of the employer
4. The attorney will tell him what other documents to get if necessary.

2. A person's car is not insured and is damaged in an accident

Tom owns a car which is not insured. His brother-in-law Simon borrows the car and has an accident which causes about R5 000 worth of damage to the car. The accident was Simon's fault. He refuses to pay for the repairs. What can Tom do?

WHAT DOES THE LAW SAY?

Tom was not injured in the accident and no-one died. So he cannot make a third party claim.

His car is not 'comprehensively insured' so he cannot claim from an insurance company to cover the cost of the damage to the vehicle. If his car had been comprehensively insured he could have claimed for the damages from the insurance company. They would then claim against the person who caused the accident.

Tom will have to sue Simon in one of the civil courts to get the money. Because the claim is for less than R15 000, he could sue him through the Small Claims Court. This is much cheaper and quicker than going through the Magistrate's Court or High Court. He also does not need an attorney to do this.

*(See page 597 Damage to your property and What happens if you are not insured).
(See page 598 Comprehensive insurance)*

WHAT CAN YOU DO?

Ask Tom to get at least two official quotations from different garage dealers, for the repairs to his car. Help him to lodge a claim at the Small Claims Court in your area and explain the procedures to him. *(See page 150 Small Claims Court)*

If there is no Small Claims Court, then Tom can sue Simon through the Magistrate's Court. He will have to go to an attorney to do this.

CHECKLISTS

Particulars to take for a third party claim

- The name and address of the driver of the vehicle that caused the accident
- The registration number of the vehicle that caused the accident
- Describe how the accident happened.
- Were you injured in the accident?
- Have you been to see a doctor?
- Have you been to see an attorney?
- Have you applied for legal aid to pay for an attorney?

If your car or other property is damaged in an accident

- Was your car damaged in the accident?
- Was any other property damaged in the accident?
- Was your car comprehensively insured?
- Describe how the accident happened?
- What is the name and address of the person driving the other car?
- Who was driving your car when it was damaged? (Give the person's name and address)
- If your car was damaged in the accident, have you got quotations from a panel beater or garage?
- What will it cost you to repair your car (or anything else that was damaged)?
- Can you bring your claim in the Small Claims Court?
- Have you been to see an attorney if you can't bring your claim in the Small Claims Court?
- Have you applied for legal aid if you need to use an attorney?