



## 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 a 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*.

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### 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 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.

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## **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 old, 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 cyclist or a pedestrian who was injured as a result of an accident involving a motor vehicle.

## **NEGLIGENCE**

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. If 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 they did not drive the vehicle in a way 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.*

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## 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 has 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.

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## Who do you claim from?

The claim is against the Road Accident Fund (RAF). The Fund has offices in Tshwane, Randburg, eThekweni and Cape Town. A third-party claim is not against the negligent driver or the owner of the vehicle. The RAF 'steps into the shoes' of the driver/ owner and pays on their behalf.

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## 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, they 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. (*See pg 257: Applying for legal aid*)

You can also apply to the Legal Practice Council for a pro bono (free) attorney. Go to their website, [www.lpc.org.za](http://www.lpc.org.za), and download a pro bono request form. To qualify for free legal support, you will need to comply with a 'means test' (a maximum monthly income or no income) and have a legal problem with merit. The Legal Practice Council will refer you to an attorney who will assist you free of charge.

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## 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 that resulted in your claim prescribing.

### **WHAT YOU MUST DO IMMEDIATELY AFTER A MOTOR VEHICLE ACCIDENT**

There are important actions to take if you have been involved in a motor vehicle accident. This is what you need to do:

- Stop
- Help anyone who is hurt
- Find out what the damage is
- Get all relevant information
- Report the accident to the police
- Do not interfere with the evidence

#### **STOP**

If you are involved in an accident where someone is injured or dies or which causes damage to property, you are required by law to stop your vehicle. It is a crime not to stop after an accident, and you could be fined up to R36 000 or sent to prison for up to nine years, or both.

You don't have to stop or report an accident for example, if you crash into a tree and only damage your car and you are the only one that gets hurt. But, if you damage someone else's property you must stop and report the incident at the nearest police station.

When you stop, you should switch on your hazard lights to warn other traffic of the accident.

#### **HELP ANYONE WHO IS HURT**

After you have stopped, you need to find out if anyone is hurt and help them as much as you can. You also need to call emergency services. These are the numbers you can call:

- 084124 National ER N24-hour emergency
- 10177 to call an ambulance
- 10111 to call the police

If you don't know any first aid, be careful not to do anything that might make the injury worse. Unless you need to go for help, you must stay at the scene until a police officer says you can leave. You can be criminally charged for failing to help anyone hurt in the accident.

#### **GET ALL RELEVANT INFORMATION**



You must provide your name, address and vehicle registration number to anyone who has reasonable grounds for asking for this.

If you are involved in the accident, try to get the following information from all parties involved and witnesses:

- Full names
- ID numbers
- Addresses
- Telephone details
- Vehicle registration numbers
- Descriptions of the vehicles involved in the accident
- Details of police and traffic officers and ambulance staff
- Details of tow truck personnel.

To help you remember what happened, record the following as soon as possible:

- Write down the date, time, and address of the accident, the weather and road conditions when the accident happened and how the accident happened.
- Take photographs or a video of the scene of the accident from different angles, the surrounding areas, the injuries and any damage to property. Or draw a sketch plan of the accident scene.
- If the person driving the motor vehicle who caused the accident is driving a motor vehicle on behalf of their employer, write down the details of the driver and the employer.

This information will help you if you want to make a claim against your insurance or against the Road Accident Fund or if you want to claim the costs of repairs from the other party. At a later stage, you or your lawyers may need a copy of the accident report that is filled out by the police.

## **REPORT THE ACCIDENT TO THE POLICE**

Report the accident to the police or an authorised office of a traffic officer within 24 hours with your driving license.

You have to give your name, address and vehicle registration number to the police or traffic officer, either at the scene of the accident or at a police station or traffic office when you report the accident. You must also show your driver's license. Write down the name of the police officer you spoke to

and the accident report (AR) reference number. The AR number is needed for any insurance claim or third-party claim that you make in the future.

If you are hurt and can't report the accident immediately, you must do it as soon as possible and explain why there has been a delay in reporting the accident. It is an offence not to report an accident in which another person's property has been damaged or in which another person is injured, even if neither of the drivers intends to take legal action.

When two cars are involved in a collision, and nobody is injured, the drivers may decide to pay for their repairs and not claim against each other. In such a case, it is not necessary to call the police to the scene of the accident, but it must be reported by both drivers at a police station within 24 hours.

### **DO NOT INTERFERE WITH THE EVIDENCE**

You must NOT drink any alcohol or take any drugs unless it is on doctor's orders. If the police ask you to go for a medication examination, you must not drink any alcohol or take any drugs that have a narcotic effect before the examination and before you have reported the accident.

If anyone is injured in the accident, the vehicles may not be moved before the police or traffic officer has arrived and said that the vehicles can be moved. If the accident blocks the road, the vehicle may be moved enough to allow other vehicles to pass, but only after you have clearly marked the vehicle positions (for example, with chalk or spray paint).

### **VISIT A DOCTOR IF YOU HAVE BEEN INJURED**

If you have been injured, visit a doctor immediately, even if the injury is not so serious.

### **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 permit 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.

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## 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 of support are limited to R357 565 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 R357 565 per year.

These amounts of damages paid for loss of support and loss of income are 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 sports, 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 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 to what they can claim.

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### **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.

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### **What is an undertaking?**

The RAF may issue you with an Undertaking that 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 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 their 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 them. (See pg 394: *Compensation Fund*)

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### 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 R20 000, then you can claim it in the Small Claims Court if there is one in your area. (See pg 242: *Small Claims Court*; See pg 957: *Problem 2: A person's car is not insured and 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 000 in the Magistrates' Court. A claim over R200 000 has to be instituted in the High Court. You will need an attorney to help you. (See pg 236: *Civil claims*)

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### 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 that 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. 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 their 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 pg 956: *Problem 1: Dealing with a third-party claim*)

### 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 them.) 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 pg 394: **Compensation Fund**)

## Problems

### 1. Dealing with a third-party claim

Jeffrey is injured 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. 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 shock claim.

#### WHAT CAN HE DO?

1. Jeffrey can make a claim as soon as possible so that the claim can be lodged with the Road Accident Fund.
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:
  - a. His ID document
  - b. The registration number of the car that caused the accident
  - c. The police case number
  - d. The name and address of the driver of the car
  - e. The names and addresses of any witnesses
  - f. His hospital patient number
  - g. Salary advice slip with information about the employer
4. The attorney will tell him what other documents to get if necessary.



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## 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 R20 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 pg 954: Damage to your property; See pg 954: What happens if you are not insured?; See pg 954: 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 pg 242: 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?