

WHAT TO DO IF YOU ARE INVOLVED IN A MOTOR ACCIDENT

With the alarming increase in road accidents over our recent festival season, and deaths and injuries of people involved in Road Accidents either as drivers passengers or pedestrians and with the limitations imposed on the amounts which can be claimed as compensation by Road Accident Victims, it is deemed essential that you should know what steps to take if, most unfortunately you, or a close family member or friend are injured or if a loved one is killed in a Road Accident and this article sets out the steps you should follow.

1. As soon as is humanly possible after the accident record the following information of all drivers, passengers, pedestrians involved in the accident, of witnesses to the accident, of Police or Traffic Officials on the scene of the accident or to whom the accident is reported, ambulance officials and tow truck personnel who are charged with removing damaged vehicles from the accident scene:-
 - 1.1. Full names;
 - 1.2. Identity numbers;
 - 1.3. Addresses both residential and businesses;
 - 1.4. Telephone numbers work home and cell phone numbers;
 - 1.5. Vehicle registration letters and numbers;
 - 1.6. Description of the vehicles involved;

- 1.7. Date time and full address of the accident scene (eg 31st December 2008, at 11h15 at the intersection of Westcliff Drive and Valley Roads Westcliff Johannesburg.
 - 1.8. Statements from witnesses and parties involved in the collision as to how it occurred;
 - 1.9. Photographs of the scene of the accident the damaged vehicles and the injured parties;
 - 1.10. A sketch plan of the accident scene;
 - 1.11. Report the accident to the nearest Police Precinct within 24 hours of the accident and obtain the case number allocated to this accident;
 - 1.12. If injured repair to a doctor or hospital facility as soon as possible after the accident;
 - 1.13. Ensure the doctor has a record of your visit and the treatment given and obtain his details.
2. In the event that you decide to lodge a Claim with and-against the Road Accident Fund, you will need the following documents:-
- 2.1. The Accident Report of the accident completed by the Police or Metro Police;
 - 2.2. A medical report completed by the treating doctor on the statutory RAF claim form;
 - 2.3. Medical records and clinical notes depicting the injury sustained and the treatment given and accounts;

2.4. The duly completed claim form duly signed;

2.5. If the victim died as a result of his injuries:-

2.5.1. His identity document;

2.5.2. His death certificate;

2.5.3. Certificate of his earnings from his employer;

2.5.4. Identity documents and the unabridged birth certificates of those to whom the deceased owed a duty of support (eg surviving spouse and children);

2.5.5. Accounts for cost of funeral and burial;

2.5.6. Post mortem report or inquest report confirming cause of death.

2.6. It is appreciated that you may not on your own without assistance be able to procure all of the above, and we, as your Attorney are able to provide you with our assistance and expertise in obtaining all of the above.

3. The Road Accident Fund is an entity set up by the Government to pay monetary compensation to people injured in Road Accidents and to Dependents of those killed in Road Accidents arising out of the negligent driving of Motor Vehicles in South Africa. The Road Accident Fund obtains its Funds from the fuel levy imposed on motorists every time they fill up with petrol and diesel.
4. A question most frequently asked is does a Road Accident Victim need an Attorney to claim from the Fund on his behalf? The Road Accident Fund employs information Officers at all of its branches and offices to assist people who want to claim from the Fund and this service is offered free of charge. An

Attorney is permitted to assist a victim and is permitted to charge for such services. If you are a family member are injured or killed in a motor accident, you are most strongly urged to consult an Attorney and mandate him or her to represent you. In this regard please telephone us as soon as possible to enable us to give you our assistance.

5. A further frequently asked question is how soon after the accident must the claim be lodged?
 - 5.1. If the victim is injured or killed in a motor accident where the driver and the vehicle driven responsible is identified, the claim must be lodged with the Road Accident Fund by no later than three years from the date upon which the accident occurred.
 - 5.2. If the victim is injured or killed in a motor accident where the driver and the vehicle driven responsible is unidentified, the claim must be lodged with the Road Accident Fund by no later than two years from the date upon which the accident occurred.
 - 5.3. In all of the above cases, provided that the claim has been lodged within the time limits set out, the summons must be issued and served on the Fund within five years from the date upon which the accident occurred.
 - 5.4. If the victim is a minor under the age of 18 prescription does not apply save to state that prescription will commence to run from the date upon which the minor attains the age of 18.
6. The person entitled to make a claim against the Road Accident Fund is anyone who is injured in a motor accident provided he or she is not the driver of the vehicle whose negligent driving caused the accident. A dependant of a person who died in the accident provided that the deceased is not the one

whose negligent driving caused the accident, can also claim for the loss of support he has been deprived of and anyone who paid for the funeral and burial of a deceased victim can claim for the funeral expenses.

7. Under the latest amendments to the Road Accident Fund Act which apply to all accidents occurring after 1st August 2008 , Road Accident Victims can claim:-
 - 7.1. Medical expenses both past and future limited to hospital expenses at the rate one would pay at a Public Health facility;
 - 7.2. Funeral expenses incurred by the Party who paid the funeral expenses for the deceased;
 - 7.3. Loss of earnings both past and future capped at a maximum of R167000-00 per annum;
 - 7.4. General damages for pain suffering loss of amenities provided it can be shown that the injuries sustained results in a general body impairment of 32% in accordance with the standards and guidelines laid down in the American Medical Association Guidelines;
 - 7.5. No compensation is recoverable from the wrongdoer and damages for emotional shock suffered by a close relative who witnessed the accident can be claimed.

8. It is believed by the vast majority of Attorneys that these limitations are constitutionally inappropriate. An Application to Court for an Order declaring these limitations unconstitutional has been launched by the Law Society and other interested role players and should be determined by the Court in the near future. In the meantime these limitations are in place and it is reiterated that these apply to victims injured or killed in Road Accidents after 1st August 2008.

9. A further question frequently posed is what happens if I am injured in an accident land up in a hospital and am approached by a person who claims to be a representative of an Attorney ready to take on your case and exerts pressure on you to sign documents instructing such Attorney to take on your case? Our strong recommendation is for you not under any circumstances to sign such documents. Rather yourself or through a family member make contact with us and we will advise you appropriately as we are well versed with appropriate expertise in these matters. Remember the choice of an Attorney is your inalienable choice and you should be able to make such choice freely voluntarily and appropriately.

10. Finally you would do well to remember the following:-

- 10.1. Damage to your vehicle cannot be claimed from the Fund. You can claim these directly from the negligent driver and if you are comprehensively insured contact your insurers immediately;
- 10.2. The Road Accident Fund has the right to refer you to a medical expert of its choice for an independent assessment and may call you to an interrogation. At such an interrogation you may be represented by your Attorney.
- 10.3. If you are partially to blame for the accident, you may find that the amount of your Claim may be apportioned by the extent to which you are held to be negligent.

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LESLIE M KOBRIN

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