

Road Accident Fund Act 56 of 1996 (RAFA)

Topic: Roads and Public Liability

IN A CALABASH

Introduction

Road transportation is the major mode of transportation in South Africa. Despite a number of road laws which seek to regulate and control the use of vehicles on South African roads, accidents occur daily. Road accidents have devastating effects. People are killed, injured and/or disabled and, in consequence, are unable to work or support their families. In order to ensure that road accident victims and their families are compensated, a compulsory no-fault based insurance fund was established. This fund is known as the Road Accident Fund (RAF) and was established by the Road Accident Fund Act 56 of 1996 (RAFA). The RAF provides compulsory insurance cover to all users of South African roads against injuries sustained or death arising from accidents involving motor vehicles within the borders of the country. The RAF applies to the South African public and all foreigners within the borders of the country. The RAF provides two types of cover, namely personal insurance cover to road accident victims or their families and indemnity cover to those people who cause accidents.

Objectives of the Act

The RAFA is the law, which regulates and administers the compulsory road accident insurance fund known as the RAF.

The RAF has established a juristic entity known as the Road Accident Fund (fund).

Application of the Act and its implication to Tourism

The RAFA applies to all persons, including tourists, who—

- drive or operate or own a vehicle operated on South African roads; and
 - may be involved in an accident on South African roads.
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Summary of the provisions of the Act

The object of the fund is to ensure that compensation is paid to victims who have suffered loss or damage which was wrongfully caused by a person driving a motor vehicle on South African roads.

The fund is tasked with the investigation and settling of claims arising from loss or damage caused by the driving of a motor vehicle, whether or not the identity of the owner and/or the driver of the vehicle has been established.

Fault

The RAFA is based on fault system. The fund is only obliged to pay compensation to a third party claimant in a motor accident if injury or death was due to negligence or another wrongful act of the driver or owner of the motor vehicle involved in the accident.

In establishing fault, the common law rules of delict as developed and interpreted by the courts will be applied.

In order for a third party claimant to succeed with a claim against the fund, it must be established that the damage or loss suffered did not result from that claimant's own negligence or other wrongful act or omission but was rather due to the negligence of another driver or owner of a car.

If a third party claimant or the person on whose behalf they are claiming was solely to blame for the accident, no claim will lie against the fund.

Liability of fund and agents

In the case of any person submitting a claim for compensation arising from the driving of a motor vehicle, whether the identity of the owner or the driver of same is known or not, the fund or an agent must—

- compensate the third party for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee.

Compensation only for bodily injury



Note: The obligation of the fund to compensate a third party will be in respect of non-pecuniary loss incurred by the third party, which amount must be limited to compensation for a serious injury and paid by way of a lump sum.

The fund is only liable to pay compensation for loss or damage suffered as a result of bodily injury or death. The fund does not pay for any loss or damage to property, such as damage to motor vehicles or goods conveyed in a vehicle.

Accidents within South African borders

The fund is only liable for loss or damage caused by the negligent or unlawful driving of a motor vehicle at any place within South Africa. It is not liable for losses or damage arising outside the borders of South Africa.

Losses and damages compensated

The compensation paid by the fund is determined by the RAFA and regulations.

Damages paid by the fund are categorised as either special damages or general damages.

Special damages are paid for pecuniary losses that have been or will be suffered, such as–

- past and future hospital, medical and related expenses;
- past and future loss of earnings;
- past and future loss of support; and
- funeral expenses.

General damages (non-pecuniary loss) are paid as compensation for loss of amenities of life, pain and suffering, disability and disfigurement to persons who have suffered bodily injury in a motor vehicle accident.

Apportionment of damages

Because the RAFA is a fault-based system of compensation, the amount of damages recoverable by a third party claimant will be reduced by the extent to which the third party claimant's fault contributed to his or her damages. This is done through the application of the Apportionment of Damages Act 34 of 1956.

If a claimant was partly to blame, the fund will not be liable for the percentage of damage representing the claimant's own negligence.

Assessments of injury and damages

Assessment of a serious injury will be based on a prescribed method adopted after consultation with medical service providers and must be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.

Any assessment of an injury and the extent thereof will be carried out by a medical practitioner registered as such under the Health Professions Act 56 of 1974.

No interest calculated on the amount of any compensation which a court awards to any third party will be payable until 14 days have elapsed from the date of the court's relevant order.

In issuing any order as to costs on making such award, the court may take into consideration any written offer, including a written offer without prejudice which has been submitted by the fund in the course of settlement negotiations or settlement of the claim concerned or by an agent before the relevant summons was served.

When a claim for compensation–

- includes a claim for the costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a medical related service or supplying medical goods to the third party, the fund or an agent is entitled to compensate the third party in respect of these costs after furnishing the third party with an undertaking to that effect or a competent court has directed the fund or the agent to furnish such undertaking. Compensation will be paid after the costs have been incurred and only once the third party is able to prove that the costs were actually incurred. Such costs will be paid in accordance with the applicable RAFA tariff; and/or
- includes a claim for future loss of income or support, the amount payable by the fund or the agent will be paid by way of a lump sum or in instalments as agreed. The annual loss, irrespective of the actual loss, will be proportionately calculated to an amount not exceeding–
 - o R201 337 per year in the case of a claim for loss of income; and
 - o R201 337 per year, in respect of each deceased breadwinner, in the case of a claim for loss of support.

The above values are adjusted from time to time by the fund to counter the effect of inflation.

The liability of the fund or an agent regarding any RAFA tariff must be based on the tariffs for health services provided by public health establishments contemplated in the National Health Act 61 of 2003 and shall be prescribed after consultation with the Minister of Health.

When a third party is entitled to compensation and has incurred costs in respect of accommodation of himself or herself or any other person in a hospital or nursing home or the treatment of or any service rendered or goods supplied to himself or herself or any other person, the person who provided the accommodation or treatment or rendered the service or supplied the goods (the supplier) may claim an amount in accordance with the tariff direct from the fund or an agent on a prescribed form. Such claim is subject to the above conditions and may not exceed the amount which the third party could have recovered.

The fund or an agent with the approval of the fund may make an interim payment to the third party out of the amount to be awarded to the third party in respect of–

- medical costs, in accordance with the RAFA tariff; or
- loss of income and loss of support.

The fund or such agent must only be liable to make an interim payment in so far as such costs have already been incurred and any such losses have already been suffered, notwithstanding anything to the contrary in any law contained.

Liability for legal expense

In terms of the RAFA, third party claimants who are paid compensation by the fund are entitled to have some of their legal fees paid for by the fund.

The fund may consider making a contribution towards legal costs in non-litigated matters but does not have a legal obligation to do so.

Limitation of liability in respect of a COID claim

When the loss or damage suffered by any third party as a result of a motor accident was incurred as a result of bodily injury to or death of any person who, at the time of the occurrence, was being conveyed in or on the motor vehicle concerned and who was an employee of the driver or owner of that motor vehicle, the third party is entitled to compensation under the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COID). In this event, the liability of the fund or such agent, in respect of the bodily injury to or death of any one such employee, will be limited to the difference between the amount which that third party could have claimed from the fund and the amount to which that third party is entitled by way of compensation under COID.

Funeral costs

The liability of the fund or an agent to compensate a third party for any loss or damage which is the result of the death of any person will, in respect of funeral expenses, be limited to the necessary actual costs to cremate the deceased or to inter him or her in a grave.

Fund has no liability to entertain claim in certain cases



The fund or an agent shall not be obliged to compensate any person for any loss or damage—

- if the claim concerned has not been instituted and prosecuted by the third party or on behalf of the third party by any person entitled to practise as an attorney within the Republic or any person who is in the service or is a representative of the state or government or a provincial, territorial or local authority; or
- when the third party has entered into an agreement with any person, excluding an attorney or state body referred to above, in accordance with which the third party has undertaken to pay such person a portion of the compensation in respect of the claim or any amount in respect of an investigation or of a service rendered in respect of the handling of the claim;
- suffered as a result of bodily injury to any person who unreasonably refuses or fails to subject him- or herself to any medical examination or examinations by medical practitioners at the request and cost of the fund or such agent or to furnish the fund or such agent with copies of all medical reports in his or her possession that relate to the relevant claim for compensation or to allow the fund or such agent to inspect all records relating to himself or herself that are in the possession of any hospital or his or her medical practitioner;

- if the third party refuses or fails to submit to the fund his or her claim form and an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out or furnish the fund with copies of all statements and documents relating to the accident that gave rise to the claim concerned within a reasonable period after having come into possession thereof; or
- suffered as a result of an emotional shock sustained by that person when that person witnessed , observed or was informed of the bodily injury or the death of another person as a result of the driving of a motor vehicle.

Prescription of claim

The right to claim compensation from the fund where the identity of either the driver or the owner of the vehicle has been established will become prescribed or expire upon the expiry of a period of three years from the date upon which the cause of action arose.

Prescription of a claim for compensation shall not run against a minor, a person detained as a patient in terms of any mental health legislation or a person under curatorship until they have reached a status where they possess full legal capacity.

When a claim has been lodged in accordance with the RAFA, this claim will not prescribe before the expiry of a period of five years from the date on which the cause of action arose.

Right of recourse of fund or agent

When the fund or an agent has paid any compensation to a third party, the fund may recover from the owner of the motor vehicle concerned or from any person whose negligence or other wrongful act caused the loss or damage concerned the amount which it has paid to the third party without having obtained a formal cession of the right of action, if—

- the vehicle was being driven by a person other than the owner and the driver was under the influence of intoxicating liquor or a drug to such a degree that his or her condition was the sole cause of such accident and the owner allowed the driver to drive the motor vehicle knowing that the driver was under the influence of intoxicating liquor or of a drug;
- the vehicle was being driven by a person other than the owner without the driver holding a license, or the driver, being the holder of a learner's or other restricted license issued under such law, failed to comply with the requirements or conditions of such learner's or restricted license while he or she was driving the motor vehicle and the owner allowed the driver to drive the motor vehicle knowing that the driver did not hold such a license or that the driver failed to comply with the requirements or conditions of a learner's or restricted license, as the case may be;
- the vehicle was being driven by the owner and he or she was under the influence of intoxicating liquor or a drug to such a degree that his or her condition was the sole cause of such accident;
- the vehicle was being driven by the owner without holding a license or the owner, being the holder of a learner's or other restricted license issued under such law,

- failed to comply with the requirements or conditions of such learner's or restricted license while he or she was driving the motor vehicle; or
- the vehicle was being driven by the owner and he or she failed to provide the fund or agent with the requested and required information pertaining to the accident within the prescribed 14 day period or knowingly furnished the fund or the agent with false information relating to such accident and the fund or agent was materially prejudiced by such failure or by the furnishing of such false information, as the case may be.



WHAT HAPPENS IF YOU DO NOT COMPLY?

The RAFA does not house penalties or sanctions for non-compliance in the form of criminal sanctions, imprisonment or fines.

Instead, the consequences of not complying or giving effect to the RAFA and related road laws will be—

- losing one's right to claim when one is entitled to. If one fails to lodge a claim correctly or at all, one will lose or forfeit the right to receive compensation from the fund;
- when one, as a driver or owner, has allowed the vehicle involved in the accident to be driven while the driver was unlicensed or drunk, one may be sued by the fund for the amount it paid to the third party;
- failure to lodge a claim within a certain period will prescribe.

Jurisdiction

An action to enforce a claim against the fund or an agent may be brought in any competent court within whose area of jurisdiction the occurrence that caused the injury or death took place.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

- Awareness of the RAFA and how it may protect one;
- Submission of claim, when one is involved in an accident,
- Assessment of an injury;
- Provision of all required information, when requested, in capacity as driver and/or third party claimant;
- Awareness of personal liability issues; and
- Awareness of prescription issues.

FURTHER INFORMATION

Regulator

Road Accident Fund

Website

www.raf.co.za