WHAT MUST YOU DO AFTER AN ACCIDENT?

Get the full names, address (work and home) and contact numbers (Cell and landline) of all drivers, passengers and witnesses, and vehicle registration numbers.
Get the details of police or traffic officers attending the scene so you know which police station will investigate the accident.
Get the ambulance details, if possible.
Get details of the tow truck company so your vehicle can be tracked down to photograph before it is repaired.
If you are badly injured and cannot do any of the above try to get a family member or friend to get as much information as possible from the SAPS investigating the accident and, if possible, a copy of the accident report.
The sooner that you can have a professional person investigate the circumstances of the accident the better for you especially if there might be a dispute as to how the accident happened.
Report the accident to the SAPS within 48 hours. All accidents where there are personal injuries or death MUST be reported to the police by the drivers of the motor vehicles involved as soon as possible.
If you are badly injured and are not able to do this ask a family member or friend to find out whether the accident has been reported by someone else or not, and to ask the SAPS to investigate further.
If you have already appointed an attorney he/she can help you with this.
Report the accident to the RAF if someone else was injured as well as you, and you were the driver of a motor vehicle involved in the accident. Your attorney can help you with this.
If the matter is not being investigated by the SAPS, try to get statements from all the witnesses as soon as possible.
Taking photographs of the scene and the vehicles involved is not obligatory, but it will be very useful, particularly if the merits of the accident are contested.
When taking photographs of the scene, if possible show any debris an the road or skid marks or other indication of where the accident took place.
Taking photographs of your injuries will also be helpful in later proving your damages.
Make sure that the treating doctor records the visit or gives a detailed account, including treatment – especially where treatment is not given by your normal doctor.
A sketch plan of the scene identifying fixed points will also be useful.

BRANCH LOCATION

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AFTER HOURS BAIL APPLICATIONS

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CLAIMING FROM THE ROAD ACCIDENT FUND

WHAT YOU NEED TO KNOW

tnk Inc.
ATTORNEYS & CONVEYANCERS

www.tnklaw.co.za

"Legal Solutions that make Business Sense"

The Road Accident Fund (RAF) is a government-run insurance scheme operating in terms of the Road Accident Fund Act 56 of 1996 (As amended). It is an organ of State crated in order to pay compensation to road accident victims injured or to the dependants of those killed as a result of the negligence of the driver or owner of a motor vehicle at any place within South Africa.

WHO CAN CLAIM?

- You can claim only if the accident was not all your fault. A dependant of a breadwinner can claim if the breadwinner was not entirely to blame for the accident.
- You can claim if you were a passenger in a car, taxi, bus, truck, bakkie or on a motorbike and suffered injuries in an accident.
- You cannot claim if you did not suffer any injuries in the accident.
- You may not be able to claim if the injuries suffered were not 'serious'.
- If the deceased had no dependants, there may be no claim arising from his/her death.

DO YOU NEED AN ATTORNEY?

You can claim direct from the RAF, but

- Claiming from the RAF is a complicated and technical process;
- Medical reports (RAF 1 and RAF 4) need to be completed by doctors, and paid for;
- Documents need to be obtained from the South African Police Service, and paid for;
- An affidavit explaining how the accident took place must be prepared and lodged with your claim;
- Medical records need to be obtained from hospitals and doctors, and paid for;
- You need to quantify your claim – that is state in your claim form what you are claiming for various heads of damages such as pain and suffering, loss of amenities of life, disfigurement, disability and shock (general damages), loss of income, loss of earning capacity, future medical costs and past expenses (special damages);
- To claim general damages for pain and suffering, loss of amenities of life, disability, disfigurement and shock you need to lodge a serious injury assessment report (RAF 4) from a suitably qualified medical expert who has assessed your injury as 'serious' as provided for in the Act and Regulations.

An attorney specialising in personal injury claims has the knowledge and experience to assist you and to ensure that your claim is properly calculated and submitted to the RAF in accordance with the Act and Regulations. There are time limits that apply to your claim and if they are not complied with your claim will be unenforceable (prescribed).

Many attorneys specialising in personal injury cases will also incur and carry the costs necessary to prosecute your claim pending finalisation of the claim.

If your attorney does not attend to your claim properly, allows your claim to prescribe or under-claims, you can complain to the relevant provincial law society and/or sue your attorney. If you claim yourself and make a mistake and allow your claim to lapse, the RAF will not pay you and you will not receive any compensation.

An attorney specialising in personal injury will have the knowledge and experience to advise you whether the amount offered by the RAF to settle your claim is fair and reasonable in the circumstances of your particular case.

HOW MUCH WILL IT COST?

Most attorneys specialising in personal injury claims will be prepared to take your case either

- On a contingency basis (no win, no fee basis); or
- In terms of a fees agreement, where the attorney will charge a normal fee in terms of an agreed tariff. The attorney may be prepared to wait until the end of the case for payment of all the costs including expenses.

Many attorneys specialising in personal injury cases will also undertake to incur and/or pay for all disbursements required in order to prepare your claim, including obtaining medical records and medico-legal reports on the basis that they will be repaid those costs out of the proceeds of your claim. Some of these costs will be received from the RAF as part of the party –and-party costs for which they may be liable.

An attorney acting in terms of a fees agreement (not on contingency) can charge you in terms of the agreement for all work done and all expenses incurred.

Some attorneys may want you to pay some of the costs as your case proceeds.

If the attorney acts on contingency (no win, no fee) basis

- The agreement must be signed by both you and the attorney (you must be given a copy at the time of signing);
- The attorney is entitled to charge a success fee in addition to the normal fee. The amount of the success fee is regulated in terms of the Contingency fees Act and may not exceed 25% of your capital, or 100% above the normal fee, which-ever is the lesser amount;
- You will also have to pay for other expenses (such as medical and other expert' fees, medical records, police documents, court fees etc). Some of these will be recovered from the RAF as part of the party-and-party costs.

If you do not understand the fee or contingency fee agreement, then you must ask your attorney to explain the agreement to you properly.

CAN YOU CLAIM DIRECT FROM THE RAF?

Yes you can. The RAF has an active outreach programme and employs information officers at its branch offices. It has also appointed representatives in all major government hospitals. While in hospital you may be approached by an agent of the RAF offering to assist you to make a claim direct.

You are not obliged to agree to claim direct from the RAF (a direct claim) or to appoint an attorney recommended to you by someone who has approached you in hospital or elsewhere. You have the right to appoint your own attorney.

Check that an attorney is registered and in good standing with the relevant provincial law society.

Although the RAF will assist you by explaining how to claim and help you fill in a claim form, you will need to obtain and pay for all the supporting documents required, including medical reports and records.

The RAF is the very body against whom you are claiming and it is their job to investigate and exclude all claims it considers that it is not obliged to pay.

There may be a difference of opinion between you and the RAF as to whether you are entitled to be compensated (the merits of the case) and, if so, what your claim is worth. The RAF also has to be satisfied that your injury is 'serious' before you are entitled to be paid for pain and suffering. The RAF may reject your claim either on the merits or as not being 'serious'. They can also decide that the accident was partly your fault and offer you only a percentage of your loss.

Without advice from an independent attorney, you will have no way of knowing whether any settlement offered by the RAF is fair and/or whether the claim has been properly rejected. By the time you have to seek independent advice it may be too late.

HOW MUCH TIME DO YOU HAVE TO CLAIM?

Claims need to be lodged within 3 years from the date of the accident if the driver and/or owner of the vehicle at fault has been identified. If it is not possible to identify the owner or driver of the vehicle at fault, then the claim must be lodged within 2 years.

After the claim is lodged there is a waiting period of 120 days. After that summons may be issued within 5 years from the date of the accident. If your claim is lodged late or summons is not served in time, your claim will become unenforceable (prescribed).

WHAT YOU CAN ASK YOUR ATTORNEY

- How much your attorney will be claiming.
- How long your attorney thinks your claim will take to be finalised.
- Any questions about fees and other costs.
- Ask for progress reports so you can see how your claim is being dealt with.
- Ask for a full account at the end of your case.

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