



School Bus Accidents The Do's and Don'ts

The cruel reality

If you are a South African and have been living here for most of your life, chances are good that either yourself, or family or friends close to you have been involved in a motor vehicle accident at least once over the past 5 years – often resulting in fatal and/or serious medical and financial consequences to both the victims and their families which, in many instances, negatively alter and disrupt the course of their lives forever.

When we hear about accidents involving motorcycles, sleek sports cars or even pedestrians we immediately shrug it off, assuming that it was due to speeding, intoxication, arrogance, road rage, distraction or pure stupidity on the part of the drivers or pedestrians. These accident victims then very quickly become part of the proverbial “statistics”, products of the reckless and inconsiderate road usage and behaviour on our roads which we have become so accustomed to.

However, when it comes to busses with innocent children on board, our response is usually more emotional and we do not forgive and forget that easily. Our immediate knee-jerk reaction is usually anger or rage and most people want to blame and seek retaliation from the driver or owner of the bus concerned. This is of course completely understandable – there are hundreds of thousands of parents all across the country, who, on a daily basis put their children's lives in the hands of a bus driver to take them to school or to and from a sport or cultural event etc. We drive by, in front of, behind and next to school buses every day – mostly during the get-to-school-and-work-morning-rush or after-school-happy-hour - and it is therefore only natural for people to think “What if this happens to MY child and MY family? What can I do when that happens? How am I going to be able to afford medical treatment? Surely someone must pay!?”

There is however, as always, two sides to the story. Most bus drivers and companies work endlessly and go to great lengths to provide a safe and reliable transport service to their community. No good, hardworking and well-trained bus driver ever drives a bus full of innocent children, to intentionally cause an accident. Nor does an owner of a bus company - that has a reputation to uphold and who invests everything he has in his drivers, employees and vehicles - put un-roadworthy busses on the roads to cause accidents on purpose. A lot of accidents are caused by factors which are outside of the control of the driver or the owner of the bus, such as poor road conditions (potholes and gravel roads), adverse weather conditions, stray animals, jaywalking pedestrians, and of course, other irresponsible road-users etc.

The fact of the matter is, we all make mistakes and accidents do happen. Some mistakes and accidents just have more devastating consequences than others. How we prepare for and how we mitigate and manage those consequences after the event, are the questions that need to be focused on most.

The Road Accident Fund

Fortunately, victims of motor vehicle accidents have the Road Accident Fund (RAF) that has been specifically established by law (i.e. the Road Accident Fund Act 56 of 1996, as amended - “the RAF Act”) to administer the system of compensation for damages suffered due to bodily injuries or death caused by the negligent driving of a motor vehicle. The RAF is financed by a levy on all fuel consumed in South Africa. Every person (even non-South African citizens) therefore has a right to claim compensation against the RAF if they have suffered injuries in a motor vehicle accident or the breadwinner dies in such an accident which occurred within the borders of South Africa.

Persons (also called “third parties”) who are entitled to claim from the RAF are:

- A person who sustained bodily injuries in a motor vehicle accident.
- When a breadwinner of a family dies in an accident then the widow/widower and the children are the persons who suffered damages by way of the loss of the financial support of the breadwinner.
- Where a minor is injured and received medical treatment. In this case the parent/guardian would be the claimant in respect of the medical costs incurred

because they were the persons liable for such costs and therefore have suffered damages. (If a medical fund paid for the medical costs, they're strictly the claimant, however, most medical aids allow their members to claim the medical expenses from the RAF and to then reimburse the medical aid, once compensation has been paid out to the member).

- Minors are also entitled to claim possible future loss of income and general damages if same is proven, however the minor's natural parent or guardian will claim this on the minor's behalf.

Examples of the types of compensation /damages that may be claimed from the RAF resulting from bodily injuries are:

- Past & future medical & hospital expenses;
- Claims for emergency medical expenses incurred in respect of third party and supplier claims (i.e. ambulance , helicopter fees, emergency surgery etc) resulting from accidents which arose after 1 August 2008 are compensated in accordance with a prescribed tariff.
- Non-emergency medical expenses are compensated if the cost of the medical expense is reasonable and provided the medical treatment was necessary.
- Past & future loss of earnings. If the accident occurred after 1 August 2008, the RAF's liability to compensate the loss is limited. The cap is adjusted quarterly to take into account inflation. The last adjustment took place with effect from 31 January 2017 to R254 450 per year.
- General damages (an amount for pain, suffering, trauma, disfigurement and loss of the amenities of life). To be able to claim general damages, the injured party would be required to undergo a "serious injury assessment" and lodge a "serious injury assessment form" within the required time frames.

Examples of types of damages arising from death:

- Loss of maintenance or support. As with past and future loss of earnings, compensation for a loss of support claim, is also limited which is currently capped at R254 450 per year;
- Funeral costs (limited).

A third party must lodge a claim with the RAF within three (3) years of the date upon which the accident occurred and two (2) years in respect of unidentified claims (i.e. where neither the identity of the driver nor of the owner of vehicle can be established). A summons, if necessary, must be served on the RAF within five (5) years from the date on which the accident occurred.

It is also important to note that as from the 1st of August 2008, the common law right of a third party to claim compensation from the guilty driver or his employer has been abolished. Section 21 of the RAF Act does not permit injured persons or dependants of deceased breadwinners to claim from these drivers or their employers, unless the RAF is unable to pay any compensation or unless the person claims compensation in respect of loss or damage arising from secondary emotional shock. (Secondary emotional shock is where a person witnessed or observed or was informed of the bodily injury or death of another person.)

The RAF has branches and offices in most cities and towns across the country. Also, most government hospitals have in-house RAF consultants and victims of motor vehicle accidents and/or their family members are invited to get into contact with these offices and persons as soon as possible after an accident. It is also important to remember that a third party may submit a claim against the RAF themselves directly or they may make use of a legal practitioner (attorney) to assist them with their claim. If a third party cannot afford an attorney, he or she may apply for legal assistance through the Legal Aid Board.

It is also recommended that bus companies engage and collaborate with their local RAF branch and representatives and prepare an "Accident / Disaster Management Plan" to be followed in the event of an accident. This plan should include all local emergency contact numbers and persons (i.e. ambulances, emergency helicopters, fire brigades, hospitals, pathologists, towing vehicles etc.), counselling sessions for not only victims but also their families, teachers and other pupils of the school which the bus company service, funeral services, a dedicated person/s to deal with the media and other press releases, and of course, the involvement of the RAF and their representatives to liaise with and assist victims and their families to lodge their claims against the RAF. It is also of the utmost importance that parents of children who are regularly conveyed on buses, are fully informed of the plan and that they are educated on the steps to be taken to claim against the RAF in the event of an accident where their child is injured or killed.

Personal / Group Accident Insurance Cover

As can be seen from the above, although the RAF compensates third parties for certain losses incurred by them due to bodily injuries or death resulting from a motor vehicle accident, such compensation payable are limited and it usually takes months or even years before payment is actually received.

It is for these reasons that Stalker Hutchison Admiral (Pty) Ltd (SHA) has developed a Personal / Group Accident Insurance Product to financially cover the insured person, members of his/her family, partners or business associates in the case of injury, permanent disability or death caused by an accident. Should an unforeseen violent or accidental incident occur, this will ensure that the insured person or those left behind are compensated. Personal accident insurance is available on both an individual basis or, for businesses, on a group basis. No matter where in the world they are, beneficiaries can be compensated.

With South Africa rated as a prominent tourist destination, there is also a need for an insurance product that will cover tourists travelling on South Africa's roads at the time of an accident. Personal accident insurance is the appropriate cover to have in place for these travellers.

Should an insured person die as a result of an accident, beneficiaries will be paid out an additional sum as death cover. Should an insured person be injured as a result of an accident, such person will be paid out a lump sum. Even if the injury is not completely devastating the person will still receive a portion of the payout to cover costs. This refers to personal accident injuries leading to loss of hearing in an ear, losing a limb, partial loss of sight etc.

The two most important benefits of a Personal / Group Accident policy are that payments are made much quicker than payments from the RAF and payments are also made in addition to any benefits that may be obtained from the RAF, the Workmen's Compensation Fund, or a retirement fund.

People make mistakes. Accidents do happen. Unfortunately, no insurance policy or any other safety measure can protect us and our loved ones against these accidents and mistakes. The best one can do is to ensure that the financial burden following an accident are reduced as much as possible, so that the process of mourning, healing, recovery and recuperation can be somewhat easier and lighter to bear.

Contact [Clare Gelderblom](#) for more information.