

ATILA:

**AUTOMOBILE
INSURANCE PROBLEMS
AND POLICIES:**

**A TRANSNATIONAL
COMPARISON**

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MANDATORY VEHICLE INSURANCE IN SOUTH AFRICA

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1. There is no mandatory (compulsory) vehicle insurance cover required for private vehicles
2. Credit grantor's who hold ownership until fully paid require mandatory private insurance
3. Public transporters (formal sector) are required to maintain insurance cover
4. Personal injury: Fund based compensation scheme

ONE TAXI HAS A LICENCE DISC FROM MALAWI TO GO WITH ITS NUMBER PLATES FROM CAPE TOWN.



PRESENTATION TITLE

ONE MINIBUS AT THE BENONI ROADWORTHY TESTS FOUND A TAXI WITH:

"NO BRAKES, NO HEADLIGHTS, HAND BRAKE NOT FUNCTIONING."



Australian man caught using spanner for steering wheel - this is not strange in Africa either

The driver was initially pulled over by police
after they observed him driving dangerously on two blown tyres.



The inside of a taxi impounded in Rosettenville. The floor has been reconstructed and most of the electronics exposed with additional wires to the ignition, which is activated by a separate button.



- GDP per capita in South Africa was **7,080.00 USD** by the end of 2021,
- According to Trading Economics global macro models and analysts expectations.
- In the long-term, the South Africa GDP per capita is projected to trend around 7200.00 USD in 2022, according to our econometric models.

- **Rank: 2021**
- 1. Liechtenstein
143,400
- 2 Luxembourg
126,570
- 3 Ireland
111,360
- 4. Switzerland
78,110



Monthly net average income

South Africa: € 784

State	Net in local currency	Gross in €
France	€2,791	4,130
Georgia	₾1,062	375
Germany	€2,952	4,130
Greece	€1,116	1,466

€ 35 modest vehicle insurance per month.

Exchange rate is R16 – R20 PER Dollar/Euro

Complications

1. Lack of supervision and regulation for privateers
2. Lack of enforcement capacity
3. All private taxi drivers who offer public transport must have
 - a driver's license; and
 - a professional driving permit to operate in South Africa

Vehicle insurance and liability insurance is not required by law

4. The poorer the quality of the taxi vehicle, the cheaper the fare.

The Road Accident Fund

A third party claim
is a **claim for compensation**
resulting from personal injury to
or the death of a person
(including) the death of a breadwinner,
in a motor vehicle accident.

Such a claim will lie against the RAF, a statutory body.

Essentially a parastatal and therefore controlled by government.

It reports to the Minister of Transport.

It has a long history, having started in 1942, and has existed in various forms for over 50 years.

The RAF is responsible for:

providing appropriate cover to *all road users*

within the borders of South Africa;

rehabilitating and compensating persons injured as a result of motor vehicles in a timely and caring manner;

The funding of the RAF

The RAF can obtain its funding from several sources as outlined as:

- Fuel levy income;
- Government grants paid by National Treasury only where acute cash shortage;
- Borrowings/loans which are an allowed source of funding according to the RAF Act, and investment income acquired from invested

The primary source of

income for the RAF compensation scheme is **a levy raised on fuel.**

Measured in terms of cents per litre on petrol and diesel fuel sold in South Africa: part of the general fuel tax regulated by government.

R 22-00 per litre of fuel
(\$1.00 = R 15.06/ € 1.00 = 16.67)

The RAF Cover

- **Drivers, passengers, pedestrians, cyclists and motorcyclists** can all claim from the Road Accident Fund, as long as they were not *entirely* responsible for the accident.

You cannot claim from the RAF if:

- you were the driver and are the owner of the vehicle solely responsible for the accident
- you were the only person involved in the accident (for example, you were injured because you crashed your vehicle into a tree or other obstacle, and nothing else, such as badly maintained roads, contributed to the accident).

Prescription periods

Requires that you submit a claim within 3 (three) years (standard prescription period) of the motor vehicle accident if you know who was responsible.

If you don't know who the responsible driver was – if for example, in the case of a claim after a hit-and-run accident – you must submit your claim within 2(two) years of the accident.

Compensation for

- medical expenses that result from a motor vehicle accident
- funeral expenses in the case of a death caused by an accident
- general damages for pain and suffering: only
 - provided you suffered a serious injury (as determined with reference to set criteria), have lost an unborn child or have sustained serious disfigurement, mental impairment or the loss of a bodily function
- lost earnings, if you were unable to work as a result of an accident
- loss of support, if a household's main income provider was killed in a road accident that resulted from someone else's negligence.

Assessment and Quantification

Short time periods limit extensive determination of future loss

As stated by Conradie JA:

“No matter how anxiously a court peered into the future when assessing future hospital or medical expense, or costs of goods and services, it risked awarding either too much or too little.”

Road Accident Fund v Arendse NO 2003 (2) SA 490 (SCA) 494B.

If the claimant receives free medical services in place of past medical and related treatment,
and the probability exists that the same free medical services will be available for his/her future needs,
the question to be asked: whether the claimant suffers any actual loss?

It is a trite principle that the claimant must not be compensated twice for a single damage-causing event.

When the claim or quantification is contested,
it is referred to litigation

Consideration will be given to section 2(4) of the Law Reform (Personal Injuries) Act of 1948: concerning:

private medical facilities vs. public medical facilities.

The emphasis falls not on which of the two was used by the claimant,

but rather on whether the expenditure was reasonably incurred.

In any event, the claimant does not necessarily recover in damages every cent expended,

but rather only those costs that were reasonably incurred.

Guiding principles

- once-and-for-all rule
- compensating advantages
- mitigation of loss
- interest and inflation
- apportionment of damages due to contributory fault
- other statutory limitation
- discounting

Payments

The capital (settlement amount) usually takes **180 days**, from the court date to recover from the RAF.

If uncontested 2 – 6 weeks from finalization

In terms of the fee agreement,
all fees and disbursements
are deducted from the first available funds
and the difference is paid to the client as a first payment.

RAF 2020 report:

- The **average value paid out per claim** was **R138,010**.
- **R826,007** was the average pay-out for **loss of earnings**.
- **R482,291** was the average pay-out for **general damages**.

A whiplash injury may merit a payout of R100 000 for

A broken leg could result in a claim of R400 000

A serious brain injury as much as R2 000 000.

Amounts for General Damages only
and not past medical & hospital expenses
or past and future loss of income.

Medical tariffs as prescribed by the Minister of Health

Criticism of the Road Accident Fund

This was a scheme where 'the poor subsidise the rich'.

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The cost of administration was excessive;
more than half the R0.64 fuel levy
went towards administrative costs,
including the costs of legal experts.

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THANK YOU

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