

Can you claim if a family member dies in a road accident?

The loss of a loved one due to a road accident is an enormously painful experience and if the person who died was the family's main breadwinner it can also result in financial difficulties for those left behind. However, South Africa's existing legal system takes this into account.



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This is according to Kirstie Haslam, partner at DSC Attorneys, who says that if someone is killed in a road accident that they weren't solely responsible for causing, that person's direct dependants may claim compensation from the Road Accident Fund (RAF).

Who can claim

"As a general rule, family members who were supported financially by the deceased can claim from the RAF," Haslam explains. "Claimants need to be able to prove that they were financially dependent on the person who has died and that the deceased indeed owed them a duty of support."

She adds that any income earned by the claimant is brought into account in determining whether there has been a loss of support, and the extent of that loss.

What compensation you can claim

As a dependant of a family member who has died in a road accident, Haslam says that you can claim RAF compensation for loss of support and funeral expenses.

Loss of support

“A spouse or other close relative who was a financial dependent of the person who died can claim for loss of support from the RAF,” she says. “If you’ve lost a boyfriend or girlfriend on whom you were financially dependent, it’s likely to be harder to get your claim approved. However, the RAF does provide loss of support compensation in cases of common-law marriage.”

Funeral expenses

Haslam says that family members can claim funeral costs from the RAF and family members who already covered the deceased’s funeral costs can also claim for compensation.

“RAF payments are made to the claimant and not to the funeral parlour,” she explains. “Funeral parlours may not make RAF claims even at the request of the deceased’s family.”

Haslam says that family members can claim for the following funerary expenses:

- transportation of the remains
- provision of the coffin or burial shroud
- preparation of the deceased, including embalming
- storage of the remains
- issue of the death certificate
- burial or cremation of the remains
- grave fees, including hiring of equipment.

Limitations on RAF claims if a family member dies in a road accident

Haslam says that certain limitations are imposed on loss of support claims including:

- If the claimant is over 18, and the identity of the negligent driver or owner of the vehicle is known, the claim must be submitted within three years of the date of death.
- If the claimant is under 18, the claim must be submitted within three years of them turning 18
- For hit and run accidents where the driver is unknown, the claim must be submitted within two years of the date of the accident.
- Loss of support claims are capped at a specific value - R160,000 per annum adjusted quarterly for inflation since 2008; the most recent, adjusted limit is published in a board notice, such as the one for April 2019 where it was adjusted to R281,271. (https://www.gov.za/sites/default/files/gcis_document/201904/42417bn71.pdf)
- Claims for funeral costs cover burial and cremation costs only; they don’t cover other expenses such as catering, flowers or tombstones.

Use an attorney

Haslam strongly recommends that if you plan to pursue a claim against the RAF, to get proper legal advice and representation from an attorney that specialises in RAF claims.

“They can assess your claim, help prepare supporting evidence and represent you in legal proceedings, giving you the best chance of receiving the compensation you deserve,” she adds.

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