

Although the Road Accident Fund (RAF) was initially established to help South African motorists bear most of the costs resulting from road accident injuries or death, we saw a significant reduction in benefits for road accident victims since amendments to RAF legislation took effect in August 2008.

The most controversial of the amendments that were recently enforced being:

- the restriction imposed on the loss of income or loss of support claims by injured parties to R180 000 per year, regardless of their actual income at the time of the accident; and
- the removal of victims common law right to claim further damages from the guilty party or wrongdoer to cover the gap between their actual earnings and RAF compensation received; *except* where the RAF is not able to pay any compensation; and/or if any claims arise as a result of loss or damage due to secondary emotional shock that was sustained e.g. as a result of a claimant having witnessed, or being informed of the bodily injury or death of another person as a result of a motor accident; and
- the restriction imposed on general damages claims, which are now limited to 'serious injuries' only

Given the fact that the above-mentioned amendments severely restrict the compensation available to road accident victims, they were challenged in the Constitutional Court by the Law Society of SA (LSSA), the Quad Para Association, the SA Association of Personal Injury Lawyers and the Johannesburg Attorney's Association, as well as individuals injured in road accidents, last year.

But the Constitutional Court ruling in November 2010 found that limits on damages and the abolition of personal claims against negligent drivers are not unconstitutional, given Government's intention to replace the current system with a set of limited no-fault benefits which will form part of the broader social security net.

The Court did, however, rule against the RAF's proposal to limit the tariffs for hospital and other medical expenses to public health service tariffs only, with retrospective effect, which means that RAF will be liable for the cost of healthcare needs of accident victims from the inception of the amending Act in 2008.

“Given the perspective that there is an increasing risk of driving on South African roads due to the fact that less than 30 percent of all vehicles on South African roads are insured, and as a result of our poor road conditions and driving behaviour, as well as the ever-increasing congestion and number of unlicensed and un-roadworthy vehicles on our roads, the above-mentioned RAF amendments put further strain on South African insurance companies and consumers, who now, more than ever, need to ensure that adequate financial protection is in place,” comments Pravin Pather, senior underwriter at Centriq Insurance.

“Therefore, insurance cover for the cost of damage or losses suffered by a third party has become a necessity while third party insurance as a legal requirement in the country needs to be imposed as a matter of urgency,” he says.

Other players in the industry, including the South African Insurance Association (SAIA), which is currently lobbying the Road Traffic Management Corporation (RTMC) on behalf of the short-term insurance industry to implement compulsory third party motor property insurance, share Pather’s views.

“Although the RAF amendments remove the common law right of injured parties to sue the wrongdoer, contingency cover will be important should any of the two exceptions mentioned above apply. Hence, motor insurance policies would have to include liability cover for the second exception, namely emotional shock claims, while comprehensive healthcare insurance, personal accident insurance, loss of income insurance (especially for consumers earning more than the capped amount of R180 000 per year) are strongly advised,” he concludes.