

THE INTERPRETATION OF THE AMENDED RAF ACT 56 OF 1996 AND THE REGULATIONS THERETO BY THE COURTS WITH REGARD TO “SERIOUS INJURY” CLAIMS

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SUMMARY

The RAF Amendment Act 19 of 2005 came into effect on 1 August 2008 and sections 17(1) and 17(1A) introduced the concept of “serious injury”. This entails that a third-party claimant who wishes to claim compensation for non-patrimonial loss suffered after a motor-vehicle accident has to prove that his or her injury is “serious”. If the claimant’s injury is not considered “serious” no compensation will be awarded for the non-patrimonial loss suffered and, furthermore, the claimant will also not be entitled to claim any compensation from the wrongdoer in terms of common law (s 21 of the RAF Act). In a sequence of unreported cases the courts have provided guidelines on the procedure to be followed in serious-injury claims. Firstly, a claimant must submit himself or herself to an assessment by a medical practitioner registered under the Health Professions Act. Secondly, the medical practitioner must assess if the injuries sustained by the claimant fall within the list of “non-serious injuries”, and if so, compensation for non-patrimonial loss will not be awarded. If the injury is not on the list of non-serious injuries, the medical practitioner may assess the injuries and if they result in 30 per cent or more of whole-person impairment (“WPI”) compensation for non-patrimonial loss may be awarded. If the evaluation is that the 30 per cent of WPI cannot be reached, non-patrimonial loss may still be claimed if the injuries fall within the “narrative test”, namely (a) resulting in a serious long-term impairment or loss of a body function; (b) constituting permanent serious disfigurement; (c) resulting in severe long-term mental or severe long-term behavioural disturbance or disorder; or (d) resulting in the loss of a foetus. A plaintiff may use either of the two tests to establish serious injury and in such a manner

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qualify for compensation for non-patrimonial loss. A medical practitioner must complete and submit a serious-injury assessment report on the RAF 4. If the RAF is not satisfied that the injury has been correctly assessed they must (a) reject the serious-injury assessment report within 60 days and furnish reasons for the rejection; or (b) direct that the third party submit himself or herself, at the cost of the Fund, to a further assessment. Thereafter the RAF must either accept the further assessment or dispute the further assessment within 90 days. An Appeal Tribunal, consisting of three independent medical practitioners, has been created to hear these disputes.

KEYWORDS: Road Accident Fund, serious injury, patrimonial loss, narrative test, assessment report

Abbreviations

RAF	Road Accident Fund
WPI	whole-person impairment
AMA	American Medical Association
MMI	maximum medical improvement