

“ROAD ACCIDENT FUND’S REFUSAL TO ACCEPT ILLEGAL FOREIGN NATIONALS CLAIMS AND NON – COMPLIANCE WITH COURT ORDERS”

The Road Accident Fund (RAF) is once again in the spotlight for its failure to comply with court orders concerning the rights of undocumented foreign nationals to claim compensation. Despite clear legal directives mandating the RAF to process claims from this group, the agency has been accused of dragging its feet, leaving many potential claimants in legal and financial limbo. This issue stems from the RAF’s refusal to recognize claims from undocumented foreign nationals, in direct violation of recent court rulings. Court orders related to the now-invalidated Notice 271 of 2022 have demanded that the RAF revise its stance and allow undocumented foreign nationals to access compensation for injuries sustained in road accidents. However, the RAF’s reluctance to adhere to these court orders has created widespread frustration among claimants and legal experts alike.

The courts have been clear in their rulings: undocumented foreign nationals injured in road accidents in South Africa have the same rights to compensation as any other road users. Despite the legal clarity, the RAF’s position has remained rigid, with the organization citing concerns about verifying the identity and status of claimants. This has led to a situation where deserving claimants are denied compensation, even when they have been severely injured due to the negligence of others. This article seeks to further divulge on the non-compliance of the RAF, having regard to Case law

1. FOREIGN NATIONALS INVOLVED IN MOTOR VEHICLE ACCIDENTS IN SOUTH AFRICAN BORDERS AND THEIR COMPENSATION BY ROAD ACCIDENT FUND

There are foreigners who are involved in motor vehicle accidents and sustain injuries or death as a result in South African borders. Majority of them will claim for loss or damages wrongly caused by the driving of a motor vehicle from a juristic body called Road Accident Fund. The RAF up to 2022 compensated any person injured in a road accident in South Africa. This was regardless of their immigration status.

2. ROAD ACCIDENT FUND NEW DIRECTIVE REFUSING TO ACCEPT ILLEGAL FOREIGN NATIONALS’ CLAIMS

In June 2022, the Road Accident Fund published a Notice (Notice 271 of 2022) stating that a Road Accident Fund claim by a foreigner would be rejected if the claimant could not show documentary proof that s/he was legally in South Africa. The Notice specifically reads, *“A copy of the foreign claimant’s passport showing the entry and/or exit stamp must be submitted. Where the passport does not have any stamp the Road Accident Fund will not be lodging such a claim.”*

In July 2023, the Minister of Transport gazetted a new claim form, known as **RAF 1 form** (specifically the requirement under paragraph 6.1 of the form) that expressly requires foreigners to prove that they were *legally* in South Africa when the road accident occurred.

3. **THE HIGH COURT CHALLENGING NEW DIRECTIVE AND RAF 1 FORM OF ROAD ACCIDENT FUND - MUDAWO AND OTHERS V MINISTER OF TRANSPORT AND ANOTHER (011795/2022) [2024] ZAGPPHC 258 (26 MARCH 2024)**

In 2024 the Gauteng High Court, Pretoria, in a full bench of three judges, led by Judge Noman Davis (*in an application, brought by a group of foreign nationals who were injured in road accidents but were precluded from claiming due to the directives*) struck down the directive issued by Road Accident fund that only those foreign nationals who can prove that they are legally in the country at the time of injury, can claim for compensation. This includes that they are required to provide copies of their passports with an entry into the country stamp and proof of an approved visa, before they are allowed to lodge a claim. Another requirement which was struck down, is that copies of the passports of foreign claimants may only be certified by the police before it would be accepted by the Road Accident Fund.

Judge Davis held that the court can find nothing in the text of the Road Accident Fund Act, the context of the Road Accident Fund scheme as a whole and the purpose of the Act which leads it to conclude that illegal foreigners should be excluded from claiming following a road accident. In his opening statement of the judgment, Judge Davis noted that according to the *“Road Traffic Management Corporation, 12 436 people had died in 2022 when this application was lodged, and thousands more were injured in road accidents in South Africa. These accidents don't discriminate in respect of the victims thereof between race, gender, age or between illegal foreigners and citizens of this country,”*

The court concluded by holding that *“the impugned decisions therefore fall foul of section 6(2)(a)(i) of the Promotion of Administrative Justice Act 3 of 2000 and they are to be reviewed and set aside to the extent necessary... we find it unnecessary to deal with the Constitutionality arguments relating to the attempted exclusion of illegal foreigners as claimants against the RAF”*

Looking Forward

As the controversy surrounding the RAF's non-compliance grows, pressure is mounting on the organisation to change its approach. Legal experts are urging the government and relevant authorities to step in and ensure that the RAF complies with the law. Until then, undocumented foreign nationals remain in limbo, waiting for the compensation they are legally entitled to receive. The RAF's ongoing failure to adhere to court orders not only threatens the rights of vulnerable individuals but also raises concerns about the integrity of South Africa's legal system. Until these issues are resolved, the RAF's reputation will continue to be tarnished by its unwillingness to follow the very laws it is meant to uphold.

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