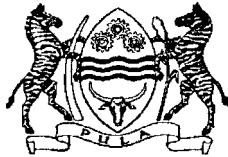


MOTOR VEHICLE ACCIDENT FUND ACT, 1998

No. 6



of 1998

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An Act to provide for compensation for certain loss or damage caused in vehicle accidents and for matters incidental thereto and connected therewith.

Date of Assent: 20th April, 1998.

Date of Commencement: 30th April, 1998.

ENACTED by the Parliament of Botswana.

Short title

1. This Act may be cited as the Motor Vehicle Accident Fund Act, 1998.

Interpretation

2. In this Act, unless the context otherwise requires —

“Board” means the Board established by section 4;

“conveyed” in relation to the conveyance of a person in a vehicle includes being in the act of entering or mounting the vehicle for the purpose of being so conveyed, or being in the act of alighting therefrom after having been so conveyed;

“dependent” in relation to a person involved in a vehicle accident, means any person being a spouse or minor child of such person or a disabled or indigent person legally entitled, other than in terms of contract, to monetary maintenance from such person;

“defect” when related to a vehicle means any remediable fault in the tyre or in the steering, braking or seat belt mechanism, and “defective” shall have a corresponding meaning;

“Fund” means the Motor Vehicle Accident Fund established by section 3 of this Act;

“hospital” shall include a nursing home, clinic and any other institution of medical, therapeutic or physiotherapy care and treatment;

“Manager” and “Assistant Manager” mean the Manager and the Assistant Manager respectively of the Motor Vehicle Accident Fund appointed in accordance with subsection (1) of section 9;

“negligence”, in addition to its common law meaning, includes an unlawful act or omission in relation to the possession, use or maintenance of a vehicle and “negligent” shall have a corresponding meaning;

“offer” shall include an offer made without prejudice to rights reserved;

“owner” in relation to —

(a) a vehicle which a dealer has in his possession in the course of business, means that dealer;

(b) a vehicle which is the subject of a hire-purchase agreement, means the purchaser under the agreement in question;

(c) a vehicle which is leased under an agreement of lease for a period of at least six months, means the lessee concerned;

“seat belt” includes the mechanism by which the seat belt operates;

“special circumstances” shall not include any element of neglect, negligence, omission or ignorance;

“vehicle” means any vehicle, designed or adapted for propulsion or haulage on a road by means of power, excluding exclusively human or animal power, without the aid of rails, and includes any trailer designed to be drawn by a vehicle but excludes any vehicle which is the property of the Government of Botswana;

“vehicle accident” means any occurrence in which a vehicle is involved resulting in injury to or the death of any person.

3. There is hereby established a fund to be known as the Motor Vehicle Accident Fund, or MVA Fund, which shall, under that name, be a body corporate, with full capacity to sue or be sued in its own name, and to do all such things as bodies corporate may, by law, do and as may be necessary or incidental to the exercise of its powers and the performance of its functions under this Act.

Establishment
of the MVA
Fund

4. (1) There shall be a Board, constituted in accordance with section 5, in which, subject to the provisions of section 8, the powers of the Fund shall be vested.

Establishment
of Board

(2) The Board shall exercise such powers by issuing general and specific mandates, instructions and directions to the Manager.

5. (1) The Board shall consist of the following seven persons appointed by the Minister —

Membership
of the Board

- (a) one member who shall be Chairman;
- (b) the Manager of the Fund;
- (c) three members, who shall not be public officers, appointed by the Minister from among professional persons of good standing, experience and reputation in their respective fields, of whom —
 - (i) one member shall be appointed in the capacity of insurance advisor, and
 - (ii) one member shall be appointed as an investment advisor; and
 - (iii) one member who shall be appointed as a motor vehicle accident advisor
- (d) the Attorney General or his representative; and
- (e) one member who shall be a member of the National Road Safety Committee, which person shall not be an employee of the Fund.

(2) Each member appointed under subsection (1) (c) shall be appointed for a term not exceeding four years, as the Minister may decide, and shall be eligible for reappointment.

(3) No person shall be a member of the Board under subsection (1) who is —

- (a) a member of the National Assembly
- (b) a member of the legal profession practising as such; or
- (c) a minor or other person under a legal disability:

Provided that paragraphs (a) and (b) shall not apply to the Attorney General or his representative.

(4) The members of the Board shall be paid such fees or allowances as may be determined by the Minister.

6. (1) A person shall be ineligible for appointment to the Board if he has been at any time —

Vacation of
office

- (a) convicted of an offence for which the prescribed punishment is a term of imprisonment, with or without the option of a fine;
- (b) found guilty of unprofessional conduct by a competent tribunal, board or body legally constituted for the purpose of adjudicating on matters of discipline and conduct;

- (c) declared insolvent;
- (d) certified as mentally disordered; or
- (e) ineligible for appointment in accordance with the provisions of section 5(3).

(2) A member of the Board shall cease to hold office in the event of any occurrence which would have rendered that member ineligible for appointment in accordance with subsection (1), in the event of his tendering his resignation from the Board, in the case of a member appointed under section 5 (1) (c), (d) and (e), or if he fails to attend two consecutive Board meetings without leave of the Board.

(3) If any member of the Board appointed under section 5(1)(c), (d) or (e) dies or ceases to hold office for any reason during his term of office, the Minister shall, as soon as possible, appoint another person in replacement thereof, in accordance with the provisions of section 5, for the remaining period of office of such dead or vacating member.

Meetings
of the Board

7. (1) The Board shall meet as often as the business of the Fund may require, but not less frequently than once in each quarter of the year.

(2) The Board shall elect a Vice-Chairman who shall act in the absence of the Chairman.

(3) The conduct of business at Board meetings shall be minuted, and such minutes, when passed as correct by the Board, shall then be kept by the Fund as a permanent record.

(4) All decisions of the Board shall be passed by a simple majority of the members present thereat, on open ballot, with the Chairman having a casting vote.

(5) A quorum at any meeting shall consist of any four (4) members of the Board.

Matters not to
be discussed
by Board
Members

8. (1) The Board shall not be concerned with and shall not discuss the merits of any individual claim for compensation being processed by the Fund, or whose processing is pending or imminent.

(2) Where a Board member is the claimant, or is the spouse, parent, brother, sister or child of the claimant, such member shall not be precluded from availing himself of his rights under and in accordance with the provisions of this Act, but he shall not raise the merits thereof at any Board meeting or canvass the same with any other Board member.

(3) Any member who contravenes the provisions of subsection (1) or subsection (2) may be dismissed from the Board by the Minister, in which case the Minister shall appoint another person to the Board in accordance with the provisions of section 5 for the remaining period of the dismissed member's term of office.

Appointment
of Manager
and other staff

9. (1) The Fund shall have a Manager who shall be appointed by the Minister on the recommendation of the Board upon such terms and conditions and for such period as may be determined by the Board.

(2) In advising the Minister in terms of this section the Board shall not recommend a person unless such person has the experience and skills relevant to the Fund's special needs, and is a person of integrity.

(3) The Board shall appoint an Assistant Manager of the Fund on such terms and conditions and for such period as it shall determine.

(4) The Board shall not appoint a person as Assistant Manager unless such person has the experience and skills relevant to the Fund's special needs.

(5) The Manager shall, subject to the directions of the Board, appoint such other staff, on such terms and conditions, as may be required for the proper management of the Fund.

(6) Where the Manager is absent from Botswana or is for any other reason unable to perform the functions or carry out the duties required of the Manager under this Act, those functions or duties shall be performed or carried out by the Assistant Manager.

10. (1) Without derogation from the generality of the powers conferred by section 3, the Fund shall have power —

Powers of
the Fund

- (a) to utilize its funds for the purposes connected with or resulting from the exercise of its powers or the performance of its duties under this Act;
- (b) to purchase or otherwise acquire goods, equipment, land, buildings, shares, debentures, stocks, securities and any other kind or class of movable or immovable property;
- (c) to draw, draft, accept, endorse, discount, sign and issue promissory notes, bills and other negotiable or transferable instruments;
- (d) to sell, lease, mortgage, encumber, dispose of, exchange, work, develop, build upon, improve or in any other way deal with property;
- (e) to invest any monies, not immediately required for the conduct of its business, in such manner as may be for the benefit of the Fund, and to realise, alter, reinvest such investments or otherwise deal with such monies or investments as may be to the benefit of the Fund;
- (f) to borrow or lend money and secure repayment thereof in such manner as it considers necessary or advisable;
- (g) to make such donations as it considers advisable for research in connexion with any matter relating to vehicle accidents and injuries sustained in motor vehicle accidents;
- (h) to reimburse the Government for services rendered to the Fund by persons in the employ or service of the Government;
- (i) to negotiate agreements in terms of which it may accept liability in respect of vehicle accidents involving vehicles registered or licensed in a territory other than Botswana;
- (j) to do all such things as are incidental or conducive to the exercise of its powers or the performance of its duties under this Act:

Provided that it shall in each case require the prior approval of the Board in the exercise of its powers in terms of paragraphs (b), (d), (e), (f), (g) and (i) hereof.

11. (1) The monies of the Fund shall consist of such sums as shall be raised and paid into the Fund in terms of subsection (2) hereof, such sums as may be paid into the Fund by the Government, such sums as the Fund may receive from its investments, and such other sums as it may acquire or earn or borrow in accordance with the provisions of this Act.

(2) A levy of eight thebe per litre, or at such other rate as the Minister may, from time to time prescribe, shall be retained by the seller on every litre of petroleum product sold by him, or by the importer on every litre of petroleum product imported by him other than for resale, such levy to be paid over to the Fund by the twenty fifth day of the month following the date of sale or importation, as the case may be:

Provided that the Minister may exempt, or partially exempt, from such levy petroleum products purchased for consumption by such organizations, persons or classes of vehicles as he may by regulations prescribe, and such regulations may prescribe the rate at which, the manner in which, and the period of time within which any rebate in respect of such exemption or partial exemption shall be claimable.

(3) In this section —

“seller” means any organization, person or body of persons involved in the importation or sale of petroleum products; and

“petroleum products” means petrol and diesel fuels.

(4) Payments made in terms of this section shall be examined half-yearly by a person, qualified as a company auditor in terms of section 123 of the Companies Act, who shall then issue a certificate that such examination has been performed and that, on the evidence presented in the seller’s or importer’s books of account, the payments made accord with the rate prescribed.

(5) Where monies are due in terms of subsection (2), but have not been paid into the Fund within the period of time therein stipulated, interest at three percent per month or part thereof shall accrue thereon and shall become payable to the Fund.

(6) The monies of the Fund shall be used by the Fund to discharge obligations and defray expenses incurred in the exercise of its powers and the performance of its duties in terms of this Act.

(7) The Manager shall cause to be kept proper books of account and records of all financial transactions, assets and liabilities of the Fund.

(8) The accounts of the Fund shall be audited annually by an independent auditor designated for that purpose by the Board, and, as soon as is reasonably possible thereafter, the Manager shall submit the audited balance sheet and auditor’s report to the Minister, together with his own report on the performance of the Fund during the year to which the audit report relates.

(9) The Minister shall table in the National Assembly copies of the reports submitted to him in terms of subsection (8), within one month of their receipt by him, or, if the National Assembly is not then in session, as soon as possible after the commencement of its next ensuing session.

(10) The income and revenues of the Fund shall be exempt from income tax.

12. (1) Subject to the provisions of this Act, and any conditions which may be prescribed relating to the submission of, investigation of, and processing of claims, the Fund shall be obliged to compensate any person (in this Act referred to as "the third party") in an amount that reasonably equates to the value of any loss or damage which he may suffer as a result of —

- (a) bodily injury to any person including himself; or
- (b) the death of any person,
directly caused by the negligent driving of a vehicle in a vehicle accident at any place in Botswana, except to the extent that such injury or death was occasioned in consequence of such third party's own negligence, and except where the accident occurs on any road, place or area to which the general public has no normal or temporary right of access:

Provided that —

- (i) whenever the person envisaged by section 12 (1) (b) is a minor the parent or guardian of such minor shall be entitled to payment of the sum of Pula 5 000 as *solatium* for grief; and
- (ii) in respect of the death of any minor of the age of fourteen years or less, resulting from vehicle accident, the Fund shall reimburse the parent or guardian of such minor the costs of the funeral, including burial, an amount not exceeding such amount as may be prescribed, whether or not liability in respect thereof has accrued to the Fund.

(2) For the purposes of subsection (1) (b) (i) a parent or guardian shall not include such person where such person had abandoned his legal duty to maintain the minor or attend to the minor's needs in accordance with such duty.

(3) Notwithstanding the definition of "vehicle" in section 2 but subject to all other provisions of this Act, the Fund shall also be liable to compensate any person in terms of subsection (1) hereof where the vehicle negligently driven is an animal drawn vehicle and the vehicle accident involves a collision between such vehicle and another vehicle.

(4) Where a claim for compensation under this Act —

- (a) includes a claim, in relation to an injured party, for the recovery of costs of any future operation, care, treatment, accommodation in a hospital, or the rendering of a service or the costs of goods to be supplied, the Fund may furnish the third party concerned with a written undertaking to compensate the third party, in respect of such costs as claimed, proved or agreed prior to such undertaking, after they have been incurred, and upon proof thereof;

Provided that where the claimant is a minor the Fund may proceed in terms of subsections (1) (b) and (2) of section 14 in respect of costs to be incurred after attainment of the age of majority;

- (b) includes a claim for future loss of income or support, the loss shall be projected over the anticipated period of loss and the Fund may furnish the third party concerned with an undertaking to pay such amount as claimed, proved or agreed prior to such undertaking and shall thereafter pay the amount due in respect thereof by instalments payable monthly or yearly in accordance with such projection.

(5) Where a third party is entitled to compensation in terms of this section, and has incurred costs in respect of accommodation for himself or the injured or deceased party in a hospital, or has incurred the costs of treatment, the rendering of a service, or goods supplied, the person providing such accommodation, treatment, service or goods may claim the amount due therefor directly from the Fund on such form as may be prescribed, and any such claim shall be subject, *mutatis mutandis*, to the provisions applicable to any claim of the third party concerned.

13. The liability of the Fund in terms of this Act shall, in respect of claims for compensation caused by a vehicle accident involving an unidentified vehicle, be subject to the following additional conditions —

- (a) proof, involving physical evidence, of a collision between the unidentified vehicle and the injured party or the deceased, or the vehicle in which either was travelling or being conveyed at the time of the accident;
- (b) proof of reasonable steps taken to identify the vehicle in question; and
- (c) proof that the collision or accident in question was reported to the police as soon as was reasonably possible.

14. (1) Whenever the Fund accepts liability, or is adjudged to be liable, in respect of any claim for compensation by a minor —

- (a) the sum due and payable;
- (b) any amounts provided for the care and treatment of such minor; and
- (c) any amounts representing future loss of earnings or support, shall be maintained, by the Fund, in an interest bearing bank account or shall otherwise be invested until such minor attains the age of majority, whereupon —
 - (i) the sums due, in terms of paragraph (a) of this subsection, and any interest accrued thereon, shall accrue to his estate, and

Accidents
involving
unidentified
vehicle

Trust for
minors

- (ii) the remainder of the said amounts so provided in terms of paragraphs (b) and (c) of this subsection, and any interest accrued thereon, shall accrue and revert to the Fund, and the Fund shall thereupon determine whether such amounts are still needed for the purposes of that paragraph, and, if necessary, pay over such remainder or portion thereof as needed, to him:

Provided that in the event of such minor failing to attain the age of majority, the remainder of the amounts provided in terms of paragraph (b) and the amount fixed in terms of paragraph (c) of this subsection, and any interest accrued thereon, shall accrue and revert to the Fund.

(2) The bank account containing the amounts, together with accrued interest thereon, provided and banked in terms of paragraph (b) of subsection (1), shall be operated solely by the Fund for the purposes of meeting expenses necessarily incurred in the care, treatment and support of the minor concerned, and any balance shall constitute the remainder stipulated in subsection (1) (ii) and the proviso thereto, and shall be so dealt with.

(3) For the purposes of paragraphs (a) and (i) of subsection (1), the word "sum" shall mean such amount as constitutes compensation for pain and suffering, disablement, disfigurement and loss of amenities.

15. (1) Subject to the provisions of this Act, and notwithstanding the provisions of any other law, the compensation payable by the Fund in respect of a person injured or killed in a vehicle accident shall be calculated in accordance with the provisions of this section.

Limitation
of liability

(2) The compensation payable by the Fund in respect of a vehicle accident caused solely by the negligence of the driver or owner of the vehicle in which the person or persons killed or injured was conveyed as a passenger shall not exceed P36 000 in respect of each such person or persons, irrespective of the number of claimants.

(3) Where the vehicle accident involves negligence or fault on the part of the driver or owner of more than one vehicle, and the loss and damage to any passenger, or person claiming in consequence of the injury to or death of such passenger, exceeds P36 000 in value, the liability of the Fund to pay compensation shall be calculated in accordance with the following formula —

- (a) it shall first be assumed that the whole loss and damage caused to such a person is quantified at Pula 36 000, which figure shall then be reduced to a figure which, in relation to the sum or Pula 36 000, proportionally represents the contribution made to such cause by the negligence of the driver or owner of the vehicle in which such passenger was conveyed; and
- (b) the resultant figure shall then be increased by such sum as proportionally represents the contribution made by the negligence of the driver or owner of the other vehicle to the whole of the loss and damage suffered:

Provided that where the loss or damage suffered by the person in terms of this paragraph exceeds Pula 50 000 the amount payable by the Fund shall not, subject to the other provisions of this section, be reduced below Pula 50 000.

(4) The compensation payable by the Fund in respect of the injury or death of a person in a vehicle accident shall be reduced in direct proportion to the contribution made by such person to the vehicle accident or to his own injury or death.

(5) The compensation otherwise payable by the Fund in respect of a driver of a motor vehicle involved in a vehicle accident shall be reduced by fifty percent where it is proved that the blood alcohol level of such driver exceeded eighty milligrams of alcohol per one hundred millilitres of blood within six hours after the accident in question.

(6) The compensation otherwise payable by the Fund in respect of a person injured or killed in a vehicle accident shall be reduced by twenty five percent, where such person was, in the circumstances stated —

- (a) at the time of the accident, not utilising the facility of a seat belt fitted to the vehicle for such purpose; or
- (b) being conveyed otherwise than in or on a properly constructed seat affixed permanently to the vehicle for that purpose.

(7) The compensation otherwise payable by the Fund to the driver of a vehicle, or his dependents, shall be reduced by fifty percent where the said driver was in unlawful possession or use of the vehicle, or where the vehicle was defective irrespective of whether or not such possession, use or defect contributed to the cause of the vehicle accident in question, and the same reduction shall apply to any passenger, in the vehicle, or his dependents, if it is proved that he knew or ought reasonably to have known of such unlawful possession or such defect.

(8) The compensation that the Fund is required to pay in respect of medical expenses on any claim shall not exceed such sum, or sums, as is or are currently prescribed and generally chargeable in terms of any accepted formal or informal tariff used in the medical profession in Botswana or South Africa.

(9) The compensation payable by the Fund to any person, including a dependent, in respect of any vehicle accident shall, where such person is entitled to be compensated or paid in terms of any workman's compensation, industrial law, or employment contract, be limited to such sum as represents the difference, if any, between the amount payable in terms of such entitlement and the amount otherwise payable in terms of this Act.

(10) The compensation payable by the Fund to any person in respect of any medical expenses or costs shall, where such person is entitled to be compensated or paid in terms of any medical aid scheme or contract be limited to such sum as represents the difference, if any, between the amount payable in terms of such entitlement and the amount otherwise payable in terms of this Act.

(11) Notwithstanding the provisions of this Act, the amount of compensation payable by the Fund in respect of any one vehicle accident shall be limited to a total of Pula 1 000 000, irrespective of the number of claimants, where such accident took place within the confines of, or bordering on the confines of, an aerodrome, airfield or airstrip, and involves damage to any aircraft.

(12) The compensation payable by the Fund in respect of any funeral, including burial, shall be limited to such sum as may be prescribed.

(13) Notwithstanding the provisions of this Act, the total compensation payable by the Fund shall be limited —

(a) in respect of a claim by any one injured party, to the sum of Pula 1 000 000.

(b) in respect of a claim by any dependent of a person injured or killed, to the sum of Pula 300 000.

(14) The limitations specified in this section shall be exclusive of any order for costs made by a court, or the costs of obtaining any medico-legal report.

16. (1) Notwithstanding the provisions of any other law and the provisions of sections 12, 13, 14 and 15, the Fund shall not be required to pay compensation —

Exclusions
of liability

(a) with the exception of the reimbursement of funeral expenses in terms of the proviso to section 12(1), where, but for the provisions of this Act, no right to compensation would have accrued to the claimant;

(b) to any third party, unless the claim has been instituted or prosecuted by such third party personally, or on behalf of him by —

(i) a person entitled to practice as an attorney in Botswana; or

(ii) a person who is in the service of, or is a representative of, the Government of Botswana or a local authority;

(c) in respect of any loss or damage in consequence of shock or other nervous or physical trauma induced in any person by virtue of that person witnessing, hearing of or becoming aware of any vehicle accident;

(d) in respect of any loss or damage comprising or involving loss of profits, outlay, or investment or comprising expense, including expense involving the recruitment, hiring or replacement of any member of staff or any employee in any company, organization, enterprise or venture;

(e) in respect of injury or death suffered by any person who at the time of the occurrence —

(i) was being conveyed for hire or reward on a motor cycle;

(ii) was a dependent of the negligent driver of the vehicle in question, or was responsible in law for the maintenance of such driver, and was being conveyed other than as an employee being conveyed in the normal course of business;

Cap 69:01

- (f) where it is proved that the driver of a vehicle involved in a vehicle accident was under the influence of intoxicating liquor or drugs to the extent of being incapable of having proper control of such vehicle, in respect of any loss or damage to such driver, or in respect of any loss or damage to any passenger of such vehicle, where such passenger, not being a minor, was aware of, or ought reasonably to have been aware of, the condition of the driver;
- (g) in respect of any claim by a driver of a vehicle, or by a dependent of such driver, in the absence of satisfactory proof that the vehicle accident in question was reported to the police within the period prescribed in the Road Traffic Act for the reporting of vehicle accidents, or was reported in terms of section 18 of this Act, unless it is proved that the failure to so report was due to incapacity on the part of the driver as a result of the accident.

(2) The Fund shall not be obliged to pay compensation where the person injured or killed was being conveyed in a vehicle which was, to the knowledge of such person, not being a minor, unlawfully conveying any passengers or goods.

(3) Where the Fund has reasonable grounds to believe that a claim or the information and particulars, concerning the vehicle accident, injury or death giving rise to the claim is false or misleading, the Fund shall not be obliged to pay compensation.

Claimant's
other rights
reserved

17. An award of compensation to a third party in terms of this Act shall be without prejudice to any other claim which such third party may have against any other person arising out of the same occurrence:

Provided that the claim shall first be made against the Fund, and a court adjudicating in such other claim, shall take into account any compensation awarded under this Act, or any offer made by the Fund to settle the claim.

Responsibility
to report
accidents

18. (1) The owner, and the driver if he is not the owner, of a vehicle involved in a vehicle accident shall report, in the prescribed form, such vehicle accident to the Fund as soon as is reasonably possible after such accident, and, in any event, within a period of fourteen (14) days after such accident, giving full details of the date, time and place, and the vehicles and persons involved:

Provided that where, due to reasonable cause, such as the incapacitation of the owner or driver of the vehicle as a result of the accident, the report of the accident is made subsequent to the 14 days from the date of the accident, the report shall be accepted if made within a reasonable time after the recovery of the owner or driver.

(2) Any owner or driver who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable to a fine of Pula 500 or, in default of payment, to thirty days imprisonment.

19. (1) A claim for compensation against the Fund shall be made in the prescribed form and shall include duly completed medical reports and such other relevant information and particulars concerning the vehicle accident, injury or death giving rise to the claim as required on such form or as may be required in terms of the regulations made under this Act.

(2) Any claim made in terms of subsection (1) shall be delivered by hand or registered post to the offices of the Fund and, where delivery is by hand, the receipt thereof, together with the date of such receipt, shall be duly acknowledged in writing.

(3) (a) At any time after receiving a claim for compensation in terms of subsection (1), the Fund shall be entitled to require the claimant, or any person who has suffered the bodily injury giving rise to such claim —

- (i) to submit, at the expense of the Fund, to a medical examination or examinations by medical practitioners appointed by the Fund;
- (ii) to answer any questions put by a representative of the Fund on any matter raised as an issue in the claim;
- (iii) to provide a written sworn statement on any matter raised as an issue in the claim; and
- (iv) to furnish copies of any documents, plans, drawings, photographs or X-ray photographs which the claimant relies on in his claim for compensation:

Provided that the Fund shall give the claimant at least seven days written notice of its intention to invoke any or all of its rights in terms of this section.

(b) Where any person refuses, declines, neglects or fails to cooperate with the Fund in respect of any of the matters set out in paragraph (a) of this subsection then the claim in which such person is involved or which relates to such person shall be deemed to be in breach of this section.

(c) For purposes of this section, “medical practitioner” shall include an occupational therapist, a speech therapist and any other discipline concerned with the loss of physical or mental function.

(d) The claimant shall be entitled to copies of all documentary evidence on which the Fund relies in making a determination.

(4) Any person who wilfully makes a false claim or produces false or misleading information or particulars concerning the vehicle accident, injury or death giving rise to the claim for compensation shall be guilty of an offence and shall be liable to a fine not exceeding P5 000, or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment.

(5) Whenever any person is convicted of an offence under sub section (4), the court convicting him shall, in addition to any penalty imposed, forthwith make an order requiring such person to reimburse the Fund the full sum paid as compensation in respect of which the offence was committed.

Legal
proceedings

20. (1) Legal proceedings to enforce any claim under this Act may be instituted in a court of competent jurisdiction upon expiry of a period of six (6) months after completion of the procedures set out in section 19:

Provided that such proceedings may be instituted at any time after the Fund has made a final determination on the claim subject to the limitations and provisions of section 21.

(2) Where such legal proceedings are concerned with an issue of procedure, costs or a dispute as to the amount of compensation awarded such proceedings shall be by way of review and in such event the claimant shall first submit a written statement to the Fund setting out the reasons for dissatisfaction or complaint to which the Fund shall respond in writing within fourteen (14) days.

(3) In all other instances such proceedings shall be by way of action for an order directing the Fund to proceed to make a determination on the claim and award compensation in accordance with the provisions of this Act.

(4) In any legal proceedings the Fund itself, as represented by its servants, shall be entitled to act on its own behalf and to appear in any court and to sue out, serve and receive service of process.

Prescription
of right to
claim

21. (1) Notwithstanding the provisions of any other law relating to the prescription of claims, but subject to the provisions of subsections (2) and (3), the right to claim compensation from the Fund shall become prescribed upon the expiration of a period of two (2) years from the date of the vehicle accident giving rise to the claim.

(2) Prescription of a claim under this Act shall not run against any person —

(a) whilst such person is a minor;

(b) whilst such person is detained as a patient in terms of the provisions of the Mental Disorders Act;

(c) whilst such person is under curatorship due to mental disorder.

(3) Prescription of a claim under this Act shall be suspended for a period of three (3) months from the date of delivery, to the claimant or agent, of a notification —

(a) repudiating liability; or

(b) conveying an offer of settlement,

Provided that in respect of a claim which has been submitted in full accordance with the provisions of section 19, the running of prescription may be suspended by mutual agreement between the Fund and the claimant, or his agent, which agreement shall be reduced to writing before taking effect.

(4) In respect of any prescribed claim, the court may grant the claimant concerned, on application, the right to institute an action for enforcement of the said claim provided that —

(a) it is satisfied that special circumstances exist as to the reason for the claim not having been submitted before becoming prescribed;

(b) the application is brought not later than three months after the claim became prescribed; and

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(c) the claimant concerned provides security for costs to the satisfaction of the court.

(5) The right to institute any action granted in terms of subsection (4) shall be exercised within a period of three months from the date on which such right is granted, failing which such right shall lapse.

22. Notwithstanding the provisions of any other law, where the Fund has paid any sum as compensation in terms of this Act, it shall have the right to recover such sum from the person who caused the vehicle accident giving rise to the claim in question, less such amount as is due to such person but for the provisions of this section, if, at the time of such vehicle accident that person -

Right of
recovery
by Fund

(a) was under the influence of intoxicating liquor or drugs to such an extent as to be incapable of having proper control of a vehicle;

(b) was driving the vehicle recklessly;

(c) was driving the motor vehicle without being the holder of a valid driving licence;

(d) was driving a defective vehicle and such defect caused or contributed to the cause of the vehicle accident;

(e) was driving a stolen vehicle knowing, or ought reasonably to have known, that it was stolen; or

(f) being the owner, custodian or lawful possessor of the vehicle, permitted the vehicle to be driven in the circumstances set out in paragraphs (a), (b), (c) and (d) hereof

23. Where, in accordance with a claim made in terms of this Act, a court makes an order for compensation against the Fund —

Order for
interest or
costs by court

(a) it shall not make an award of interest payable on any sum due unless payment in satisfaction of the order is not made by the Fund within a period of fourteen (14) days after such order; and

(b) in making an order for costs it shall take into consideration any written offer in settlement of the claim made by the Fund prior to the issue of the summons, but evidence of such offer shall not be admissible for such purpose until after judgement on the issue of liability.

24. (1) For the purposes of this Act, a vehicle which is being propelled by any mechanical, animal or human power or by gravity or momentum shall be deemed to be driven by the person in control or apparent control of the said vehicle or animal.

Evidence and
presumptions

(2) For the purposes of this Act, a person who has parked a vehicle at any place shall be deemed to be the driver of that vehicle, and if, as a result of gravity the said vehicle moves from that place, that said person shall be deemed to be the driver of the said vehicle whilst it is so moving, and at the place where it comes to rest.

(3) Whenever a vehicle has been parked or left at any place, it shall, for the purposes of this Act, and until the contrary is proved, be presumed that the said vehicle was so parked or left by the owner thereof.

(4) Whenever it is shown that a vehicle involved in a vehicle accident was equipped with a seat belt it shall be presumed, until the contrary is proved, that such seat belt was in proper and efficient working order.

(5) Whenever it is proved that the blood alcohol level of any person, alive or dead, exceeded 150 milligrams of alcohol per 100 millilitres of blood within six (6) hours of such person driving a vehicle, it shall be presumed that such person was under the influence of liquor to such an extent as to be incapable of having proper control of a vehicle.

(6) No agreement or undertaking by the Fund to pay compensation or any sum of money in respect of any claim shall be enforceable in any court unless in addition thereto liability has accrued to the Fund in terms of section 12.

Regulations

25. (1) The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and in particular but without prejudice to the generality of the foregoing, may make regulations with respect to any of the following matters —

- (a) to prescribe anything required by this Act to be prescribed and to prescribe the manner in which any form so prescribed shall be completed and presented;
- (b) to prescribe the powers and duties which may be exercised or performed in connexion with the administration of this Act by such person or persons as the Minister may designate;
- (c) after consultation with the Minister responsible for health, to prescribe a tariff of fees to regulate the medical expenses recoverable from the Fund in respect of claims for medical care, accommodation, treatment, goods or services provided in any hospital.

(2) Regulations made in terms of subsection (1) may provide for penalties in respect of any breach thereof or failure to comply therewith or with any order or direction given thereunder, not exceeding a fine of P 500 and imprisonment for three months.

Repeal of
section 10
Cap 12:03

26. (1) The Motor Vehicle Insurance Fund Act is hereby repealed.

(2) Notwithstanding the provisions of subsection (1), the provisions of this Act shall not apply to vehicle accidents which occurred prior to this Act coming into force, and any claims in respect of such vehicle accidents shall be dealt with in terms of the Motor Vehicle Insurance Fund Act repealed by subsection (1), which shall continue to have force and effect in respect of such claim.

(3) All rights, obligations, assets and liabilities which have accrued to the Fund in terms of the Motor Vehicle Insurance Fund Act repealed by subsection (1) shall, upon this Act coming into force, simultaneously pass and accrue to the Fund and be dealt with in terms thereof.

(4) Nothing in this Act shall affect the validity of any agreement entered into under the repealed Act in respect of the assumption of liability for loss and damage caused by a vehicle accident involving a vehicle which is registered in a country other than Botswana, and any such agreement shall continue to have force and effect as if entered into under the terms of the Act.

27. Section 10 of the Apportionment of Damages Act is hereby repealed.

Repeal and
savings
Cap 69:02

PASSED by the National Assembly this 8th day of April, 1998.

C.T. MOMPEI,
Clerk of the National Assembly.