



**LAW SOCIETY**  
OF SOUTH AFRICA  
**PRESS RELEASE**

***29 September 2009: For immediate release***

**ROAD ACCIDENT VICTIMS APPLY TO COURT TO JOIN  
LAW SOCIETY CHALLENGE TO CONSTITUTIONALITY OF ROAD ACCIDENT FUND  
AMENDMENT ACT WHICH DEPRIVES VICTIMS OF RIGHTS, PROPER TREATMENT  
AND COMPENSATION**

Seven road accident victims will tomorrow ask the North Gauteng High Court, Pretoria, to be joined as co-applicants with the Law Society of South Africa (LSSA) against the Minister of Transport and the Road Accident Fund (RAF) in the matter launched earlier this year challenging the constitutionality and legality of a number of provisions of the Road Accident Fund Amendment Act and Regulations.

The victims were all injured in road accidents after the Amendment Act and Regulations came into effect on 1 August 2008. They state in their founding affidavits that the amendments to the RAF legislation substantially reduce or totally deny them certain rights to compensation that they would have had, had they been injured before 1 August 2008.

The seven victims

- a grass cutter living in an informal settlement and no longer able to support his four minor children, his mother and brother;
- a housewife and mother who can no longer care properly for her child and home;
- a self-employed single mother who can no longer support her child and conduct her chosen profession effectively; and
- a welder and father of four children who, due to his injuries, faces unemployment as he can no longer perform his work efficiently;
- a young man, a full time university student at the time of the accident who was rendered quadriplegic, who has had to abandon his studies and who will require life long full time care;
- a young man who had gone to work after school to raise funds to attend university (which he would have done in February 2009, but for the accident) and who is now a quadriplegic;
- a young woman, employed as a credit controller and a part-time student at Unisa who has sustained facial injuries which may result in permanent loss of sight in her right eye. As a result of the accident she has received no income since 2008 and has had to abandon her studies;

and their families are all suffering physically, emotionally and financially due to the negligence of other drivers who caused their injuries.

'The co-applicants, in their applications, raise those aspects of the Amendment Act and new Regulations that materially adversely prejudice them in relation to their own personal

circumstances and demonstrate, in graphic terms, the actual effect of the Amendments and new Regulations which is not readily discernable from the main application, which raises broad issues of principle. Rather than pursuing individual challenges to the Amendment Act and Regulations, which they are, of course, fully entitled to do, they have elected to intervene in the main application so all the issues can be ventilated in one forum at one time,' says the Chairperson of the LSSA's Road Accident Fund Committee, Jacqui Sohn.

As six of the victims do not have medical aid, they are being forced to seek ongoing medical assistance from provincial hospitals, which in some cases have provided unsatisfactory treatment in the first place. In the past they would have been able to received ongoing medical assistance from a private institution.

Their roles as caregivers, providers and breadwinners are being threatened as a result of their injuries, but in terms of the RAF Amendment Act, they will receive substantially reduced compensation from the RAF compared with persons injured in the same circumstances before August 2008.

The Amendment Act also prevents the victims from pursuing a common-law claim against the negligent and insured drivers who injured them, for those parts of their claims which they are no longer entitled to claim from the RAF. In terms of the current legislation, victims cannot claim for general damages if their injuries are not regarded as 'serious' in terms of the very complex new American Medical Association Guidelines adopted by the RAF. The Guidelines also do not take into account future complications or disability, and cannot be used to asses a victim's ability to work or receive direct financial compensation.

'Being able to claim general damages would, on the one hand, have allowed the victims to obtain the medical treatment of their choice at a time and place convenient to them, rather than leaving them at the mercies of the under-resourced, unreliable and in some cases inaccessible provincial hospitals. On the other hand, general damages would also have provided the victims and their families with some financial security should they not be able to continue to perform their current duties as a result of the negligence of others,' says Ms Sohn

In the words of one of the victims:

'As a result of these amendments to the RAF Act I am now in a difficult position. I have been advised that under the RAF Act I am not entitled to receive any compensation for general damages because my injuries are unlikely to be classified as "serious" in terms of the prescribed method of assessment. *The injuries were certainly serious to me*, but I have been prevented from receiving any compensation for pain and suffering and loss of the amenities of life caused by and resulting from the collision. *I find this offensive, unfair and unjustifiable.*

'It seems to be very unjust and unjustifiable that I am now even denied the right to seek payment for the rest of my damages from the person who caused me this harm. I have been advised that if I had sustained exactly the same injuries in any other circumstances other than a motor car accident as a result of the fault of another, I would be entitled to recover all my damages.'

### **About the LSSA application:**

In February this year, the Law Society of South Africa (LSSA), the South African Association of Personal Injury Lawyers, the Quadpara Association of South Africa and the National Council for Persons with Physical Disabilities in South Africa launched the application against the Minister of Transport and the Road Accident Fund (RAF), challenging the constitutionality and legality of the Road Accident Fund Amendment Act 19 of 2005 and some of its regulations, which came into effect in August 2008.

The LSSA contends that the Amendment Act

- denies the many badly injured road accident victims of compensation from the RAF; and
- entitles those who are able to claim to less compensation and lower levels of medical and hospital treatment than under the previous Act; while at the same time depriving them of their fundamental common-law rights to claim compensation from the wrongdoer for substantial damages now no longer covered by the Act from the wrongdoer.

According to the LSSA, it is unconstitutional for the Amendment Act to remove a road accident victim's common-law right to claim for fair compensation from the wrongdoer; and, at the same time

- to provide that only persons who suffer 'serious' injuries are entitled to claim general damages from the RAF;
- *by definition (of 'serious' injury) exclude many claimants who may, in fact, have suffered severely debilitating injuries from qualifying in terms of the definition and thus the right to claim from the RAF any compensation for pain and suffering, disfigurement and loss of the amenities of life;*
- capping a claimant's claim against the RAF for past and *future* loss of income or support to R167 000 per year;
- restricting compensation for emergency treatment to a reduced tariff which will be insufficient reasonably to ensure that accident victims will obtain emergency medical care where they need it; and
- limiting claims for future hospital and medical care to provincial hospital tariffs.

The LSSA brings the matter in the North Gauteng High Court, Pretoria on behalf of the tens of thousands of road accident victims who cannot themselves challenge the rights removed by the amendment Act because they are too badly disabled, live in remote areas or are disadvantaged by poverty.

It is expected that the matter will be heard early in 2010.

- [Link to media release of 24 February 2009.](#)
- [Link to comparative table of major differences between the Road Accident Fund Act, 1996 and the Road Accident Fund Amendment Act, 2005.](#)
- For full access to court documents in this matter see <http://raf.lssa.org.za>

#### **ISSUED ON BEHALF OF THE LAW SOCIETY OF SOUTH AFRICA**

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#### **Editor's note:**

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa's 18 800 attorneys and 4 900 candidate attorneys.

In Afrikaans items, please refer to the 'Prokureursorde van Suid-Afrika'.