

KQ NEWSLETTERS

March 2007

Claims under the Motor Accidents Compensation Legislation

If you are injured in a motor vehicle accident, whether you were a driver, passenger, pedestrian, cyclist, motorcyclist or pillion passenger, you may be able to make a claim for personal injury compensation.

It is necessary to think out all of the arguments to be raised in any future adjudication (whether these be based on contract, jurisdiction or other) at the time of serving the claim/payment schedule. Lack of precision in defining these arguments may prove costly

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Early Payment of Treatment Expenses

At the outset you may be entitled to immediately claim up to \$500 for your treatment without having to lodge a formal claim if you did not cause the accident. To do so you must get the registration number of the vehicle that caused the accident, report the accident to the police if they did not attend, get the event number of the accident from the police if they did attend and complete an Accident Notification Form ('ANF') available from your treating doctor. Within approximately 10 days of receiving the ANF notification a CTP Insurer will deny liability or admit provisional liability and pay the first \$500 of treatment expenses.

The early payment of treatment expenses will only be provided in cases where such expenses were reasonable and necessary and related to the injury caused by the motor accident. It is important to note that even if an Insurer pays for the treatment expenses this is not an admission of liability or an agreement to pay other future expenses.

Making a Claim

If your treatment expenses are going to exceed \$500 you should consider making a formal claim as soon as possible. To do so ensure that the accident is reported to the Police within 28 days and ascertain the CTP Insurer of the vehicle that caused the accident and get a claim form from that insurer, complete and return it to the Insurer within 6 months of the date of the accident or in respect of the death of a person, the date of death. Within approximately 3 months of receiving a claim the Insurer will determine liability and where liability is accepted the Insurer will pay reasonable and necessary treatment expenses.

Late Claims

Your claim could be affected if the insurer receives it more than six months after the accident. If your claim is indeed late recent amendments to the Act provide that a late claim may be permitted where the claimant provides a full and satisfactory explanation for the delay in making the claim. A Claimant's explanation may include a range of factors such as age, education, legal knowledge, place of residence, language barriers, disability, the extent of the injuries sustained and indeed even information regarding the party at fault. Further, the explanation must tie in with the objects of the Act, namely to encourage early and appropriate treatment and rehabilitation, provide compensation and encourage the prompt resolution of claims.

Claims for Economic and Non-Economic Loss

Claims under the Act may either be economic or non-economic. Economic loss includes the loss of ability to earn an income, reasonable and necessary hospital, medical and rehabilitation expenses (past and future), reasonable and necessary attendant care and home modification expenses and any other reasonable and necessary expenses and losses you suffer as a result of your injuries.

To make a claim you will need to demonstrate that the amount claimed is reasonable, you can verify it and it relates directly to the injuries and losses caused by the accident. It is therefore recommended that you keep all receipts, medical reports etc.

A claim for non-economic loss is for the pain and suffering and loss of enjoyment of life that you have experienced because of the accident. In order to keep the cost of CTP Insurance down a person may only claim for non-economic loss if he/she has a whole-person impairment of more than 10 per cent as a result of the accident. The MAA Medical Assessment Service (MAS) provides a service to resolve medical disputes between an injured person and the Insurer about whether injuries have resulted in a whole person impairment of more than 10 per cent.

Claims may also be referred to the MAS where disputes arise as to:

- whether treatment is reasonable and necessary or relates to the injury caused by the accident;
- if the injury has stabilised;
- the degree of permanent impairment; and
- impairment of earning capacity.

If you think that you may have a potential claim under the Motor Accidents Act, please contact Paul Quinn of this office.

KQ LAWYERS HAVE EXPERTISE IN COMMERCIAL AND CONSTRUCTION LITIGATION. IF YOU WOULD LIKE FURTHER INFORMATION PLEASE VISIT OUR WEBSITE, EMAIL **ROBERT KALDE OR **PAUL QUINN**, OR CONTACT US ON 02 4862 2020.**