

Know Your Rights: Personal Injury Law in South Africa

Prepared by **RW KRUGER AND ASSOCIATES INC**

By Attorney **Ruan Werner Krüger**

(Public Legal Education Guide)

ZA 1. What Is Personal Injury Law?

Personal injury law protects individuals who have suffered **bodily harm, psychological injury, or death** as a result of **another party's wrongful or negligent conduct**.

These claims ensure that the injured person (or their family) can recover **financial compensation** for losses such as:

- Medical expenses,
 - Loss of earnings,
 - Pain and suffering,
 - Loss of support (in fatal cases),
 - Future care and rehabilitation.
-

2. Legal Foundations

Personal injury law in South Africa is based on **common law principles of delict**, supported by **specific statutes**, including:

Statute	Purpose
Road Accident Fund Act 56 of 1996 (RAF)	Compensation for injuries or death caused by motor vehicle accidents
Consumer Protection Act 68 of 2008	Protects consumers injured by defective products
Occupational Health and Safety Act 85 of 1993	Employer duties to prevent workplace injuries
National Health Act 61 of 2003	Regulates medical services and patient rights

Statute	Purpose
Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA)	Compensation for work-related injuries and diseases
Constitution of South Africa, 1996 – Section 12 & 27	Guarantees bodily integrity and access to health care

3. Types of Personal Injury Claims

Category	Example	Compensation Source
Road Accident Fund (RAF)	Injuries or death caused by negligent driving	Road Accident Fund (statutory)
Medical Negligence	Surgical errors, misdiagnosis, birth injuries	Public or private healthcare providers
Public Liability	Slip and fall in mall, unsafe public space	Property owners or insurers
Product Liability	Injury from defective or unsafe product	Manufacturer, importer, or retailer
Workplace Injury	Accident at work or occupational illness	COIDA (statutory)
Police Misconduct	Unlawful arrest or assault	Minister of Police (State Liability Act)

4. Proving a Personal Injury Claim

To succeed, your attorney must prove **five key elements** of *delict*:

1. **Conduct** — The defendant acted or failed to act.
2. **Wrongfulness** — The conduct was legally unacceptable.
3. **Fault** — The defendant was negligent or intentional.
4. **Causation** — The conduct caused the injury.
5. **Damages** — Actual loss or harm occurred.

5. Role Players in a Personal Injury Case

Role	Function
Plaintiff (Injured Person)	The person bringing the claim
Defendant	The person, institution, or insurer alleged to be responsible
Attorney	Advises, investigates, and litigates the claim
Advocate	Represents the plaintiff in court or settlement negotiations
Medical Experts	Provide reports on injuries, disability, and future care
Actuary / Economist	Calculates loss of income and future costs
Insurers / RAF / State Attorney	Respond to or defend the claim
Court (Magistrate / High Court)	Determines liability and compensation

6. The Legal Process — Step by Step

Step 1: Consultation

- Meet with your attorney.
 - Provide all relevant documents:
 - Accident report,
 - Medical records,
 - Proof of expenses,
 - Witness statements,
 - Photographs of injuries or scene.
 - Attorney assesses whether a **valid claim** exists.
-

Step 2: Investigation & Evidence Collection

- Obtain police docket and accident report (if applicable).

- Request hospital and doctor records.
 - Appoint **medical specialists** to assess injuries.
 - Quantify **financial loss** and future expenses.
-

Step 3: Letter of Demand

- Attorney sends a **formal letter** to the responsible party or insurer setting out:
 - Facts,
 - Legal basis,
 - Damages claimed,
 - Time limit for response.

If unresolved, the matter proceeds to litigation.

Step 4: Summons and Particulars of Claim

- The claim is filed in court.
 - The defendant files a **Notice of Intention to Defend** and **Plea**.
 - Both sides exchange **discovery documents** (evidence, reports, statements).
-

Step 5: Pre-Trial Procedures

- Attorneys exchange:
 - **Expert reports,**
 - **Witness lists,**
 - **Settlement proposals.**
 - **Pre-trial conference** held with judge or magistrate to streamline trial issues.
-

Step 6: Settlement or Trial

- Many cases are **settled out of court** after negotiations.
- If not settled, the matter proceeds to **trial**, where evidence is presented and witnesses testify.

- The court decides **liability and quantum (amount)**.
-

Step 7: Judgment and Payment

- Once judgment or settlement is granted:
 - The defendant or insurer pays the awarded damages.
 - Attorney ensures payment and distribution.
 - Final receipts and satisfaction documents filed with court.
-

7. Types of Compensation You Can Claim

Category	Examples
Medical Expenses	Hospital, surgery, medication, rehabilitation
Loss of Earnings	Past and future income due to disability
Pain and Suffering	Physical and emotional distress
Loss of Support	Dependants of deceased victims
Future Care Costs	Ongoing treatment, equipment, home modifications
General Damages	Non-financial loss (quality of life, scarring, trauma)

8. Time Limits (Prescription)

Claim Type	Time Limit
Road Accident Fund (RAF)	3 years from date of accident (2 years if unidentifiable vehicle)
Medical Negligence	3 years from date injury discovered
Public Liability / Delict	3 years
Claims Against the State	Notice within 6 months (Institution of Legal Proceedings Act)

Failure to act within these time frames may **forfeit your claim**.

9. The Role of Attorneys in Personal Injury Matters

Personal injury cases are **complex and evidence-heavy**.

An attorney ensures:

- Correct identification of liable parties,
- Proper quantification of damages,
- Compliance with statutory procedures,
- Engagement with medical and expert witnesses,
- Representation in settlement or court,
- Protection against insurers undervaluing claims.

Rob Green & Associates Assists With:

- **Road Accident Fund (RAF)** claims,
- **Medical malpractice** and **hospital negligence**,
- **Police assault / wrongful arrest** claims,
- **Slip-and-fall / public liability** actions,
- **Loss of support** claims for dependants,
- **Product and occupational injuries**.

10. Key Legal References

- **Road Accident Fund Act 56 of 1996**
- **Administration of Justice Act 1969**
- **Prescription Act 68 of 1969**
- **Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002**
- **National Health Act 61 of 2003**
- **Common Law of Delict (Case Precedents)**
- **Constitution of South Africa, Section 34: *Right to access to courts.***

11. Your Rights Summarised

You have the right to:

- Be **treated with dignity** and compassion;
 - Seek **compensation** for injuries caused by negligence;
 - Access **your medical and police records**;
 - Be **represented by a qualified attorney**;
 - Be **informed** about your claim's progress;
 - Have your matter heard **fairly and transparently**.
-

 **Contact**

RW KRUGER AND ASSOCIATES INC

By **Attorney Ruan Werner Krüger**

 Offices in Somerset West

 ruan@rwkrugerandassociatesinc.com

 [RW Kruger and Associates Inc | Attorneys](#)

 +27 (0) 82 870 0058