



FINFLASH

CAR ACCIDENT: ARE YOU GUILTY OR INNOCENT?

Ever felt cheated when you were not fully compensated for your vehicle damage after claiming directly from a third party's insurance company?

If you ever were in this position, the first things that come to mind are that, unfairly, you were not compensated in full for the damages incurred and you had to wait months to receive your payment, if you received anything at all. Before we make insurance companies out to be the greedy bad guys, we need to understand that there is method in the madness. **It all comes down to legal procedures and binding legislation, amongst other things, regarding the proportionality of guilt attributed for causing the accident.**

If you are concerned about this possibility or if you would like advice on a possible solution to this problem contact us. If you want to understand this situation better and the fundamental changes in the legislation concerned read further.

For the purpose of our explanation we will use YOU, the reader, as the disadvantaged party in the case studies and you will be referred to as Mr M. To differentiate general information from facts, all facts will be in **cursive print**.

Whilst reading this, keep the following facts in mind, as they are crucial:

- 1. Up to almost 5 years ago it was general knowledge that all or most insurance companies were part of the "Knock-for-Knock" agreement. In terms of this agreement each insurance company accepted liability for the repairs of their own insurance clients' motor vehicle damages. After settling the damages the legal departments of the two insurance companies would then negotiate on the proportion of "guilt" to be applied for the incident. Based on the outcome, one of the insurance companies would then refund the not-guilty party's excess to his insurance company. Said insurance company would refund their client the excess amount, the claim was dealt with as a successful recovery and any no-claim bonuses would be reinstated. This tended to become a financial problem for insurance companies.*

There was another way to approach this that lead to more monies being recovered than just the excess amount. More monies recovered leads to a positive influence on premiums charged to clients. Most insurance companies thus opted to cancel their participation to this Agreement. They ended up employing their own legal experts to deal with recoveries from third parties, either directly or through the third party's insurance company.

2. In the "old" days we all accepted as a fact that if you collide with a vehicle from behind you are automatically considered to be the guilty party. If someone parked within a restricted parking area and you collide with such vehicle, that person should be guilty because he parked illegally. If you indicated that you are going to turn right and a vehicle overtakes you and collides with you, it was immediately believed that the vehicle coming from behind was in the wrong.
3. New legislation changed all that. We refer you to Part II, 51 (2) of The Road Traffic Act (1996) that clearly states: "(2) Notwithstanding anything contained in this section it shall be the duty of a driver of a motor vehicle to take such action as may be necessary to avoid an accident, and the breach by a driver of any motor vehicle of any of the provisions of this section shall not exonerate the driver of any other motor vehicle from the duty imposed by him by this section." This changed how "guilty" or "liable" will be understood forever. The practical implication of this change is that all parties involved in an accident can and will be held liable proportionally. In other words, **somebody else's mistake or neglect will not exonerate YOU from your duties in terms of the law.**
4. When you take out insurance on your motor vehicle, you enter a legally binding contract with the insurance company of your choice. The contract states that in turn for accepting your premium, the insurance company will indemnify you for all losses or damages as covered by the policy. The parties to this contract are YOU and the insurance company, nobody else. The insurance company has NO obligation to any other entity or person besides those mentioned in their contract with you. This implies that your insurance company has NO obligation to settle a third party's damages in full or in part or at all if there are no legal grounds to do so. The serious implications of this will be explained in the case studies.
5. **Each and every short term insurance policy has a Subrogation Clause written into it. In terms of this clause the insurance company is, in the event of loss or damage, entitled to act as if it were YOU, the insured. This enables the insurance company to act on your behalf as if it (the insurance company) is the disadvantaged person.** This is why insurance companies and brokers remind you never to admit guilt to or to offer compensation of any kind to a third party in the event of an incident occurring. **If you refrain from adhering to the terms of this clause, the insurance company has the right to and may deny liability in terms of the policy.** The main reason for this is that when a third party is involved, the incident that occurred is no longer just a straight forward physical damage loss, there are now legal implications too. YOUR damage is the

straight forward physical loss, but the third party's damage has a legal connection. It is thus important to understand that once you submitted your claim to the insurance company and provided the third party's details, you handed all rights to deal with the third party over to the insurance company. You now need to "walk away" and let the insurance company deal with the third party directly, regardless of who it is.

6. How is proportional liability determined? It is determined by the insurance companies involved, by reading YOUR description of how the incident occurred, taking the sketch plan YOU provided along with your claim form, witness statements, police reports, and photograph's of the damages of both vehicles into consideration.

For the same purpose the version of the third party is scrutinized. The legal representatives of both insurance companies then come to an agreement of what percentage of proportionment to apply to both parties involved. The implication of this will be explained in the case studies.

7. The myth that the insurance company HAS to recover your excess or damage, is very far from the truth. The insurance company will ATTEMPT to recover all of or a portion of the damages incurred by you. There are however certain factors to consider:

- **Not all third parties have motor insurance and attempts to do a direct recovery are hindered by this.**
- **Not all uninsured third parties are in a financial position to pay for the damages they inflicted.**
- **Some uninsured and insured third parties cannot be traced due to a lack of the third party vehicle registration number, an identification number, residential address or contact details.**
- **In some cases it does not make financial sense to attempt a recovery - where the legal costs involved to attempt the recovery exceed the actual damages incurred.**

Keeping the above in mind, we illustrate the implications with certain case studies.

Case Study 1:

Mr M is parked in the general parking area of Pick & Pay. He is inside the shop for purchases. Mrs Y is parked next to him and in the process of opening her door she damages the left hand passenger side door of Mr M's vehicle. She leaves a note on his windscreen with her details.

Possible outcomes:

- a) Mr M's vehicle is parked, empty and can thus not be considered to be driven. He has zero liability for this incident.
- b) Mrs Y can be held 100% liable for the damages to Mr M's vehicle. Although her vehicle is not driven at the time, it is occupied by her and she can be held responsible. The only action that occurred that lead to damage was that of Mrs Y.

- c) Mr M's insurance company will compensate him for his damages in full.
- d) If insured, an attempt for a full recovery can be made from Mrs Y's insurance company.
- e) If not insured, Mr M's insurance company can attempt to make a recovery directly from Mrs Y.

Case Study 2:

Mr M drove his kids to school. At the four way junction he stopped and observed. The car of Mrs Y is approaching from the left hand side and approximately 10m away from the stop sign. Mr M assumes that she is going to stop and he proceeds to cross the road. Mrs Y doesn't stop as was assumed and collided with the left hand side of Mr M's vehicle.

Possible outcomes:

- a) Both vehicles were being driven, were in motion (engines running) and were occupied.
- b) Mrs Y completely ignored the traffic sign and could be held +/- 80% liable for the incident.
- c) However Mr M is compelled within the law to keep a proper lookout and had to anticipate that she may not stop. He can be held liable for 20% of the incident.
- d) Mr M, although comprehensively insured, is so upset that he decided to claim directly from Mrs Y's insurance company, as he didn't want to compromise his no-claim bonus.
- e) Mrs Y's insurance company agrees with the proportionment of blame applied and offers Mr M a settlement amount of 80% of his damages. He is now 20% out of pocket to repair his vehicle.

Implication for Mr M: If his total damage was R65 000, he only received R52 000 from Mrs Y's insurance company. He still needed to add R13 000 out of his own pocket to repair his damages. This amount exceeds the additional premium he would have paid on his vehicle if he submitted a claim and lost his no-claim bonus. If he opted to submit his claim, his insurance company would have compensated him IN FULL for his damages, his vehicle would've been repaired in a far shorter period than it took his battle with Mrs Y's insurance company, he may have lost his no-claim bonus for a period of three months, but the bonus would've been reinstated if his insurance company successfully made the recovery.

- f) If Mr M was not insured at all, he would've had to accept the offer made to him by Mrs M's insurance company.

Lessons to be learned from these examples:

1. **Never assume that you cannot be held partially liable for an accident.**
2. Never admit guilt or offer compensation as you may compromise your contract with your insurance company. Apologising is not an admission of guilt.

3. Allow your insurance company to deal with recoveries, don't attempt to do it yourself. You pay a premium to be compensated for your losses. Why try to take on an insurance company that you have NO contract with and that has NO obligation towards compensating you?
4. Direct third party claims take time to settle. **The reason for this is that it is not considered to be a compensation for damage matter, it is a legal matter.** This implies that there will be a negotiation process until a settlement is offered. Don't expect a settlement offer that will represent your total loss amount.
5. Rather submit your claim to your own insurance company and let them deal with the legal side thereof. This way you are ensured that you are fully compensated and timeously.
6. Accept that once you submitted your claim all negotiations with a third party is out of your hands. Do not interfere with your insurance company's negotiations with the third party.
7. Accept that your insurance company has NO obligation to compensate the third party.
8. Accept that not all damages are recoverable and the insurance company will attempt to make a recovery if it is financially viable.
9. **In the event of you being involved in an accident, take as many photographs as possible. Make sure you obtain as many details from the other party as possible: ID number, contact details, driver's license, registration number of the vehicle, residential address etc. This information is crucial for insurance companies to attempt recoveries.**

If you are interested to learn more about this situation, if you would like advice on your specific situation regarding insurance, or if you would like an obligation free quotation

[CONTACT US](#)

