

THE MOTOR VEHICLE ACCIDENTS ACT, 1991

*An Act to establish a Motor Vehicle Accidents Fund and to impose a levy on fuel for the purpose of paying compensation in respect of bodily injuries or death arising from the use of motor vehicles and to provide for other matters connected therewith.*

*Short Title.*

1. This Act may be cited as the Motor Vehicle Accidents Act, 1991.

*Interpretation.*

2. (1) In This Act unless the context otherwise requires:

“business” does not include any unlawful business;

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

“fuel” means petrol or diesel;

“Minister” means the Minister responsible for Finance;

“motor dealer” means a person who, as a business or trade, manufactures, assembles, repairs or deals in motor vehicles:

“motor vehicle” means any vehicle designed or adapted for propulsion or haulage on a road by means of any power (not being exclusively human or animal power) without the aid of rails, and includes any trailer of such a vehicle;

“MVA Fund” means the Motor Vehicle Accidents Fund established by section 3;

“owner,” in relation to —

(a) a motor vehicle which a motor dealer has in his possession during the course of his business and which may, in terms of any law relating to the licensing of motor vehicles, not be driven or used on a public road except under the authority of a motor dealer's licence of which the motor dealer concerned is the holder, means that motor dealer;

(b) a motor vehicle which has been received for delivery by a motor dealer in the course of his business of delivering new vehicles and which has not yet been delivered by him, means that motor ;

(ISSUE 2)

- (c) a motor vehicle which is the subject of a hire purchase agreement, means the purchaser under the hire-purchase agreement in question;
- (d) a motor vehicle leased under an agreement of lease for a period of at least 12 months, means the lessee concerned;

“repealed Act” means the Compulsory Motor Vehicle Insurance Order, 1973 and the Compulsory Motor Vehicle Insurance (Amendment) Act, 1987 repealed by section 21 of this Act;

“reward,” with reference to the conveyance of any person in or on a motor vehicle, does not include any reward rendering such conveyance illegal in terms of any provision of the Road Traffic Act, 1965;

“special circumstances” does not include any neglect, omission or ignorance;

(2) For the purposes of this Act a motor 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 of the vehicles.

(3) For the purposes of this Act a person who has placed or left a motor vehicle at any spot shall be deemed to be driving that motor vehicle while it is stationary at that spot or at a spot to which it moved from the original spot as a result of gravity.

(4) Whenever any motor vehicle has been placed or left at any spot it shall, for the purposes of this Act be presumed, until the contrary is proved, that such vehicle was placed or left at such spot by the owner thereof.

#### *Establishment of MVA Fund.*

3. (1) There is hereby established a body corporate to be known as the Motor Vehicle Accidents Fund (referred to in this Act as the “MVA Fund”) with perpetual succession and common seal and which may sue and be sued in its corporate name.

(2) The MVA Fund may acquire, hold and dispose of any movable or immovable property or enter into such contracts as may be necessary for the purposes of the Fund.

#### *Powers of the MVA Fund.*

4. The MVA Fund—

- (a) shall have the power to investigate or settle claims referred to in section 10 arising from the driving of a motor vehicle or commence, conduct, defend or abandon legal proceedings in connection with such claims;
- (b) may invest any monies not immediately required for the conduct of its business in such manner as may from time to time be determined by the Minister, and may realize, alter or re-invest such investments in such manner as may from time to time be determined by the Minister;

- (c) may, subject to the approval of the Minister in every case, borrow money and secure the payment thereof in such manner as it may deem fit;
- (d) shall utilize its funds for any purpose connected with or resulting from the exercise of its powers or the performance of its duties;
- (e) may do all such other things as are incidental or conducive to the exercise of its powers or the performance of its duties.

*Monies and audit of the MVA Fund.*

5. (1) The monies of the MVA Fund shall consist of the motor vehicle accidents levy imposed on fuel under section 6 and any income derived from the investment of monies of the Fund.

(2) The monies of the MVA Fund shall be exempt from income tax.

(3) The MVA Fund shall keep proper records of all its assets and liabilities.

(4) The books of accounts and other related records of the Fund shall be audited annually by an auditor appointed by the Supervisory Board.

(5) As soon as possible after each audit under subsection (4) but not later than three months after each such audit the Supervisory Board shall submit to the Minister the audited balance sheets and report of the auditor in respect of such audit together with a report on the activities of the MVA Fund during the year to which the audit relates.

*Imposition of Motor Vehicle Accidents Levy.*

6. (1) The Minister, in consultation with the Minister responsible for energy, may impose a motor vehicle accidents levy on fuel and the levy shall be of such amount as the Minister may, by notice published in the Gazette, determine.

(2) Any person who imports fuel in bulk from any place outside Swaziland shall pay the levy imposed under subsection (1) at the time of such importation or at such other time, whether before or after such importation, as the Minister may prescribe and also the Minister may prescribe the manner of making payment and collection of such levy.

(3) Any person who fails to pay a levy under this Act or in accordance with Regulations made thereunder shall be guilty of an offence and on conviction be liable to a fine of E5,000 or to imprisonment of two years or to both such fine and imprisonment.

*Purpose of the Motor Vehicle Accidents Levy.*

7. The levies collected under this Act shall become public monies and shall be used for the purpose specified in section 10 of this Act.

*Administration and management of the MVA Fund.*

8. The Minister may enter into an agreement or make such other arrangements with the Swaziland Royal Insurance Corporation established by the Swaziland Royal Insurance Corporation Order, 1973 or with any other person for the purposes of administering and managing the MVA Fund.

*Supervisory Board.*

9. (1) The Minister shall establish a Supervisory Board which shall supervise the operations and management of the Fund and may, subject to any directive given by the Minister on matters of policy, decide on matters relating to —

- (a) the financial position of the MVA Fund;
- (b) the financing of the MVA Fund; and
- (c) any matter from time to time referred to it by the Minister.

(2) The members of the Supervisory Board shall be appointed by the Minister, and shall consist of such number but not exceeding nine as the Minister shall determine.

(3) A member of the Supervisory Board shall be appointed for such period and on such conditions including such allowances, if any, as the Minister may determine.

(4) The Supervisory Board may demand the production to it of statistics, books, accounts or other documents relating to the MVA Fund for the purpose of examination or making extracts therefrom or copies thereof.

(5) The Supervisory Board shall meet at least once every quarter of a year and shall submit quarterly report to the Minister on the financial position of the Fund.

*Liability of MVA Fund.*

10. (1) The MVA Fund shall, subject to the provisions of this Act and to such conditions as may be prescribed, be utilised for the purpose of compensating any injured person or, in the event of death, any dependent of the deceased or where reasonable funeral expenses only is payable, the relatives of the deceased (in this Act called “the third party”) for any loss or damage which the third party has suffered as a result of:

- (a) any bodily injury to himself;
- (b) the death of or any bodily injury to any person;

which in either case is caused by or arises out of the driving of any motor vehicle by any other person at any place in Swaziland and the injury or death is due to the negligence or other unlawful act of the person driving the motor vehicle (in this Act called “the driver”) or of the owner of the motor vehicle or his servant in the execution of his duty.

(2) No interest shall be payable on the amount of any compensation which a court awards to any third party under subsection (1), unless 30 days have elapsed from the date of the courts’ order.

(3) In issuing any order as to costs on making such award, the court may take into consideration any written offer in settlement of the relevant claim made by the MVA Fund before the relevant summons was served on it.

(4) A claim for compensation under subsection (1) —

- (a) includes a claim for the costs of the future accommodation of any injured person in a hospital or nursing home or the treatment of or provision of service or goods to that person;

- (b) includes a claim for future loss or income or support.
- (5) Where a third party entitled to compensation under this section —
  - (a) has incurred costs in respect of accommodation of himself in a hospital or nursing home or the treatment of or provision of any service or goods to, himself; or
  - (b) on the recommendation of a medical practitioner and with the prior written approval of the MVA Fund, has incurred costs in respect of accommodation of any person in a hospital or nursing home or the treatment of, or provision of any service or goods to, any such other person.

The person who provided the accommodation, treatment, service or goods (in this case called the “supplier”) may claim the amount from the MVA Fund on the prescribed form and such claim shall be subject *mutatis mutandis* to the provisions applicable to the claim of the third party concerned.

*Liability limited in certain cases.*

11. (1) The liability of the MVA Fund to compensate a third party in connection with any one occurrence for any loss or damage under section 10 resulting in any bodily injury to or the death of the third party who, at the time of the occurrence which caused that injury or death was being conveyed in or on the motor vehicle concerned, shall be limited —

- (a) to the sum of E25,000 in respect of any bodily injury to or death of any one such person or to the sum of E250,000 in all in respect of any bodily injury to, or the death of, any number of such persons, (but in either case exclusive of the cost of recovering such compensation) who at the time of the occurrence which caused that injury or death was being conveyed in the motor vehicle in question —
  - (i) for reward;
  - (ii) in the course of the business of the owner or the driver of that motor vehicle; or
  - (iii) in the case of an employee of the driver or owner of that motor vehicle, in respect of whom subsection (2) of this section does not apply, in the course of his employment ; or
- (b) in the case of a person who was being conveyed in the motor vehicle concerned under circumstances other than those referred to in paragraph (a), to the sum of E12,000 in respect of loss of income or support and the cost of accommodation in a hospital or nursing home, treatment, provision of service or goods as a result of bodily injury to or the death of one such person, plus the cost of recovering such compensation but excluding the payment of compensation in respect of any other loss or damage:

Provided that the total liability under this paragraph in respect of any number of such persons shall be limited to E100,000.

(2) Where the loss or damage referred to in section 10 is suffered as a result of bodily injury or death of an employee of the driver or owner of the motor vehicle concerned and the third party is entitled to compensation under the Workmen's Compensation Act, 1983 in respect of such injury or death —

- (a) the liability of the MVA Fund, in respect of the bodily injury to or death of anyone such employee shall be limited in total to the sum representing the difference between the amount which that third party could, but for the provisions of this paragraph, have claimed from the MVA Fund or the amount to which that third party is entitled by way of compensation under that Act;
- (b) the total liability of the MVA Fund, in connection with any one occurrence to pay compensation under paragraph (a) to third parties shall be limited to the sum of E60 000 irrespective of the number of such employees whose bodily injuries or deaths were caused by or arose out of that occurrence; and
- (c) the MVA Fund shall not be liable under the Workmen's Compensation Act, 1983 for the amount of the compensation to which any such third party is entitled under that Act but nothing contained in this subsection shall relieve the MVA Fund from liability to pay costs awarded against it in any legal proceedings.

*Liability excluded in certain cases.*

12. (1) The MVA Fund shall not compensate any third party under section 10 for any loss or damage —

- (a) for which neither the driver nor the owner of the motor vehicle concerned would have been liable if section 13 had not been enacted;
- (b) suffered as a result of bodily injury to or the death of any third party who, at the time of the occurrence which caused that injury or death —
  - (i) was being conveyed for reward on a motor vehicle which is a motor cycle; or
  - (ii) is a person referred to in section 11(1)(b) and a member of the household, or responsible in law for the maintenance of the driver of the motor vehicle concerned, and was being conveyed in or on the motor vehicle concerned; or
- (c) if the claim concerned has not been instituted and prosecuted by the claimant, or on behalf of the claimant by any person entitled to practice as an attorney within Swaziland.

*Claim for compensation lies against MVA Fund only.*

13. Where a third party is entitled under section 10 to claim from the MVA Fund any compensation in respect of any loss or damage as a result of any bodily injury or death caused by or arising out of the driving of a motor vehicle by the owner thereof or by another person with the consent of the owner, that third party shall not be entitled to claim —

- (a) compensation in respect of that loss or damage from the owner or from the person who so drove the vehicle; or
- (b) compensation in respect of that loss or damage from his employer, if that person drove the vehicle as a servant in the execution of his duty;

unless the MVA Fund is unable or refuses to pay the compensation.

*Submission of information.*

14. (1) If, as the result of the driving of a motor vehicle, any person other than the driver of such motor vehicle is killed or injured, the owner and the driver, if he is not the owner, of the motor vehicle shall (if reasonably possible within 21 days after the occurrence) furnish the MVA Fund with —

- (a) particulars of the occurrence, the place and time of the occurrence, the name and address (if known) of any person who was killed or injured and of every person who was upon the vehicle in question at the time of the occurrence, a description of any other vehicle involved in the occurrence and the name and address (if known) of the driver of every such other vehicle who witnessed the occurrence;
- (b) any other information at his disposal which the MVA Fund may from time to time request him to furnish.

(2) Any person who fails to comply with any provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding E200, unless he proves that his inability or failure to comply with the relevant provision is not due to his own action or default.

(3) The MVA Fund shall within 21 days after the third party has complied with the provisions of section 16(2)(b), furnish the third party or his agent with a copy of the information referred to in subsection (1)(a) of this section.

(4) Any person who furnishes false information in respect of the particulars of registration and the licence relating to the motor vehicle at the time of an occurrence involving that vehicle out of which a claim has been made under section 10, shall be guilty of an offence and liable on conviction to a fine not exceeding E200.

*Prescription.*

15. (1) Notwithstanding the provisions of any other law in Swaziland relating to prescription, and subject to the provisions of subsection (2) of this section, the right to claim compensation under section 10 shall become prescribed upon the expiration of a period of two years from the date on which the claim arose:

Provided that the period of prescription shall be suspended during the period of ninety days referred to in section 16(2)(a) of this Act.

- (2) Prescription of a claim for compensation under section 10 shall not run against —
  - (a) a minor;
  - (b) any person detained as a patient under the Mental Health Order, 1978;
  - (c) a person under curatorship.

(3) If a third party's claim for compensation has become prescribed under subsection (1) and a court having jurisdiction in respect of such a claim is satisfied, upon application by the third party concerned —

- (a) in the case where the claim became prescribed before compliance by that third party with the provisions of section 16(1), that by reason of special circumstances he, or if he instructed another person to comply with those provisions on his behalf, such person could not reasonably have been expected to comply with those provisions before the date on which the claim became prescribed; or
- (b) in the case where the claim became prescribed after compliance by him with the provisions of section 16(1), that by reason of special circumstances he or, if he instructed any other person to act on his behalf in that regard, such person could not reasonably have been expected to serve on the MVA Fund before the date on which the claim became prescribed any process by which the running or the prescription could have been interrupted; and
- (c) that the MVA Fund is not prepared to waive its right to invoke the prescription;

the court may grant leave to the third party to comply with the said provisions and serve process in any action for enforcement of the claim on the MVA Fund in accordance with the provisions of section 16(2) before a date to be determined by the court.

(4) The court shall not grant an application referred to in subsection (3) unless —

- (a) the application is made within a period of ninety days after the date on which the claim became prescribed under subsection (1); and
- (b) the third party has given security to the satisfaction of the court for the costs of the MVA Fund in connection with the application.

(5) A plea of prescription under subsection (1) shall not be upheld in any action in which the relevant process was served on the MVA Fund by virtue of leave granted under subsection (3) of this section.

(6) Notwithstanding the provisions of the Workmen's Compensation Act, 1983, any right to recover an amount which under that Act is required to be paid to a third party in circumstances other than those mentioned in subsection 11(2) of this Act, shall for the purposes of subsection (1) (excluding the proviso) and subsection (3) of this section be deemed to be a right to claim compensation under section 10 of this Act arising from the same cause as the claim of such third party under that section:

Provided that if the recovery of any such amount has become debarred under this subsection, any compensation thereafter awarded to the third party under this Act shall be reduced by that amount.

*Procedure.*

16. (1) A claim for compensation under section 10 shall —
- (a) be set out in the prescribed manner on a prescribed form and shall include provision of a medical report or reports completed by the prescribed person or persons, in regard to the cause of the death or the nature and treatment of the bodily injury in respect of which the claim is instituted and of the prescribed supporting proof and particulars;
  - (b) be sent by registered post or delivered by hand, at the registered office or local branch office, of the MVA Fund which shall, in the case of delivery by hand, acknowledge receipt thereof and the date of such receipt in writing.
- (2) No such a claim shall be enforceable by legal proceedings commenced by a summons served on the MVA Fund —
- (a) before the expiration of a period of ninety days as from the date on which the claim was sent by registered post or delivered by hand to the MVA Fund in accordance with subsection (1); and
  - (b) before all the prescribed requirements of the MVA Fund have been complied with:

Provided that if the MVA Fund repudiates in writing liability for the claim before the expiration of the ninety days, the claimant may at any time after such repudiation serve summons on the MVA Fund.

(3) An action to enforce such a claim may be brought in any Court of competent jurisdiction in Swaziland within whose area of jurisdiction the occurrence which caused the injury or death took place.

*MVA Fund's right of recourse.*

17. (1) Where any compensation has been paid under section 10 the MVA Fund may, subject to subsections (2) and (3) of this section, and without having obtained a formal cession of the right of action, recover from the owner of the motor vehicle concerned or from any person whose negligence or other unlawful act caused the loss or damage in question so much of the amount paid by way of compensation as the third party could, but for the provisions of section 12, have recovered from the owner or from the person whose negligence or other unlawful act caused the loss or damage if the MVA Fund had not paid any such compensation.

(2) The MVA Fund shall not have any such right of recourse against the owner of the motor vehicle —

- (a) in any case if, at the time of the occurrence which gave rise to the payment of the compensation the motor vehicle was being driven by a person other than the owner unless —
  - (i) such a person was under the influence of intoxicating liquor or of a drug to a degree that his condition was the sole cause of such occurrence and the owner knew or ought to have known that such driver was under the influence of intoxicating liquor or of a drug;

(ISSUE 2)

- (ii) such a person was driving the motor vehicle without holding a licence issued under the law relating to the licensing of drivers of motor vehicles which he was required to hold, or that person being the holder of a learner's or other restricted licence issued under such law failed, while he was driving the motor vehicle, to comply with the requirements or conditions of such learner's or restricted licence, and the owner allowed him to drive the motor vehicle when he knew or ought to have known that such driver did not hold such licence or that he failed to comply with the requirements or conditions of such learner's or restricted licence, as the case may be; or
- (b) in any case where, at the time of that occurrence, such motor vehicle was being driven by the owner, unless —
  - (i) he was under the influence of intoxicating liquor or of a drug to such a degree that his condition was the sole cause of such occurrence; or
  - (ii) he was driving the motor vehicle without holding a licence issued under the law relating to the licensing of drivers of motor vehicles or being the holder of a learner's or other restricted licence issued under such law failed, while he was driving the motor vehicle, to comply with the requirements or conditions of such learner's or restricted licence;
- (c) in any case where neither paragraph (a) nor paragraph (b) applies unless the owner has failed to comply with any requirements of section 14 with respect to such occurrence (the onus of proving that the MVA Fund could not reasonably within 21 days after the occurrence have been informed of the occurrence and of the place and time thereof shall be on the owner concerned) or has knowingly furnished the MVA Fund with false information relating to that occurrence or knew or ought to have known at the time of such occurrence that the motor vehicle was unroadworthy and that the unroadworthiness of the motor vehicle was the sole cause of such occurrence.

(3) The provisions of subsection (2)(b)(i) and (ii) and (c) shall apply *mutatis mutandis* in respect of any right of recourse by the MVA Fund under subsection (1) against any person who, at the time of the occurrence which gave rise to the payment of the compensation was driving the motor vehicle in question with the consent of its owner.

*Regulations.*

18. (1) The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and in particular, may make regulations with respect to any of the following matters —

- (a) prescribing anything required by this Act to be prescribed, and the manner in which any form so prescribed shall be completed or rendered;
- (b) prescribing the powers and duties in connection with the administration of this Act which may be exercised or performed by such persons as the Minister may designate;

- (c) after consultation with the Minister for the time being responsible for health, prescribing the tariff of fees in respect of the accommodation of any person in hospital or nursing home or of any treatment, services or goods supplied to any person which may be claimed under section 10(5) for the cost of such accommodation, treatment, services or goods;
- (d) matters in respect of which statistics are to be kept by the MVA Fund, the manner in which such statistics shall be compiled and the furnishing of information in connection therewith;

or prescribing or otherwise dealing with any matter which may under this Act be prescribed or otherwise dealt with by regulations.

(2) Regulations made under subsection (1) may provide for penalties not exceeding a fine of E500 for contravention thereof or failure to comply therewith or with any order or direction given thereunder.

*Application of Public Enterprises (Control and Monitoring) Act.*

19. Without prejudice to the provisions of this Act the provisions of sections 7, 10 and 11 of the Public Enterprises (Control and Monitoring) Act, 1989 shall apply to the MVA Fund.

*Act to bind the Government.*

20. This Act shall bind the Government.

*Repeal of Compulsory Motor Vehicle Insurance Order, etc.*

21. The Compulsory Motor Vehicle Insurance Order, 1973 and the Compulsory Motor Vehicle Insurance (Amendment) Act, 1987 are hereby repealed.

*Savings.*

22. (1) On the commencement of this Act the Fund established under the repealed Act shall cease to exist and all amounts credited to that Fund immediately before such commencement shall vest in the MVA Fund and all existing liabilities and rights of that Fund are hereby transferred to the MVA Fund.

(2) Notwithstanding section 21 of this Act all claims for compensation filed with the authorised insurer under the repealed Act before the commencement of this Act and which have not been settled on the commencement of this Act by the authorised insurer shall be settled by the MVA Fund in accordance with the provisions of the repealed Act

(3) Notwithstanding section 21 of this Act any agreement or arrangement entered or made by the Minister with the Swaziland Royal Insurance Corporation or with any other person under the repealed Act for the purposes of administering and managing the levy under that Act and which is in force immediately before the commencement of this Act shall continue in force as if such agreement or arrangement has been entered into or made under this Act.