

# **LIMITS ON MOTOR INJURY AND** **DEATH CLAIMS** **(CAP 2021)**

## Introduction

The objective of this Guidelines, is to bring the practice of injury claim settlement within the provisions of the law; especially Section 255 of the Insurance Act, 2021 (Act 1061). This provides as follows: the Commissioner of Insurance Industry shall by directives, prescribe a formula to compute compensation in respect of injury and deceased claims arising out of a motor accident.

The document is structured as follows:

- Section 1 sets out the laws applicable to Motor Injury and Death Claims in Ghana
- Section 2 sets out the risks and provisions that is covered under a Motor Insurance Policy
- Section 3 sets out the standard Claim areas and the eligibility for awards under a Motor Insurance Policy
- Section 4 provides the documentation required to make a claim
- Section 5 provides the conditions under which a claim can be repudiated
- Section 6 sets out the Injury claims and the limits on the payment for the different types of injury claims
- Section 7 sets out the death and funeral claims and the limits on the claims
- Section 8 sets out the treatment of fees paid to lawyers who help claimants to obtain their claims
- Section 9 provides definition of key terms used in the document.

## SECTION 1 - Applicable Laws to Motor Injury and Death Claims in Ghana

Motor injury /death claims are regulated by law. The law requires that any user of Motor vehicle on public roads in Ghana should have insurance in place to cover injury to Third Parties. (Section 3 of Motor Vehicles (Third Party Insurance) Act, 1958 (No. 42)

**The applicable laws in Ghana and NIC directives. The applicable laws are:**

- i. Motor Vehicles (Third Party Insurance) Act (1958).
- ii. The Insurance Act 2021 ( Act 1061).
- iii. Various directives of the National Insurance Commission especially on claim settlement.

The table below sets out a summary of the applicable laws:

**Table 1: SUMMARY OF LAWS APPLICABLE TO MOTOR INSURANCE IN GHANA**

Act	Applicable provisions	Section
Motor Vehicle (Third Party Insurance) Act, (1958)	It does not apply to:	
	The user of motor Vehicle owned by or exclusively employed in the service of the Government while the motor is being used for the purposes of the Government,	Section 5 Exemptions (a)
	- the user of a motor vehicle, other than a passenger vehicle, owned by a person who has deposited and keeps deposit with Accountant- General the sum of Two billion old cedis ( Two Hundred Thousand Ghana Cedis) in respect of the motor vehicle at any time when the motor vehicle is being driven by the owner or by a servant of the owner in the course of employment	Section 5 Exemptions (b)
	- the user of a motor vehicle at any time when it is driven for the police purposes by or under the direction of a superior police officer as defined in the police Service Act. 1970 (Act 350)	3 (c)
	- A person or class of persons declared by the president to be exempted from this Act;	3 (d)
	- A Motor vehicle or type of motor vehicle declared by the President to be exempted for the Act.	3 (e)

Act	Applicable provisions	Section
Insurance Act, 2021 (Act 1061)	Provides that, The Regulator in conjunction with motor Insurance companies should provide insurance but the <b>Insurer cannot write or undertake certain contracts of unlimited amount.</b>	S.255 (1)
	Provides that the section applies to the Motor Insurance contracts despite anything to the contrary in the Road Traffic Act (Third Party Insurance) Act, 1958 (no.42)	S. 255 (2)
	<b>The Commission in consultation with the insurance Industry shall by directives prescribe a formula to compute the compensation in respect of injury and deceased claims arising out of a motor accident</b>	S. 255 (3)
Various Guidelines of the National Insurance Commission	<ul style="list-style-type: none"> <li>- To acknowledge receipt of notification of claim <u>within 10 working days.</u></li> <li>- On receipt of all relevant documents, determine liability within <u>5 working days</u></li> <li>- Where liability is not admissible or denied, inform Claimant of the reasons in writing within <u>5 Working days</u> or</li> <li>- Where liability is admitted compute claims and discuss same with the claimant <u>within 10 working days</u> or</li> <li>- To issue payment cheque upon receipt of discharge form within <u>7 working days</u></li> <li>- All motor insurance claims are to be settled and paid within <u>thirty (30) working days</u> upon receipts of all relevant documents. Reasons for delays should be clearly stated in the claim file for the inspection of the regulator.</li> </ul> <p>Where claims are unreasonably delayed, appropriate sanctions shall be applied.</p>	Claims Management Guidelines of the National Insurance Commission

None of the above stated laws and guidance, provides basis and guidelines for the computation or the determination of the quantum in the event of the injury or death arising out of a motor accident as required by the Insurance Act.

**The essence of this document is to meet the requirements under S. 255 of the Insurance Act, 2021 (Act 1061)**

## SECTION 2 - PROVISION FOUND IN A TYPICAL MOTOR INSURANCE POLICY IN RESPECT OF LIABILITY TO THIRD PARTIES:

Provision found in a typical motor insurance policy in respect of legal liability to third parties resulting from an accident caused by the insured, would provide indemnity / compensation covering the following:-

1. Injury to;
  - (i) Fare Paying passengers
  - (ii) Pedestrians
  - (iii) Pursuant of contracts of employments.
2. Death to;
  - (i). Fare Paying passengers
  - (ii) Pedestrians
  - (iii) Pursuant of contracts of employments
3. Damage to Property belonging to someone other than the insured or a member of the insured's household.
  - (i) Limit of liability arising from one Accident or series of Accident resulting from a single original cause is as stated in the in the schedule.
  - (ii) When a claim is made under Section 3 (4) our limit of liability for Third Party Property Damage (TPPD) is reduced by the amount of claim paid. The insured is to reinstate the TPPD Limit by paying an additional premium on the claim amount.
4. All legal costs and expenses incurred with our written agreement in defending any court proceedings arising from an event for which cover provided are recoverable under this policy.

Even though S. 2 as copied extensor above, of a typical Motor Insurance policy states that “Our limit of liability arising from one Accident or series of Accidents resulting from a single original cause is as stated in the schedule”, the schedule only shows percentages and not limit as prescribed in Section 255 (1) of the Insurance Act 2021 (Act 1061). This therefore buttress the need for directives to prescribe limits in accordance with the law.

## SECTION 3 - Standard Claim Areas & Eligibility for Awards

### STANDARD CLAIM AREAS:

Claims in respect of injury, death will normally cover:

- Injury claim by injured party or parties,
- Death claims by dependents or relations of the deceased parties,
- **Injury claims by Third Party or Parties.**

This would be in addition to the Third Party Property Damage (TPPD) provision, which for all intent and purposes, are not presently regulated by law.

The issue of the Third Party Property Damage is a concern to the Commission. Apart from periodic Regulator's directives to increase limit, there is the need to also provide clearer directives.

### ELIGIBILITY FOR AWARDS:

The victim must have been injured or killed in a Motor accident in circumstances covered by a Motor Insurance Policy.

## **SECTION 4 - DOCUMENTATION FOR MAKING INJURY CLAIMS:**

In this section a summary of the documents and information required to make a claim is summarized.

### **(1) Information And Documentation To Be Submitted By The Victim:**

The Victim of a motor Accident shall, at the request of the insurer, provide information on the following;

- a. Surname and other names
- b. Date and place of birth
- c. Profession or occupation and employer's address (If any)
- d. Income and relevant documents in proof of income, where necessary
- e. Particulars of dependent(s) at the time of accident (if any)
- f. The victim's contact address and Phone number

### **(2) The Following Documents Shall, Among Others, Be Produced At The Request Of The Insurer:**

- a. Any Identity card of the victim
- b. Two (2) passport size photographs endorsed by the attending Medical Officer
- c. Birth certificate (If any)
- d. Marriage Certificate (If any) or any other proof of marital status
- e. Medical Report
- f. Police Accident Report
- g. Medical Bills / Receipts
- h. Other expenses
- i. Statutory Declaration

### **(3) Information And Documentation To Be Submitted Claimant(S) Other Than The Victim:**

- a. Surname and other names of the claimants
- b. Date and Place of birth of the claimant(s)
- c. Surname and other names of the victim
- d. Relationship with the victim
- e. Profession or occupation of the claimant(s) and employer's address (If any)
- f. A description of injuries sustained, financial loss incurred and any documents in support
- g. All relevant documents as requested under Section 5(1) and (2) above.
- h. Claimant(s) contact address and phone number
- i. Two (2) passport size photographs each of the claimant(s) and in the case of a minor the photographs of the next friend
- j. Identity card of the claimant(s)

**(4) In Respect Of Death Claims, Claimants (S) Shall Be Required Among Others To Provide The Following Documents:**

- a. Death Certificate of the Victim or Burial Permit or Post Mortem Report
- b. Letters of Administration or proof of probate or Registrars Certificate
- c. Any identity card of Claimant(s)
- d. Relationship with the victim and identity cards of the beneficiaries
- e. Two (2) passport size photographs of the Administrator(s)/ claimant(s)
- f. For the rural dwellers who may not be able to provide the above documents (that is a, b, c, d and e), a report from the Chief or religious leader and Statutory declaration, can be provided.

**It is significant to note that a typical claim form should be designed in a manner to elicit all the required information as stated above.**



## SECTION 5 - Circumstances Under Which Claims Would Not Be Admitted:

The fact that a vehicle being used on the public road is involved in an accident, does necessarily not mean any claim made on the policy would certainly be settled under a motor Insurance Policy. There are circumstances under which claims would not be entertained.

These circumstances are as follows:

1. If the Vehicle is driven without the owner's consent, order or permission.
2. If the Vehicle is driven by the owner, or by any person without the owner's consent, who is not licensed to drive the Vehicle under all relevant laws.
3. If the Vehicle is driven by any person:
  - (a) with a percentage of alcohol in his/her breath or blood in excess of the percentage permitted by law, or
  - (b) who refuses to provide or allow the taking of a sample of breath, blood or urine for testing or analysis.
4. Damage to property belonging to or held in trust or in the insured's custody or control or that of any member of the household or any other person entitled to indemnity under this policy.
5. Any claim resulting from death or bodily injury to any employees which arises out of and in the course of their employment unless such employees are being carried by reason of or in pursuance of a contract of employment.
6. For any further damage or extension of damage, if your vehicle is driven after an accident before the necessary repairs are effected.
7. For loss, damage or liability caused by or materially contributed to by the insured's own criminal act or resulting from the use of the vehicle for an unlawful purpose.
8. For damage caused by war, foreign enemies hostilities, mutiny, insurrection, revolution, military or usurped power or by nuclear fuel, waste or material.
9. If the Vehicle is used in connection with the motor trade for repairs, experiments, tests, trials or in any motor sport.
10. For bodily injury, death, loss or damage occasioned by lawful seizure or other operation of law.
11. For loss or liability incurred whilst the Vehicle is on a railway line /crossing, whether running or stationary other than as cargo.
12. If the Vehicle is being used or attached to or towing a vehicle being used for commercial transportation of dangerous goods as defined in the Ghanaian Code for the Transport of Dangerous Goods by Road or Rail. However, If transportation complies with such Code, then the maximum payable in respect of all claims arising out of one Accident is as stated in the schedule.
13. For depreciation, wear and tear, rust or corrosion, mechanical, structural, electrical or electronic breakdown or failure.
14. For any claim arising out of any contractual liability.
15. For damage or loss intentionally caused by the insured or any person acting with his/her consent.
16. For damage to the tyres by application or brakes or by road punctures, cuts or bursts.
17. For theft of or from the Vehicles after an accident if reasonable steps to protect or safeguard the vehicle have not been taken.

18. If there are more than one insured under the Policy, the insurance will not cover any for the loss resulting from or occasioned by anyone stealing, converting, absconding or otherwise misappropriating the Vehicle.
19. Loss suffered because the owner or insured cannot use the Vehicle.
20. Claims in respect of death or bodily injury to the owner of the vehicle or the driver in control of the vehicle unless under Brown Card extension.
21. For any accident which occurs outside ECOWAS.

## SECTION 6 – Injury Claims and limits

Under injury claims the following areas would be covered.

The under listed headings shall guide the computation of awards:

- a. **Medical Expense**
- b. **Temporary Disability**
- c. **Permanent Disability**
- d. **Loss of Earnings**
- e. **Nursing Assistant**
- f. **Loss of Educational progression and Career Loss**
- g. **Dependents of a victim of a Motor Accident**

In addition to the individual limits, there will be an aggregate limit per accident as shown below:

No	Type of vehicle	Aggregate limit
1	Private cars for individuals	150,000.
2	Passenger carrying (Taxi)	150,000.
3	Passenger carrying Mini bus	350,000
4	Passenger carrying Buses(up to 45 passengers)	500,000
5	Passenger carrying buses, coaches (up to 65 passengers)	700,000
6	Others	350,000

### 6.1 Medical Expenses

A person injured in a motor accident shall be paid medical expenses incurred subject to the following:

- a. In particular the person shall be entitled to be paid on production of documents in proof of the injury, all reasonable and necessary expenses incurred by or on behalf of the injured.  
Where treatment was at a private medical facility, the cost of such treatment **shall not** exceed two times the cost of similar treatment in public hospitals in Ghana.
- b. Where treatment was herbal, all reasonable and necessary expenses incurred by or on behalf of the injured shall be admitted.
- c. Where treatment was at both a medical facility and herbal treatment center the cost of such treatment shall be reasonable and necessary expenses incurred by or on behalf of the injured.
- d. Where no medical Bills were submitted, payment shall not exceed GH 1,000.00
- e. Medical expense outside Ghana shall only be admitted if the evacuation was prescribed by a Medical Board or in an emergency situation the insurance company must be notified of the

impending evacuation (Medical expense outside Ghana should be treated as an additional cover and appropriate premium charged for it.)

## 6.2 Temporary Disability

The period of temporary disability shall be determined by medical examination. The computation shall be based on the period of hospitalization and income. Hospitalization in this context shall include Period of Admission (In patient) and Out Patient Department (OPD) attendance not exceeding 15 visitation.

- a. For the salaries or wage earnings workers: on the real and proven loss of income (Pay slip) Payment shall not exceed 52 weeks income.
- b. For self employed workers with proof of income on the tax declaration for the past year prior to the accident. Payment shall not exceed 52 weeks income.
- c. For Adults without proof of income the prevailing monthly guaranteed minimum wage in Ghana. Payment shall not exceed 52 weeks income.
- d. For all others not in (a-c above): on 50% of the prevailing monthly guaranteed minimum wage in Ghana. Payment shall not exceed 52 weeks income.

In all cases the determination of the temporary disability shall be by a qualified medical practitioner

## 6.3 Permanent Disability

The degree of physical injury shall be determined by the appropriate Medical professional who assess the level of physical disability (PD) for the computation of injury compensation. The level shall be between 0 – 100%

## 6.4 Loss of Earnings

This loss is only compensated if it is linked to the allocation of a permanent disability level of at **least** 50%.

The compensation shall be:

- a. For salaried or wage earnings workers: on the real proven and annual income. Payment shall not exceed 52 weeks income.
- b. For self employed workers with proof of income: on the tax declaration for One (1) year prior to the accident. Payment shall not exceed 52 weeks income.
- c. For adults without proof of income: on the prevailing monthly guarantee minimum wage in Ghana. In aggregate, payment shall not exceed 52 weeks income.

Note Permanent disability should cover a situation where the claimant is unable to work and has not worked for a period exceeding 104 weeks and should involve:

- a. Paralysis
- b. Double amputation or similar condition

- c. Mental disorder
- d. Total loss of sight in both eyes
- e. Any other similar condition as may be recommended by medical professionals.

### **6.5 Nursing Assistant**

The claimant is entitled to nursing care if permanent disability results in any of the following:

- a. Paralysis
- b. Double amputation or similar condition
- c. Mental disorders
- d. Total loss of sight in both eyes.
- e. Any similar conditions as may be recommended by the medical professional.
- f. The insurer shall pay for nursing assistant care an amount up to GH1,000.00 per month for a maximum period not exceeding 52 weeks.

### **6.6 Trauma**

This loss is only compensated if it is linked to the allocation of a permanent disability level of least **60%**.

### **6.7 Loss of Education progression and career**

Loss of Education progression and career loss mean:

- a. Either the loss of a certain chance of educational progression and career to which a pupil or a student of primary, higher education or their equivalent may reasonably aspire:  
or
- b. The career loss incurred by a person already engaged in active service.
- c. The insurer shall pay for up to GH 15,000.00 for lost educational expenses incurred by or on behalf of an insured person who sustains an impairment as a result of an accident if
  - i. at the time of the accident, the insured person was enrolled in a program of elementary, secondary, post secondary or continuing education and
  - ii. as a result of the accident, the insured person is unable to continue the program.
- d. The insurer may require a person who applies for and is receiving benefits under this section to furnish a disability certificate every 6 months.
- e. If the person fails to comply with (d) no amount is payable for the lost educational expenses and career until the person furnishes the completed disability certificate.
- f. In the case of apprenticeship GH 7,500 shall be paid.

**No disagreement under this section shall hinder settlement of compensation under other sections.**

The determination shall be by an attending medical practitioner. The insurance Company has the option to request for a second opinion from a completely new medical practitioner (and facility) with the appropriate specialization.

### **6.8 Disfigurement**

The scale of disfigurement is to be determined by a medical Doctor and it is up to GH 50,000.00 which is subject to negotiation.

## **SECTION 7 - Death and Funeral Benefits**

### **Death Benefits**

Awards are to be computed under the following headings:

- a. Medical Expenses (if applicable)
- b. Funeral expenses
- c. Loss of Dependency.

#### **7.1 Medical Expenses**

- i. Where the victim was hospitalized prior to death, receipted medical expenses shall be admitted.
- ii. In the absence of receipts payment shall not exceed GH. 1,000.00

#### **7.2 Funeral Expenses**

The Insurer shall pay a fixed amount of GH 5,000.00

#### **7.3 Payments to Spouse and Dependents**

- i. The Insurer would pay death benefits in respect of an insured person who dies as result of an accident as defined under the claim settlement guidelines of the National Insurance Commission as stated in the “Summary of Laws” under Section 1.
- ii. The payment of each of the insured person’s Dependents and to each person to whom the Insured person had an obligation at the time of the accident to provide support under a domestic contract or court order would be as follows:

##### **7.3.1 Spouse**

- a. The spouse shall be paid GH 30,000.00
- b. If at the time of the accident the insured person had more than one spouse, payment shall be divided equally among them.

##### **7.3.2 Payments to dependents (excluding spouse)**

- a. Payment of GH 25,000.00 shall be divided equally among all the dependents.

## **SECTION 8 – Fees for lawyers who help claimants**

The Maximum fees for lawyers that assist claimants to obtain their claims shall be 15% of claim amounts.



## SECTION 9 – Definition of Key Terms

### Definition

In this section we will explain terms used throughout this guidelines:

**“Insurer” and “Approved insurer”** means a person or organization licensed to carry on insurance business but it does not include insurance intermediary.

**“Policy”** means the documents, the schedule and any other endorsement attaching to and forming part of the policy issued, together they form the contract of Insurance.

**“Your Vehicle”** means the motor vehicle(s) and/or trailer(s) described in the schedule including tools accessories or appliances that are standard equipment whilst attached to or within Your Vehicle.

**“Passenger Vehicle”** means a motor vehicle used for carrying passengers for hire or reward.

**“Driving License”** Means a license to drive a motor vehicle granted under the provisions of the Road Traffic Act.

**“Highway”** means any roadway or place to which the public lawfully have free access.

**“Injury”** injury means an accident arising out of the use of motor vehicle on the public roads.

**“Death”** Death means loss of life arising out of an accident by the use of motor vehicle on public roads.

**“Accident”** means unexpected event resulting in injury or death or loss or damage.

**“Commission”** means the National Insurance Commission established under section 1(1) of this Act; Insurance Act 2021 (1061) which states that “There is established by this Act, the National Insurance Commission”.

**“Insurance Business”** means the business of undertaking liability to indemnify a person in respect of a loss or damage, and the liability to pay damages or compensation contingent upon the happening of specified events and any business incidental to the insurance business and the reinsurance.

**“Certificates of Motor Insurance”** A certificate of motor insurance means the written documents summarizing your insurance coverage. It shows the name /or organization, and the described motor vehicles(s).

**“Coverage/ Covered”** When we talk of someone or something being covered, it means that they are protected by insurance and coverage means the types of protection and how much for each type.

**“Named Insured”** The named insured means the person or the organization to whom the motor certificate of insurance is issued.

**“Occupant”** An occupants means a person, including the driver, in or on a motor vehicle, or getting into, or out or off motor vehicle.

**“Accident Report Form” (Motor claim form)** A motor claim form records the formal statements concerning a loss for which a claim is submitted. This provides all the information needed to determine whether the claim is reasonable and the extent of liability.

**“You and Your”** The words you and your mean the person or organization shown on the certificate of Motor insurance as the named insured.

Other people may also be covered under certain conditions. We call both of them and you insured persons.

**“We, our”** mean the Insurer providing the insurance.

**“Dependent”** means biological or legally adopted children, spouse and parents.

**“Disability certificate”** means, in respect of a person, a certificate from a health practitioner of the person’s choice that states the cause and nature of the person’s impairment and contains an estimate of the duration of the disability in respect of which the person is making or has made an application for a benefit described in this directive

**“Medical Doctor”** means a person authorized by law to practice medicine

**“Self – employed person”** means a person who,

- a. Engages in a trade, occupation, profession or other type of business as a sole proprietor or as a partner, other than a limited partner, of a partnership or
- b. Is a controlling mind of a business carried on through one or more private corporation some or all of whose shares are owned by the person.

**“Lost educational expense”** means expenses incurred before the accident for tuition, books, equipment or room and board in respect of the program term or program year in which the claimant was enrolled at the time of the accident, if the expenses are related to the program that the insured person is unable to continue.

**“Impairment”** means a loss or abnormality of a psychological, physiological or anatomical structure or function.

**“Spouse”** means wife or husband of a deceased person married under the Ordinance or of a deceased person married under Customary marriage, Muslim marriage, Co-habitation, Common Law marriage.

**“ECOWAS”** mean Economic Community For West African States.

Even though S. 2 as copied extensor above, of a typical Motor Insurance policy states that “Our limit of liability arising from one Accident or series of Accidents resulting from a single original cause is as stated in the schedule”, the schedule only shows percentages and not limit as prescribed in Section 255 of the Insurance Act 2021 (Act 1061). This therefore buttress the need for directives to prescribe limits in accordance with the law.