

THE NETHERLANDS

1. Actions to take immediately after road traffic accidents

The police must be informed of any serious road traffic injuries involving death or injury. The police will set down the details of the accident in an official report. The personal details of all persons involved are recorded in this report, including registration numbers and insurance information.

It is an offence to leave the scene of an accident without providing this information. If the police do not come to the scene of the accident, those involved must themselves collect the names and addresses of all relevant parties - including any witnesses. You can use the European claim form to this end. Both parties must sign the form. It is advisable to take photographs or make a sketch of the accident. You can have a report drawn up by the police afterwards.

A copy of the accident report can be requested in writing from the *Stichting Processen Verbaal* (Foundation for Police Reports) Postbus 7070, 2701 AB in Zoetermeer. You will have to state the time and place (municipality) of the accident and the relevant registration number(s). You will be required to pay for the report in advance.

With the consent of the victim, the police can pass on his or her personal details to the *Buro Slachtofferhulp* (Victim Support Association). If victims have sustained injuries, the association will contact them.

If a fatality occurs in an accident, the deceased is taken to a mortuary. The family is usually asked to identify the body. The *Officier van Justitie* (Crown Prosecutor's Office) may initiate an investigation into the cause of death. In such cases, the *Officier van Justitie* must give permission for the cremation or burial. If the remains have to be transported abroad, the undertaker will handle the formalities.

If the police are not called to the site of the accident, for example, when the accident involves material damage only, you are strongly advised to use the European Claim Form which can be obtained from your insurance company. It is important that both parties involved in the accident sign the form because the form is normally used as evidence. It is also important to take down the names and addresses of any witnesses as well as to give information on the facts of the accident. It is also advisable to take a photograph of the scene of the accident.

NB: Do not sign the European Claim Form if you do not understand the content! The same applies to other statements on who is to blame for the accident. You should not sign the form if there are differences of opinion on the facts of the accident. In such a case it is advisable to contact the police, even if the accident only involves damage to property.

2. Legal procedure

The basis for compensation in traffic accidents is fault liability. However, if an accident involves a motor vehicle (car or motor bike) and a non-motorised road user (pedestrian or cyclist) risk liability applies. This means that the driver is liable unless he can prove force majeure. If the pedestrian or cyclist is younger than 14 years of age, the driver is 100%

liable. If the pedestrian or cyclists is over 14 years of age, the driver is 50% liable. The amount of the compensation for the remaining 50% is dependent on the degree of fault of all the parties involved.

Criminal proceedings

Road accidents may be the result of a traffic violation. In such instances, the *Officier van Justitie* decides whether the person at fault will be prosecuted or not. Once the preliminary investigation begins, the victim can become a civil party in the criminal proceedings. The court will then decide on the claim for damages but only if this is simple and easy to prove. For this reason, becoming a civil party in criminal proceedings is not a very common procedure. The submission of a joinder form is one of the ways of joining in the criminal proceedings.

The police and the *Openbaar Ministerie* (Public Prosecution Service) have joint information points at various locations throughout the Netherlands. Victims of road traffic accidents can obtain information on their cases from these information points. Victims can request that they be kept informed of the progress of any criminal proceedings. If victims chooses to become civil parties in criminal proceedings, they do not have to be represented by a lawyer.

Civil proceedings

When victims do not choose to become civil parties in criminal proceedings, or the criminal case is dismissed or the claim for damages is complex, they can submit their claim to the civil court. If the claim for damages amounts to less than EUR 5,000.00, jurisdiction will lie with the canton court. Claims for damages in excess of EUR 5,000.00 are heard in the sub-district court. The services of a lawyer are only necessary for the latter. Reasonable legal costs come into consideration for compensation.

3. Compensation for damages/periods of limitation

Victims can directly hold the insurer of the other party liable. The party claiming damages must prove that he or she has incurred damages and the scope of the damage. The evidence produced will include invoices from doctors/hospitals, medical reports, photographs and witness statements.

If the party responsible for the damage is uninsured or unknown, the claim can be submitted to the *Waarborgfonds Motorverkeer* (the Road Traffic Guarantee Fund).

Periods of limitation

Criminal proceedings

If the victim becomes a party in criminal proceedings for compensation for damages, the periods of limitations for criminal offences apply. The period of limitations for traffic offences is 2 years. For traffic violations to which a fine or prison term of less than 3 years applies, the period of limitations is 6 years. The period of limitations for traffic violations to which a prison term of 3 to 10 years applies, is 12 years.

Civil proceedings

The period of limitations for road traffic accidents is 5 years from the time that the damage and the identity of the liable party become known. The period of limitations is 20 years from the date of the accident.

The period of limitations for direct claims against the motor vehicle insurer is 3 years.

4. Damages to be compensated

In the event of personal injury, in principle, only the victim is entitled to compensation for damages. The family of the victim is only entitled to compensation if the damage incurred by the victim is at their expense. Victims are entitled to compensation for medical expenses (doctors, hospitals, physiotherapy and the like) insofar as these expenses are not compensated in any other way. Compensation may be paid for loss of income arising from temporary or permanent impairment. Such compensation is based on the net income of the victim. The scope of the loss of income is dependent on the percentage of incapacity for work.

The injured victim is entitled to damages for pain and suffering. The amount of the damages is affected by factors such as the nature, duration and intensity of the pain, and the grief suffered as well as the loss of quality of life.

In the event of death, the surviving dependants are entitled to compensation for the cost of living. In addition, they may claim compensation for the funeral expenses. Relatives of the deceased or injured party are not entitled to damages for pain and suffering.

5. Accidents abroad

With effect from 20 January 2003, the 4th Motor Insurance Directive has been in force regarding traffic accidents outside your own country. Victims of traffic accidents can now claim compensation in a simple manner from the insurer of the party at fault. Such claims are submitted to the representative of the foreign insurer in the country of the victim: the claims representative. Addresses of claims representatives are available from the Information Centre. The centre can also provide information on the compensation body that will make payment if the insurer fails to designate a claims representative or does not respond to a victim's claim.

You can find additional information on this procedure at this website.

6. Useful addresses

ANWB (Royal Dutch Touring Club): www.anwb.nl > hulpverlening > rechtshulp
<http://www.anwb.nl>

ANWB *Rechtshulp* (Legal Services) tel.: 070-3147788

Verkeersslachtofferlijn (Traffic Victims Helpline): tel. 070-3147766

FEVR member organisation:

Vereniging Verkeersslachtoffers (Association of Road Victims) PO Box 721, NL.6800 AS Arnhem. E-mail: de.kroes@chello.nl. www.verkeersslachtoffers.nl

Information Centre:

Nederlands Bureau Motorrijtuigverzekeraars

Postbus 3003 - NL 2280 MG Rijswijk. Tel: 00 31 70 340 82 80. Fax 00 31 70 340 82 01. infocentre@nlbureau.nl. Website: www.nlbureau.nl

Buro Slachtofferhulp (Victim Support Association): www.slachtofferhulp.nl

Waarborgfonds Motorverkeer (Road Traffic Guarantee Fund): www.wbf.nl