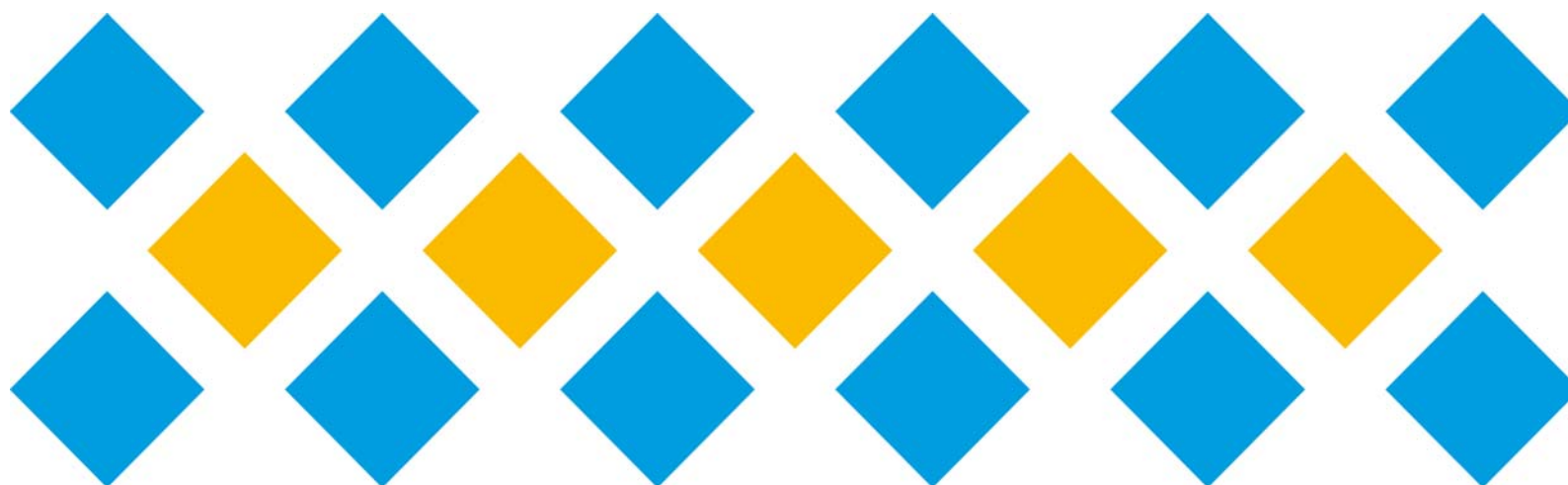


Compensation for personal injury in road traffic accidents in Sweden

(Compensation based on the Swedish Law of Damages)



In this brochure, we aim to outline some of the main aspects of compensation for personal injury in road traffic accidents in Sweden. We have chosen particularly to emphasize on what distinguishes the Swedish law on compensation from legal systems in other countries. What is it that may be difficult for citizens of Germany, France or the UK to understand and what may thus create misconceptions and uncertainty about the right level of compensation?

Against this background, the brochure describes what is characteristic of the Swedish law on compensation, and specifically how it is to be applied in the case of an injury to a person not resident in Sweden. As will become clear, the nature of the compensation (the damages) paid in Sweden for road traffic injuries is decided by the injured person's circumstances in the country of his or her residence. Although the Swedish law on damages is applied, the nature of the compensation is influenced by the other country's legislation in social insurance, labour law etc.

The attention of non-Swedish readers may be drawn specifically to these elements:

- Personal injury claims are settled in the first instance under the MTPL (motor third-party liability) insurance of the vehicle in which the person injured had either been travelling or had been in the vicinity of.
- Compensation is paid on objective grounds.
- The driver is also entitled to compensation, irrespective of legal liability.
- The claim settlement process refers to two stages, first the period of medical emergency then any period of permanent disability.
- Full compensation is paid, after a deduction for coordination benefits, for financial loss arising from the injury.
- Non-financial damage or loss is divided into three categories – pain and suffering, disadvantage and incapacity, and costs and specific inconveniences.
- Compensation for future loss of income is normally paid in the form of an annuity, while non-financial compensation takes the form of a lump sum payment.
- Compensation in respect of any period of disability is established by the impartial, specially appointed *Trafikskadenämnd*, TSN (the Swedish Road Traffic Injuries Commission).

If another party's vehicle is wholly or partly legally liable for the accident, the compensation paid is recovered from the MTPL insurance for the other party's vehicle. In this way, the liability for compensation and the costs of damages are shared in the traditional way by the MTPL insurers for the vehicles involved.

However, where personal injury is concerned, a claim for compensation is made to the MTPL insurer of the victim's vehicle, while claims to compensate for damage to the

vehicle are settled under the MTPL insurance of any other party who may be found legally liable.

In the case of unprotected passengers, cyclists and pedestrians, claims are made against the MTPL insurance of the vehicle involved, irrespective of legal liability. Compensation is established on objective grounds.

Trafikförsäkringsföreningen (the Swedish MTPL Insurers' Association)

Trafikförsäkringsföreningen (TFF) is Sweden's Green Card Bureau. Under the Swedish Traffic Damage Act (Trafikskadelagen, TSL) and the international Green Card Agreement, MTPL insurance for foreign-registered vehicles in Sweden is represented by TFF in the case of a claim in Sweden.

As Sweden's Green Card Bureau, TFF represents the MTPL insurer of the foreign-registered vehicle and has the task of settling claims in Sweden on behalf of that company in accordance with Swedish law. Swedish law and case-law therefore determines legal liability and compensation, as well as the way in which compensation is calculated. More information on this is provided below.

Under the international Green Card Agreement, TFF may instruct a Swedish insurance company to represent a specific foreign insurance company. This is a fairly standard procedure. The claim is then settled by the Swedish company.

In the case of injury in Sweden to a person from another EEA country, special rules apply to claim settlement, under the EU's Fourth Motor Vehicle Insurance Directive. These rules state that the claim will be settled in the claimant's country of residence via a specially appointed claims representative.

Motorists with vehicles registered in European and non-European countries not affiliated to the Green Card System, have to take out frontier insurance at the external borders to the EEA, or they must present a green card from a country affiliated to the system. The insurance covers only motor third-party liability and applies in Sweden and the whole of the EEA, including Switzerland. Denmark, Finland, Norway and Sweden operate a frontier insurance pool, called the E-pool. Frontier insurance may be issued both by the country's customs authorities and by its Green Card Bureau. The insurance cover is valid for a maximum of one year. Exceptionally, cover may be extended at the discretion of the customs authorities.

Where an accident in Sweden involves a vehicle covered by frontier insurance, TFF administers the claim. If the driver of the vehicle with frontier insurance is legally liable, TFF pays a reasonable sum in motor third-party liability compensation to the other party. During the claim settlement process, the existence of valid frontier insurance on the day of the accident must be verified.

In addition to serving as an international agency, TFF has other functions that are laid down in the Swedish Traffic Damage Act. TFF also assumes MTPL liability for damage or loss caused by uninsured or untraced vehicles. This includes both personal injury and damage to property. On this basis, TFF deals with claims in the following categories:

1. Claims involving foreign-registered vehicles.
2. Claims involving uninsured vehicles.

3. Claims involving untraced vehicles.

Swedish law

When a road traffic accident occurs in Sweden, Swedish law and case-law are applicable. The issue of compensation is decided under Swedish Traffic Damage Act. The way in which the compensation is then determined and calculated is laid down in the Swedish Law of Damages, to which the Traffic Damage Act refers. However, the Law of Damages is framed in a very general way, and so case-law is used as guidance. In addition, the nature of the right to compensation is largely decided by Swedish Road Traffic Injuries Commission. More information on this is provided below.

Period of medical emergency – period of disability

To understand the claim settlement process, it is important to see that it comprises two stages. First, compensation is decided for what is called the PERIOD OF MEDICAL EMERGENCY. This refers to the period from the time of the accident until the point when the medical situation of the victim has stabilized, in the best case, with a recovery to full health by the victim, or where any residual mal-positions, impaired movements or other residual adverse effects are more or less permanent and may be expected to remain so in the future. In many cases, the disability is reported as temporary, meaning that from the end of the period of medical emergency a measurable disability stated as a percentage will exist for a specific period, for example, two years, after which a new medical assessment has to be carried out. The degree of disability is considered definitive when the person's medical condition has stabilized to a degree that any residual adverse effects are permanent and foreseeable. (The situation is then said to be static.)

Residual incapacities are allocated a Swedish-determined degree of disability of 1-99%. Any other assessment outside Sweden has no relevance to settlement of the claim in Sweden.

The length of the period of medical emergency varies a great deal according to the type of injury and the associated treatment and healing period. In many cases, the period is between a few months and a year, but considerably longer periods also occur.

Obviously, the assessment of degree of disability is a factor in determining the overall level of compensation, but by no means to the extent as in many other legal systems. This is because the financial disability is fully compensated, even if the degree of medical disability may be limited. The degree of medical disability is actually only a factor in deciding compensation for non-financial damage or loss.

Compensation during the period of medical emergency

There are several reasons why the claim settlement process comprises two stages.

Compensation during the period of medical emergency includes expenses, loss of income and pain and suffering. The latter item represents one of the three categories of compensation payable for non-financial damage or loss. “Pain and suffering” refers to distress during the period of healing, with the extent of the compensation being determined by the type of injury, the treatment and the length of the period of medical emergency. Tables to facilitate the calculation are published by TSN, as described below.

The compensation for the period of medical emergency is settled by the vehicle’s MTPL insurer without TSN having to be contacted. However, if there is any dissatisfaction, TSN may be requested to state an opinion.

The expenses incurred by the claimant for medication, nursing, travel to doctors etc. are reimbursed in the normal way. In addition, of course, other injury-related costs may be reimbursed.

In establishing compensation for loss of income, the calculation is based on the loss of annual income that is attributable to the injury. Deductions from this amount are made for loss of income compensation received in the form of sick pay, occupational injury compensation or other comparable social insurance benefit. Also deducted are any employer’s sick pay and any other compensation paid under a collective bargaining agreement, or paid by the employer under another scheme. In the case of some claimants resident outside Sweden, their insurance benefit may be tax-exempt; if so, this is taken into account by paying benefit for the net loss. Once these deductions have been made, what remains is the indemnifiable loss as defined in the Swedish Law of Damages.

Compensation during period of disability

If the degree of medical disability is 10% or more, the insurance company is obliged to refer the case to TSN to establish the amount of compensation during the period of disability. Cases may also be referred to TSN in other circumstances (see below). Here, too, it is necessary to establish the extent of the injury-related costs and loss of income that are attributable to the incapacity and that may be foreseen for the future. The calculations are made in annualized amounts. As far as loss of income is concerned, pension and similar payments are deducted. Where insurance benefits are tax-exempt outside Sweden, this is taken into account by paying benefit for the net loss. In Sweden, the loss of income is normally determined in the form of an annually calculated annuity, payable until normal pensionable age, and reduced by a certain amount thereafter.

According to Sweden’s Law of Damages, compensation must be paid in the form of an annuity if the compensation is of essential importance as a means of support to the claimant. However, compensation may be paid in the form of a capitalized lump sum amount if justified by particular circumstances. Such particular circumstances could be said to include the case where the claimant is a foreign national and is resident outside Sweden. Paying a capitalized lump sum avoids the possibility that the annuity

will be eroded by currency fluctuations and national inflationary losses. Under the law, the annuity must in fact be based in and paid from Sweden. Another factor justifying a lump sum payment is that this form of compensation is standard in the majority of countries.

Even after the compensation has finally been determined via agreement or court judgment, the issue of compensation can be reviewed if the conditions on which the compensation was established have changed materially.

Major increases in injury-related costs, for nursing, medication etc., can also be compensated via a “cost annuity”, which in such circumstances may include compensation for other inconveniences. More information on this topic is provided below.

Compensation for physical and psychological distress of a permanent nature is paid under the heading of disadvantage or other permanent incapacity, as well as for specific inconveniences arising from the injury. Along with compensation for pain and suffering, this represents the categories of compensation in Sweden for non-financial damage or loss as a result of personal injury caused by a road traffic accident. In the event of death, there is another compensation category, which receives comment under the heading “Compensation in the event of death”.

Compensation for non-financial damage or loss

As we have shown, this area of the Swedish system of compensation is complex, and is also difficult to grasp for people familiar with other legal systems. It is natural to make a comparison with the compensation available in the person’s country of residence. As we have described, compensation is first established for the period of medical emergency, and MTPL insurance then makes an offer for compensation of pain and suffering. The amount offered may in some cases seem low relative to the level of compensation available, for example, in Germany. This ignores the fact that compensation is later established for disadvantage and incapacity, as well as for “specific inconveniences”. This must be borne in mind in any comparison with compensation in other countries, and the comparison should be made on the basis of the total amount of compensation paid in Sweden for non-financial damage or loss. It used to be the case that compensation for strain at work and other inconveniences (in day-to-day life and leisure activities) was calculated separately. For claims from 1 January 2002, certain standard amounts referring to these compensation categories are included in the tables for compensation of incapacity, making it easier to gain an idea of the overall level of compensation. Even after the compensation has finally been determined via agreement or court judgment, the issue of compensation can be reviewed if the conditions on which the compensation was established have changed materially.

Compensation for disadvantage and incapacity has been touched on in the above, with regard to any period of disability between the end of the period of medical emergency and onwards. “Disadvantage” covers the consequences of the injury in the form of

scarring, mal-positions and other cosmetic defects. In the practical process of settling a claim, photographs of the claimant's scars are compared to reference photographs of scars from past cases settled by TSN. The level of compensation is stated in a separate table produced by TSN. The factors taken into account are impairment of movement and/or functional impairment of sight, speech, hearing, smell, taste etc.

The concept "specific inconveniences" today deals mainly with any major difficulty (strain) at work, over and above that which is covered by the disadvantage and incapacity table. When a road injury victim with an injury-related disability returns to work, the person concerned may in many cases be able to perform the work itself in a completely satisfactory way, but will feel a greater or lesser degree of strain while performing the work. The point may be that pain or the condition of tiring more easily may make leisure time more necessary for rest etc. What is involved here is compensation for non-financial damage or loss that more subjectively takes account of the victim's situation and circumstances at work etc., as distinct from the categories of compensation "pain and suffering" and "disadvantage and incapacity", where the objectively measured consequences of injury dominate.

The age of the victim is irrelevant in determining compensation for pain and suffering, unlike disadvantage and incapacity and "special inconveniences", in which younger claimants receive higher benefit than older claimants. This is, of course, because a younger person will have longer to live with his or her incapacity. It should also be mentioned that compensation for non-financial damage or loss is payable on objective grounds to all categories of road accident victims. No legal liability has to be proven against any other party.

Adjustment of personal injury compensation

However, a vehicle driver who sustains an injury may have the amount of compensation reduced. Most commonly, this will be because he has been found guilty of driving at above the legal blood alcohol limit and without due care and attention. The amount may also be adjusted if it is found that the driver was partly responsible through gross negligence or intent. However, major medical costs are allowed and compensation for loss of income is adjusted to 90% of the person's estimated income uninjured. The social function of the compensation weighs heavily.

Compensation in the event of death

Compensation is paid to cover funeral expenses and reasonable other cost(s) in connection with the death, and for loss of maintenance. For claims after 1 January 2002, compensation is payable for personal injury which as a result of the death is caused to a person with a particularly close relationship to the deceased.

Compensation is paid for normal burial and gravestone costs. Reasonable compensation may be considered for the immediate family's travelling costs. Certain expenditure on mourning wear may also be compensated. If the deceased had no connection with Sweden, compensation to cover the cost of transportation and burial in his/her country of residence may also be contemplated. What is considered as "normal funeral expenses" will be assessed against the background of religion and custom.

Survivors who have a legal entitlement to maintenance by the deceased, or who otherwise are financially dependent on the deceased, may qualify for compensation for loss of maintenance. This compensation, together with the person's own income and benefits, such as pensions and the like, is required to provide the survivor with the same financial situation as if the accident had not happened. It should be emphasized that a genuine maintenance need must be involved. Normally, maintenance is paid in the form of an annually calculated annuity. In the case of foreign nationals resident outside Sweden, compensation may for the reasons stated earlier be converted into a capitalized lump sum amount.

Trafikskadenämnden, TSN (Swedish Road Traffic Injuries Commission)

In Sweden, compensation for personal injury in road traffic accidents is rarely taken to court. This is because a special body, the Swedish Road Traffic Injuries Commission exists to settle such claims. The Commission hears major compensation cases and determines the compensation payable to the claimant. Under the law, all MTPL insurance companies and TFF are required to maintain and fund the Swedish Road Traffic Injuries Commission, referred to here by its Swedish abbreviation TSN.

The TSN's constitution is approved by the Swedish government, which also appoints a legally trained chairman. Deputy Chairmen, who are legal practitioners, also serve on the Commission, as well as lay representatives of various interested organizations and of the insurance companies. The Commission is made up such that external interests – i.e. interests from outside the insurance industry – exercise a majority influence on the way TSN conducts its business. TSN's pronouncements are of only consultative effect to the parties involved. Even when a pronouncement has been issued, the claimant is entitled to have his or her case heard before a court. In practice, TSN exercises a very strong influence over the nature of the right to compensation. Not all claims are heard by TSN. However, in the following instances, the insurance companies are obliged to refer cases to TSN for consideration:

Possible compensation for maintenance after deceased.

Compensation during the period of disability, where the degree of medical disability is no less than 10% or where the annual loss of income is no less than 50% of the base amount, which is an index-linked amount used in the Swedish social insurance system. This means that a low degree of disability leading to a high loss of earnings may also be means-tested, but this is not very common.

Review of annuity or lump sum payment in certain circumstances.

If the claimant so requests, the company must also refer other issues of personal injury compensation to TSN. The procedure at TSN is in writing. The company sends TSN the claim dossier, and summarizes the claim investigation material in a separate memorandum with attachments, which document the claimant and claimant's representative will first have studied. The principle is that the claimant and the company should agree on the claim investigation material that is to serve as the basis of TSN's judgment.

Compared to systems in other countries, the Swedish claim settlement procedure is very long-winded. This is explained by the way the system of compensation is built up, particularly the way it is coordinated with the social insurance system. Another factor is the principle that all aspects of loss must be thoroughly examined in a way that allows for a simple overview of the case in the future. Against this background, TSN often pronounces a judgment merely for a limited period of time. A case will then be the subject of several reviews at TSN and settlement of the claim may not be concluded for several years.

Costs of representation

In complex cases, the claimant may need assistance from a specialist representative, usually a lawyer. When a claim is found indemnifiable, the MTPL insurance bears the costs (on examination) of necessary and reasonable representation. Compensation of

representation costs is paid for reasonable time incurred, according to a specific maximum hourly rate applied in Sweden. In this system, the principle is that remuneration to the representative is unrelated to the amount of the MTPL compensation, and it is also intended that the claimant should not feel compelled to use his compensation to pay his costs of representation.

The principles described here are also applied to the work of lawyers outside Sweden. Because claims are settled under Swedish law and in accordance with Swedish compensation case-law, foreign lawyers are offered assistance by a Swedish lawyer familiar with the Swedish system of compensation. In the case of claimants not resident in Sweden, it may of course be logical to wish to engage a lawyer in their own country, but no objective grounds for doing are allowed under MTPL insurance. This means that the lawyer outside Sweden will find himself in the position of having his fees determined in accordance with Swedish practice.

Statutory limitation

According to the Swedish Traffic Damage Act, anyone wishing to exercise his right to MTPL compensation must initiate proceedings within three years of the time he became aware of a possible right to compensation. Such a claim may be split into pain and suffering, disadvantage and incapacity, loss of income, expenses and inconveniences, and may be submitted at different points in time, as knowledge of these claims emerges. Once the insurance company has declared that a final decision has been taken on the issue of compensation, the claimant always has 6 months to initiate proceedings.

Review

Once settlement of the case has been finalized, there is a limited right to review. Under Chapter 5, §5 of the Swedish Law of Damages, the issue of compensation may be reviewed if the conditions on which the compensation has been determined have changed in a material way. Having previously been restricted strictly to compensation for loss of income and maintenance, the right to review of injury, loss or damage has been extended as of 2002 to cover all forms of compensation, thus also including costs and non-financial damage. Once the claim has been settled definitively, any right to further compensation lapses, unless the claimant has, within 3 years from the time of becoming aware of a possible right to compensation and no later than 10 years from that time, again contacted the company settling the claim.