An emergency guide to the steps to take by foreign victims of personal injury accidents in France

Being involved in an accident is not something you plan for, it’s not something you even imagine.

- So, when it does happen, what are your rights and duties ?

- What are the pitfalls to avoid?

- How can you make the most of your right to compensation ?



Who are we and why this guide ?

Association Victimes et Avenir

Association Victimes et Avenir is governed by the French Law of 1901 and was founded in 2016. Based in the Île-de-France region, it operates throughout France. The association's members are not victims, but professionals, particularly insurance professionals. Our network is made up of specialist legal professionals, doctors and occupational therapists, as well as home and vehicle adaptation professionals, prosthetists and medical equipment suppliers, among others. This association was set up with the aim of re-establishing a fundamental principle: fairness.

Collectif Justice pour les Victimes de la Route

Collective 'Justice pour les Victimes de la Route', governed by the Law of 1901, was founded in 2010. Its head office is in the Hérault region of France, and the association has several branches throughout the country. The collective is made up of victims and victims' families. Its aim is to support road accident victims and organise awareness-raising and tribute events, among other things.

Association A.M.O.U.R de la Justice

'A.M.O.U.R de la Justice' Association is also governed by the Law of 1901 and was founded in 2021. The association's head office is in the Var department, and it operates throughout France, in metropolitan France and the French overseas territories, as well as abroad. It is made up not only of people involved in the justice system (judges, lawyers, court clerks, legal assistants, academics, etc.), but also of mem- bers of the public who are keen to play a part in a programme to overhaul the justice system, with a view to resolving the crisis of confidence between the justice system and the public.

It is important to bear in mind that the victims of personal injury accidents represent a significant financial windfall and may attract greed from others, whose intentions are not always laudable, and this, at the worst moments of their lives. Some of those involved in the compensation process have objectives that are less than praiseworthy for victims: for some, saving money by limiting compensation, while for others, the only thing that matters is making a profit. What's more, personal injury compensation is a highly specialist form of litigation, owing to its technical nature or its special liability mechanisms, which combine different legal disciplines, from Criminal Law to Civil Law, including Social Security Law and Insurance Law. Many victims are denied their rights simply because they are not necessarily the victims of a criminal offence.
That's why we have put together this guide: to try and help you with your case and protect you as best we can.

Partners

They have joined forces to offer you this guide.

Association Victimes et Avenir,
Collectif ‘Justice pour les Victimes de la Route’,
La Caisse Nationale d’assurance Maladie, (French national health insurance fund) D.I.A.V. (délégation interministérielle d’aide aux victimes - Interministerial Delegation for Assistance to Victims)
With support from specialist lawyers, medical advisors and A.M.O.U.R de la Justice’ Association

ASSOCIATION A.M.O.U.R. DE LA JUSTICE

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Declarations

How should we go about it ?

1 - To insurer

• Check your insurance policy for time limits (usually 5 working days) and any formal requirements (such as registered letter or e-mail with acknowledgement of receipt and reading), to declare the accident to your own insurer in writing. It is advisable to do so even if you are abroad and your vehicle is the only one involved. Even if no third party has been identified, you should report the accident to your insurer. You can complete an accident report even if no third party is present.

• Depending on the consequences of the accident, remember to activate any other insurance cover you may have taken out beforehand (personal risk policy, travel insurance, loan insurance, credit card insurance, etc.).

• If a third party is liable for the accident and has not been identified or is not insured, you are not deprived of a compensation solution. In this case, you should turn to the Guarantee Fund (Fonds de Garantie des Assurances Obligatoires - FGAO), which will compensate you under certain conditions.
To find out more : https://www.fondsdegarantie.fr/fgao/

2 - To social security organisations and/or private health insurers and/or travel insurers

Under French law, if you have been the victim, in France or abroad, of an accident or injury caused by a third party for which you have received medical treatment (hospital, medical consultation, X-ray, time off work, medication, etc.), you must report it to your health insurance fund (Articles L.376-1 and L.454-1 of the Social Security Code).
If you have got private health insurance or travel insurance covering for your medical costs in France, you should notify them as soon as possible of your accident and file a claim with them in accordance with the terms of your policies.

If you receive treatment in France after your accident, you should provide any health professionals you consult with details of your social security fund, private health insurance or travel insurance; health professionals will liaise accordingly with French Assurance Maladie.

By informing the French social security Assurance Maladie, your own social security organisation, and your insurers and providing as much information as possible about the circumstances of the incident and the third party involved, they will be able to contact the party responsible, or its insurance company, to obtain reimbursement of the costs and benefits paid or incurred for your care.

If you are registered with Assurance Maladie (the French social security organisation), there are several ways of making a claim against a third party :
• From your Ameli account, under the heading 'My formalities / Declare bodily injury caused by a third party / Declare an accident';

• In just a few clicks, on Simplified formalities, where all you need to do is enter :
o Information about the victim;
o The circumstances of the accident;
• By telephone (from France) by dialling 36 46 from Monday to Friday, 8.30am to 4.30pm.
For more information : https://www.ameli.fr/ and demarches-simplifiees.fr/

Recovery by the Assurance Maladie in the event of injury or accident caused by a third party
Recovery is made by post by sending the completed simplified declaration of bodily injury caused by a third party form to your Caisse Primaire d'Assurance Maladie (CPAM). The Cerfa form can be found in appendix 1 or on the Service Public website : https://www.service-public.fr/particuliers/vosdroits/R49816?lang=en

3 - OTHER

There may be other steps to take, or requirements in your own country, especially if the accident was a fatal one involving one of your family members. In the first instance, please contact your embassy in France to enquire.

At a later stage, you may need to take some steps to act on behalf of the estate of the deceased, such as register as administrator or executor of the estate, via probate proceedings.

Investigations and legal proceedings

How does it work ?

1 - Police or gendarmerie investigation

There are 2 types of investigation : the flagrante delicto investigation (maximum 8 days after the accident) and the preliminary investigation. Investigations may also continue as part of a preparatory investigation or judicial inquiry. During the 8 days of the flagrante delicto investigation, you can contact the police or gendarmerie directly to obtain the information you need for your provisional compensation. After this maximum period, it will be up to you to request this information during the preliminary investigation directly from the public prosecutor in charge of the case, i.e. normally the prosecutor in the place where the accident occurred (Article R170 of the Code of Criminal Procedure).

2 - Criminal justice

• If your vehicle is being investigated and sealed as part of criminal proceedings, the cost of storage during this period will be paid by the Treasury. Otherwise, these costs are your responsibility. They may be paid by your insurer, depending on the cover options taken out, or by the opposing party in the event of non-liability. It is therefore important to scrutinise the provisions of your insurance policy.

• In the event of death, whether or not as a result of a criminal offence, the Public Prosecutor or an Examining Magistrate may request a body examination or a judicial autopsy. The police will inform you. The Public Prosecutor or the Examining Magistrate will then issue the report for burial or cremation. If this document is not given to you, it must be given to the funeral directors, who will be able to give you a copy.

• In some countries, if the death was not of natural causes, an inquest may be initiated in your home country to determine the cause of death, in addition to the investigation carried out in France. The Coroner may be involved and work in connection with French authorities.

• If the death or injury is the result of a criminal offence, as the direct or secondary victim, you can file a complaint and register as a civil party. Under Article 15-3 of the Code of Criminal Procedure, you cannot be refused the right to lodge a complaint wherever you go (police station, gendarmerie). You must be given a receipt for the complaint, which you may request, as well as a copy of the report of your complaint if you so request. If you are being denied the right to file a complaint, you can then lodge a complaint directly with the Public Prosecutor.

To find out more :
https://www.service-public.fr/simulateur/calcul/Porter_plainte

If you do not wish to lodge a complaint, this will not affect your right to claim compensation. The Public Prosecutor will decide whether to prosecute in the first instance. If he/she decides not to do so, he/she is supposed to send you the notice of closure after his/her decision. If you have not received it, you may request it by post.
The decision to close the case is never final. The Public Prosecutor may reverse the decision at any time and initiate proceedings, provided that the limitation period has not expired (generally if new evidence is discovered or the perpetrator is found), i.e. that the offence is not statute-barred.

If you do not agree with the decision to close the case, you can contest it by writing to the General Prosecutor of the Court of Appeal heading the office of the prosecutor who made the decision to close the case.

Bear in mind that if the Public Prosecutor or the General Prosecutor does not initiate criminal proceedings, you yourself can initiate the recognition of the criminal liability of the presumed perpetrator of your damage through the following two channels :
• Formal complaint with registration as a civil party (“plainte avec constitution de partie civile”) before the senior examining magistrate (doyen des Juges d’Instruction)
• Direct summons to appear before the criminal court if the perpetrator has been identified and you have sufficient evidence to convict him.
However, criminal proceedings are not a prerequisite for asserting your right to compensation or that of your family members. You can claim directly from the insurer of the third party involved, from a guarantee fund and/or from a civil court.

3 - Civil justice

If out-of-court discussions re your right to compensation, whether contractual or under common law, fail, a Civil Judge will be able to rule on the extent of your right to compensation and, at your request, will arrange for a judicial medical assessment to assess your losses.

Prepare your claim for damages for personal injury

A meticulous but necessary task, that falls to you.

The right to compensation depends on the circumstances of the accident

• Drivers who are at fault and have taken out driver's guarantee (or equivalent) maybe entitled to contractual compensation by their own insurer, which may be partial (depending on the insurance cover taken out).
• A driver who is not at fault in an accident in which another vehicle is involved is entitled to full compensation for his or her losses, unless he or she has committed a fault in connection with his or her injuries that could reduce or even annihilate his or her right to compensation.
• Passengers, pedestrians, cyclists, etc. are entitled to full compensation, without loss or profit, unless it can be proved that they committed an inexcusable fault, which was the exclusive cause of the accident, or that they intentionally sought to cause the damage to themselves.

The aim of compensation is to repair the losses suffered by both the direct victim and the indirect victims. Even if you think you are fine, consult a doctor. Some injuries appear late. Without an initial medical certificate, the insurance company may say that the accident did not cause your pain. You will find a non-exhaustive list of heads of loss in Appendix 2.

When first corresponding with you, the insurer is obliged to remind you of your rights (Article L. 211-10 of the Insurance Code), which are as follows:

- To obtain a copy of the police or gendarmerie investigation report on request, - To be assisted by a lawyer

- In the event of a medical examination, you have the right to be assisted by a victim's medical advisor.

If they do not inform you of these rights, they run the risk of you asking for the settlement agreement to be annulled if it does not suit you.

Please note that no other organisation whatsoever may represent you at the expert assessment, such as claims management companies, whose business is illegal, and above all, only lawyers and doctors advising victims have the right to charge fees.

Any organisation claiming to help victims must be free of charge, and you must be able to choose your own lawyer, who cannot be imposed on you by your insurer, even in the case of legal expenses insurance or legal defence provision.

Under Article 90 of Decree no. 72-468 of 9 June 1972 on the organisation of the legal profession, no lawyer ('Avocat') has the right to solicit you or contact you directly without your agreement.

Before taking any action, it is the lawyer's duty to have you sign a clear and explicit fee agreement setting out the terms and conditions of their remuneration.

A number of documents will be requested by different parties. You can prepare these documents by scanning them in PDF format. If you do not have the necessary equipment, feel free to ask your local townhall or your nearest France Services centre for help.

For more information : https://www.france-services.gouv.fr/
A non-exhaustive list of these documents can be found in Appendix 3.

1 – Expenses

These are taken into account from the day of the accident, and include all expenses incurred in connection with the accident. These include the various journeys made (car, train, etc.), parking costs, meals and accommodation.

If your expenses require the use of human assistance to help you in your daily life, you should keep the relevant receipts (gardening costs, household assistance costs, childcare costs, etc.). Compensable human assistance is not limited to the use of third parties. Therefore, if a family member fulfils this role, proof should also be provided by way of a statement.

In the event of death, funeral expenses and the purchase of a plot must be taken into account (pay attention to the number of spaces the insurer will cover).

This list is not exhaustive and should be adapted to each individual situation.

It is essential to keep all receipts for expenses.

An indicative table can be found in appendix 4.

The mileage scales for calculating your expenses can be found here: https://www.service-public.fr/particuliers/actualites/A14686

1- Under French law. If your own insurance contract is governed by a foreign law, you may not have the right to choose your own lawyer under your legal expenses policy.

2 – Follow-up medical care and related expenses

Keeping track of your treatment is important. You can also take photos of your injuries and how they are progressing. You will be asked to provide proof of all your health care expenses as part of the medical expert assessment. This also applies to the cost of psychological support, including for indirect victims, who may, for example, develop pathological grief after the death of their loved one. Expenses include travel and accommodation costs, out-of-pocket healthcare expenses, miscellaneous purchases, medical equipment hire, home adaptations (even if temporary), human assistance, medical assistance fees, etc.

Overall, the aim is to have reimbursed all expenses arising from your injuries that would not have occurred in the absence of the traumatic event. It is therefore important to keep all receipts for out-of-pocket expenses. Proofs of payment received from various organisations should also be kept carefully. You will find an indicative table in Appendix 5.

3 – Loss of income

This head of loss can compensate for losses of both the direct and indirect victims. Loss of past professional earnings is relatively simple to calculate since it refers to the loss of income resulting from the temporary total disability. This loss is assessed by comparing the daily allowances paid by social security funds, the wages maintained by the employer, and the income the victim would have received had the accident not occurred. Loss of premiums/bonuses may also be taken into consideration, under certain conditions, until medical recovery or consolidation.

Loss of future professional earnings, however, can be more complex to calculate because it involves looking into the future. Here, compensation aims to cover, from the date of consolidation, the definitive impact of the injury on the performance of professional activity in terms of loss of earnings. It is therefore necessary to consider the permanent loss of bonuses in the future, the risk of dismissal induced by the permanent disability, the loss of opportunity to get promoted, etc. You will find an indicative table in Appendix 6.

4 – The crucial step towards fair compensation : the medical expert assessment

This will be amicable and initiated by the insurer initially, which is not a problem as long as you are well prepared for this step. It must be adversarial, which is why you must be present and should be assisted by a specialist, experienced, and trusted medical professional (lawyer and/or medical advisor). The insurer will give the expert specific instructions. In order to ensure a fair medical expert assessment, and fairer compensation, do request that the instructions specified in Appendix 7 be used.

In addition to the supporting documentation of follow-up medical treatment, which must be updated throughout the assessment, you must also provide the expert with a copy of your complete medical records. This complete medical file must also be requested from the healthcare facility if the victim died there as a result of the accident. You will find a sample letter in Appendix 8.

Next, in order to best and most accurately determine your functional impairment, whether temporary before consolidation (or permanent after consolidation), as well

as your need for human assistance, we recommend regular monitoring of the impairment experienced in your daily activities (leisure activities, travel, private life, sex life, etc.). To this end, a record should be made from the first day of the accident and even during the hospitalisation period, by yourself or your loved ones if you are unable to do so.

- Be careful, however, to only report the impairment caused by the accident, and not any inconvenience related to any previous or unrelated condition.
- You can update this record once a week or every day if you wish.
- You can then space out the time between filling it out if your situation does not improve or does not worsen.
- Feel free to add sections if you find it necessary.

The medical expert's assessment will most likely take place in a doctor's consulting room. However, depending on your sequelae, if they seriously complicate your mobility or your neurocognitive abilities, you may request a home assessment with a specially trained occupational therapist so that they can assess the concrete impact of the reduction in your physical, psychosensory, or intellectual potential in your living environment. A model of table that you may use for that purpose can be found in Appendix 9.

In the event of the death of the accident victim, as heir or administrator of the estate, you are responsible for some formalities, such as terminating contracts, filing out tax returns, etc. Find all the information on the public service website: https://www. service-public.fr/particuliers/vosdroits/F16507. It is likely that you will be in charge of other formalities in your home country, which you should check with local authorities.

When experiencing a traumatic event, you may find that you do not know how to manage your feelings and reactions.

Therefore, initially, seek the assistance of a trusted loved one during your initial appointments to better reflect and act while remaining in control of your decisions.

More haste, less speed in those crucial choices that inevitably await you.

Other types of accidents causing injury victims

Medical Accident

In all cases of medical accidents (except for defective healthcare products), the first step is to request a copy of the medical records from the healthcare facility.

Whether the accident was negligent or not (therapeutic hazard), whether it originates from a preventive, diagnostic, or treatment procedure, whether it involves a nosocomial infection or an iatrogenic condition, there is a free, out-of-court compensation system available through the Conciliation and Compensation Commissions (CCI), which have regional jurisdiction, in the event of a serious accident. This method of attempting to resolve the dispute is optional. However, it offers the advantage for the direct or indirect victim of not having to upfront any legal costs or expert fees. Only potential lawyers' fees, travel costs, and the cost of mailing and photocopying files are borne by the claimant.

In the event of damage caused in the course of a medical act, you also have the option of pursuing a court claim.

You may be compensated, under certain conditions, either by ONIAM (National Office for Compensation of Medical Accidents and Iatrogenic Infections) if the medical accident is not negligent, or by the insurer of the responsible healthcare provider in the event of fault/negligence.
For more information : https://www.oniam.fr/
The appendices to this Guide can also assist you with steps to take in preparing your compensation claim.

Life accidents

A general wording covering

- Accidents at home
- Accidents occurring outside (store, pavement, etc.) other than road accidents
- Sports accidents
- Travel, holiday or leisure accidents
- School accidents

If a third party is liable for your accident, their insurer will compensate you, and you will be entitled to full compensation for your injuries, without loss or profit. The appendices to this Guide can also assist you with steps to take and preparing your compensation claim.

If no third party is liable, your insurance coverage may be triggered if you have taken out a GAV (Life Accident Guarantee) policy. Also, remember to check any other policies you may have, such as travel insurance, health insurance, credit card insurance etc.

One last important recommendation

For both out-of-court and legal proceedings, do seek the assistance of an independent medical advisor and/or a specialist or experienced lawyer.
The lawyer should have a certification in personal injury law and/or medical liability law for medical accidents. Be careful, claiming to be a specialist is not enough for a lawyer. They must have a certificate of specialisation attesting to their professional skills in the specialty, issued by the National Bar Council and validated by a jury.

To help you identify them, they use this logo, but beware of fake ones.

Our advice

Do not hesitate to check law firms' websites; choose lawyers who dedicate their practice solely to defending victims.

Don't entrust the tragedy of your life to the first person who comes along, and don't confuse speed with haste.

The first meeting is generally free; feel free to consult a few different lawyers before making your choice.

The choice is very personal, it is also crucial, and while changing lawyers is always possible, it can be very costly.

A relationship of trust should be established and last over time; the process of compensation is often a long one.

Have you got any questions? Feel free to contact us :

Do you need help with your formalities?

We can assist you in your dealings with insurers, law enforcement, the Public Prosecutor, the FGAO (Guarantee Fund), and the ONIAM (National Office for Compensation for Medical Accidents and Iatrogenic Infections), if you do not have a lawyer; otherwise, your lawyer will take care of it.

For all requests for intervention by the association with stakeholders, we need your written authorisation. You will find the relevant Mandate available on our website, and in Appendix 10.

Useful links

Our association does not provide psychological support, but your mental health is important.
Do seek professional support if you need it. You can find help and information on these websites :

- **https://cn2r.fr/**
- **https://www.sante.fr/recherche/trouver/cmp**
- **https://monsoutienpsy.ameli.fr/recherche-psychologue**
- **https://santepsy.etudiant.gouv.fr/**

If you are a road traffic accident victim and need support, or wish to talk with people who have experienced a tragedy like yours,
Or, if you would like to participate in awareness-raising activities :
Collective 'Justice pour les Victimes de la Route' (Justice for road victims) is here for you : https://www.justicevictimesroute.fr/

Other charities or organisation may be available in your home country for support.
Finally, keep in mind that this tragedy is yours; no one can, or should, decide for you.

It is essential that you remain an active participant and decision-maker.

Our supporters

A big thank you to all our partners for their support and contributions ! Your commitment has been crucial to success of this guide.

Thank you to the prefectures of Alpes-Maritimes, Seine-Saint-Denis and Val-d'Oise for your subsidies, which have made our initiatives possible. As well as to the Road Safety Delegation.

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Thanks to you, we have been able to achieve our goals and bring this project to life.

Thank you again for your trust and collaboration!

Maud Escriva,
Présidente of Association Victimes & Avenir

PRÉFET DU VAL-D'OISE
Liberté
Égalité
Fraternité

PRÉFET DE LA SEINE-SAINT-DENIS
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PRÉFET DES ALPES-MARITIMES
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PRÉFET DE LA LOIRE-ATLANTIQUE
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SÉCURITÉ ROUTIÈRE VIVRE, ENSEMBLE

Les étoiles de la route

Griffes

sur Vous

Documents annexes à télécharger ou à consulter