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LawTalk Blog



## Cyclists, have you experienced a “hit and run”?

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### Can an injured cyclist make a claim for compensation in a hit and run accident?

This is one of the most frequent questions we receive. These accidents can be particularly emotional as a cyclist feels powerless as they believe that they cannot hold anyone accountable for the accident and thus not be able to claim for compensation. Cyclists can also feel confused as they don't know exactly what to do in these situations.

The answer to this question is that injured cyclists can make a claim for [motor vehicle accident](#) compensation however, action needs to be taken early to ensure the maximum chances of achieving a successful claim.

In situations where the driver who hit the cyclist is unknown, the law contains a special category of a legal person known as "[the Nominal Defendant](#)". Nominal defendants are commonly used in the following situations:

1. In hit and run situations where the driver in question is not known;
2. In accidents where the driver in question does not survive the accident; and
3. In cases where the vehicle in question was not insured at the time of the accident.

In all of these instances, the injured party does not have a person to sue. This is particularly the case in hit and run accidents involving motor vehicles, bikes and pedestrians.

The latter two situations mentioned above which relate to drivers passing away and uninsured drivers are technical examples where the law allows the Nominal Defendant to “fill in the gap” regardless of whether or not the identity of the driver is known.

In cases where a cyclist has been hit by an unknown driver, a normal claim for compensation can proceed in the same way as other claims where there is a known driver who was “at fault”. The normal requirements for hit and run claims would apply, but it is essential to obtain legal advice as soon as possible. This is because the law requires a “due enquiry and search” to be carried out in these cases.

The requirement for “due enquiry and search” exists as the law requires the injured road user to make some attempt to identify and locate the driver in question. As a bare minimum, the incident should be reported to the police and a “Witness Wanted” ad should be placed in a newspaper of wide circulation, such as The Advertiser at the earliest possible opportunity.

If early action to prepare a claim is not properly carried out, the insurer representing the Nominal Defendant may successfully argue that they have been disadvantaged and prejudiced. For example, if the insurer is first made aware of the accident 18 months after it happened, the matter comes “stale”, as the insurer may argue that it is very hard for them to properly investigate the accident.

This is why we emphasise that it is crucial to obtain advice at the earliest possible stage following an accident if you find yourself in a hit and run incident.

Today’s primary writer and researcher is PLT Law Student [Milo Kuga](#) assisted by Senior Associate in Civil Litigation, Matthew Fuss.

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