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Indexed as:
D.A. (Re)

IN THE MATTER OF an appeal by D.A.
AICAC File No.: AC-97-73

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[1997] M.A.I.C.A.C.D. No. 45

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C.,
and L. Goodspeed
Heard: December 3, 1997.
Decision: December 9, 1997.
(6 pp.)

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Issue(s):

Whether nieces and nephews of a deceased victim qualify
as dependent children?

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.
36, ss. 121(2)(a), 122 and 70(1)(d).

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Appearances:

Manitoba Public Insurance Corporation ('MPIC')
represented by Keith Addison.
The appellant, D.A., represented by Martin Pollock.

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MAIC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE
PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING
PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

REASONS FOR DECISION

THE FACTS:

[para1] V.V.S.A. was fatally injured in a motor vehicle
accident in Winnipeg on the 8th of August 1995. At the time
of her death she was employed at [text deleted] and lived in
Winnipeg with her father and her brother. Amongst other
surviving members of her family were two nieces and one
nephew, E.A., V.J.D. (A.) and S.M.A.F. V.V.S.A.'s brother,
D.A., made application on behalf of the nephew and nieces for

dependents' benefits, upon the basis that the deceased stood in loco parentis to each of them at the time of the accident.

The other relevant facts are spelled out succinctly in the decision letter of the acting review officer of MPIC, Mr. Dean I. Scaletta, bearing date June 16th, 1997. They are as follows:

1. The deceased was an unmarried woman born on February 14th, 1965 in the [text deleted]. At the time of her death, she was a Canadian citizen living and working in Winnipeg;
2. The deceased had immigrated to Canada with her parents. She was predeceased by her mother. Her father, who also lives in Winnipeg, is a Canadian citizen.
3. The deceased had no children of her own.
4. The claimants are her niece, S.M.A.F. (DOB - [text deleted]), her niece, V.J.D. (A.) (DOB - [text deleted]), and her nephew, E.A. (DOB - [text deleted]).
5. All of the claimants live in the [text deleted]. S.M.A.F. attends college, but otherwise lives with her parents. V.J.D. (A.) and E.A. live with their father (their mother having died in 1991). The parents of each of the claimants provide them with the basic necessities of food, shelter and clothing.
6. The deceased, for some period of time prior to her death, had been sending \$[text deleted] per month to the {text deleted} to help defray the costs of educating the claimants. The money was strictly for education purposes. The commencement date of the payments does not appear in the material on file.

[para2] At the time of the internal review, counsel for the Appellant argued that the deceased stood in loco parentis to the claimants and, in the alternative, that the words "a child by blood" in Section 70(1) of the MPIC Act which defines a "child of a victim" should be given a sufficiently broad interpretation to include nieces and nephews.

[para3] At the hearing of the appeal before this Commission, counsel abandoned the position that V.V.S.A. stood in loco parentis to the three young people in question, but argued strongly that the nephew and nieces of the deceased should be classified as dependent children.

THE LAW:

[para4] The sections of the MPIC Act that are relevant to the present inquiry are these:

"Lump sum indemnity to other dependant

121(2) A dependent, other than the spouse, of a deceased victim is entitled to

(a) a lump sum indemnity in the amount opposite the age of the dependant in Schedule 3; and....";

and

"Dependant child of deceased victim with no spouse

122 If on the day he or she dies the deceased victim has no spouse but has a child who is a dependant, the child is entitled, in addition to a lump sum indemnity under Section 121, to a lump sum indemnity under Section 120 and, where there is more than one child, the lump sum indemnity shall be divided equally among them.";

and

"Definitions

Section 70(1)

"child of a victim" means a person related to a victim as a child by blood or adoption or to whom a victim stands in loco parentis at the time of the accident;

"dependant" means

(d) a child of the victim

(i) who was under the age of 18 year at the time of the accident, or

(ii) who was substantially dependant on the victim at the time of the accident, and ..."

"parent of a victim" means a person related to a victim as a parent by blood or adoption or who stands in loco parentis to a victim at the time of the accident;".

[para5] Counsel for the Appellant argues that the three young people are indeed "children", since each of them was under the age of eighteen at the time of their aunt's accident; that, being her nephew and nieces, they were certainly related to the deceased by blood; that, if the Legislature had intended the word "child" to be limited to sons and daughters, it would have said so, and that by virtue

of the \$[text deleted] per month sent by the deceased to her brother in the [text deleted], E.A., V.J.D. (A.) and S.M.A.F. were dependent upon her. He argues that the word "dependant" means dependent for support, and dependency does not necessarily mean totally dependent - that is to say, in order to fall within the definition of "dependant" in the statute, it is not necessary for a claimant to be totally dependent upon the deceased for food, clothing and shelter; if their aunt was paying only for their education, that factor is so important as to constitute a substantial dependency.

[para6] Counsel argues, further, that the late V.V.S.A. was treating the children as she would treat a child of her own and that the \$[text deleted] gratuitous, monthly payment was something upon which they had come to be dependent.

[para7] With deference, we are not able to agree. As counsel for MPIC submits, the situation would be different had the deceased been the natural parent or the adoptive parent of all or any of those young people or if she had established a pattern of conduct whereby she could be said to have been acting in loco parentis vis-a-vis those children.

[para8] In our view, the principal operative word upon which a decision in this case must stand is the word "of" in the phrase "child of a victim". In our view, that phrase, in the context of the MPIC Act, can only mean a natural child, an adopted child or a child to whom the deceased stood in loco parentis; no other member of the family of a deceased victim can qualify as a dependent child.

[para9] We should add that, we concur in the submission of Mr. Pollock that, in order to qualify as a dependant, it is not essential that the claimant show total dependency. Such a finding would render redundant the legislative use of the word "substantially" in the definition of a dependant. However, we are of the view that, in order to qualify under that head, something more than a contribution towards educational costs is required.

DISPOSITION:

[para10] For the foregoing reasons, we conclude that the present appeal must fail and that the decision of the internal review officer should be confirmed.

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