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Indexed as:  
K.A.S. (Re)

IN THE MATTER OF an appeal by K.A.S.  
AICAC File No. AC-96-13

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[1996] M.A.I.C.A.C.D. No. 13

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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: June 6, 1996.  
Decision: June 14, 1996.  
(10 pp.)

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Issue:

Victim's right to claim interest on delayed payment.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.  
36, ss. 6(2)(g), 153(1), 163 and 184(1).

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Appearances:

Manitoba Public Insurance Corporation ('M.P.I.C.')  
represented by Joan McKelvey.  
Linda J.R. Choy, of Roy, Johnston & Co., counsel for the  
appellant, via telephone conference call.

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#### REASONS FOR DECISION

THE FACTS:

[para1] The facts giving rise to this appeal are not in dispute. They are succinctly spelled out in the written submission of counsel for the Appellant, as follows:

1. On August 14th, 1994, J.S. was fatally injured in a motor vehicle accident. He was survived by his wife, the Appellant, K.A.S. and an infant son, M.S.
2. On September 12th, 1994, K.A.S. completed an Application for Compensation under the Personal

Injury Protection Plan established under The Manitoba Public Insurance Corporation Act (the "Act"). She was at that time asked to provide a copy of J.S.'s 1993 income tax return.

3. By letter dated November 25th, 1994, K.A.S.'s then solicitor, G. Fay Lowes, provided a copy of the 1993 income tax return to M.P.I.C.'s adjuster.
4. It does not appear that there was any action by M.P.I.C. on the matter until February, 1995. After reviewing the matter, on February 22nd, 1995 the adjuster requested that K.A.S. also provide the 1992 income tax return.
5. The 1992 income tax return was provided to the adjuster within a few days. The adjuster then, by letter dated March 7th, 1995, requested further information from K.A.S. about the extent of J.S.'s farming experience.
6. The M.P.I.C. file does not disclose when that information was provided but the next action on the file was not taken until March 29th, 1995 when the adjuster was requesting approval of the payment. There are memos between the adjuster and his supervisor discussing whether payment should be made pending receipt of the 1994 income tax return. The last note by the supervisor states  
  
"Only you can tell if you should wait for 94 tax return as I was not talking to I.R.I. calculator. If it will have a bearing on what we pay then I think we should or perhaps we can adjust later. If it does not then pay now. Did you ask I.R.I. when info was requested."  
  
7. Payment of the lump sum indemnity death benefit was forwarded to K.A.S.'s solicitor by letter dated May 23rd, 1995.
8. The lump sum indemnity death benefit received by K.A.S. was the minimum \$40,000.00 benefit payable under S. 120 of the Act.

[para2] Three further facts might usefully be added to those stated by Appellant's counsel, namely:

9. On October 11th, 1994, M.P.I.C. wrote to counsel for the Appellant seeking a copy of her late husband's 1993 income tax return and noting that the insurer was "awaiting the proof of death report to be returned to us through the Chief Medical Examiner's Office in order to proceed with this claim". No

explanation of this requirement was offered, although J.S.'s death by automobile accident does not seem ever to have been questioned. The file does not disclose when that proof of death report was received, if at all.

10. Payment of \$34,000.00 for the benefit of the infant dependent was made to the Public Trustee's Office at the beginning of January, 1995.
11. The Appellant's entitlement to at least the basic, minimum lump sum payment of \$40,000.00 was never in doubt, from December 12th, 1994, the date when the insurer received from Appellant's counsel the marriage and birth certificates that it needed in order to verify the claims.

#### THE ISSUE:

[para3] The sole issue in this appeal, as noted above, is whether the Appellant has the right to receive interest on the lump sum to which she was undoubtedly entitled. If the answer to that question is affirmative, the supplemental question would arise: from what date should interest be computed?

#### THE LAW:

[para4] This Commission finds its jurisdiction in the Manitoba Public Insurance Corporation Act ("the Act"). We are bound by what we find within the four corners of the Act, following proper rules governing the interpretation of statutes.

[para5] The Act, in the present case, is silent upon the question whether interest accrues upon any delayed payment, except for Section 163 which reads as follows:

"163 Where a person's application for a review or appeal is successful, the Corporation shall pay interest to the person on any indemnity or expense to which the person is found to have been entitled before the review or appeal, at the prejudgment rate of interest determined under Section 79 of the Court of Queen's Bench Act, computed from the day on which the person was entitled to the indemnity or expense.

In other words, if the insurer has refused to pay a lump sum, an income replacement or reimbursement of expenses, to a claimant whose appeal against that denial is successful, the Corporation must pay interest on the amount thus found to have been due.

[para6] We are of the view of the maxim of statutory interpretation *expressio unius est exclusio alterius* (meaning

that the expression of one thing is the exclusion of another) is one that we must apply here. Under this maxim, if the governing statute specifies one exception to the general rule, or specifies the effects of a certain provision, then other exceptions or effects are excluded.

[para7] The general rule, here, is that a corporation created by statute to perform certain specific tasks cannot be required, by any one having a legitimate claim against that corporation by virtue of that same statute, to pay interest on any delayed payment of that claim unless the statute itself says so. The exception to that general rule is found in Section 163, quoted above. We must infer, therefore, that by specifying this one set of circumstances wherein the successful claimant is entitled to interest the legislature intended to exclude interest in other circumstances.

[para8] A Court has the power to award interest on monies wrongfully withheld or delayed, by virtue of Section 80 of the Queen's Bench Act, being Chapter 280 of the Continuing Consolidated Statutes of Manitoba. This Commission, not being a Court of original jurisdiction, does not have that power.

[para9] While we are of the view that, contrary to the position put forward by counsel for M.P.I.C., the Corporation does have the same rights as any other body corporate to make an ex gratia payment to any claimant whom the Corporation may feel it has treated unfairly (whether by undue delay or otherwise), and while Section 184(1) of the Act does give this Commission the power 'to make any decision that the Corporation could have made', we do not take that power to include the making of a gratuitous payment. Rather, we interpret Section 184(1) to mean that we may substitute, for any decision of M.P.I.C., a decision of our own provided that its roots are found within the statute.

[para10] We have considered the effect of Section 6(2)(g) of the Act, which reads in part as follows:

"...the corporation may...do all things necessary for the purpose of settling, adjusting, investigating, defending and otherwise dealing with, in conformity with this Act and the Insurance Act insofar as is applicable, and the regulations made under both Acts, claims made in respect of contracts by which the corporation may be liable as insurer..."

Section 180 of the Insurance Act, R.S.M. 1987, cap. I40, provides that, upon receipt of sufficient evidence that life insurance proceeds are, in fact, due and payable to a beneficiary, the insurer must make payment to that beneficiary within 30 days after receiving that evidence. We find that this section is applicable to the so-called 'death benefits' payable under Sections 120-124 of the M.P.I.C. Act, imposing

upon the Corporation an obligation to pay those lump sum death benefits within 30 days after receipt of the appropriate evidence.

[para11] However, the Insurance Act is also silent upon the question whether interest accrues on monies improperly remaining unpaid beyond that 30-day period. Section 196 of the Insurance Act does provide that

"Court may order payments.

196 Where an insurer does not, within 30 days after receipt of the evidence required by Section 180, pay the insurance money to some person competent to receive it or into Court, the Court may, upon application of any person, order that the insurance money or any part thereof be paid into Court, or may make such other order as to the distribution of the money as it deems just, and payment made in accordance with the order discharges the insurer to the extent of the amount paid."

but that merely gives to a disgruntled beneficiary the right to sue for his money after 30 days and then to invoke S. 80 of the Queen's Bench Act cited above.

[para12] In sum, therefore, the combined effect of Section 6(2)(g) of the Act and the Insurance Act is not helpful to the Appellant.

[para13] Counsel for the Appellant submits that where, as here, there is no doubt that a claimant is entitled to at least the basic \$40,000.00, and that any further information sought by the insurer could only be of use in determining whether the claim can legitimately be increased, there is every good reason for the insurer to exercise its discretion under Section 153(1) by disbursing the undisputed portion of the claim as soon as all relevant proofs have been filed. We agree; it is a matter of regret that this was not done, since the result has been to deprive K.A.S. of income from \$40,000.00 for a period of approximately five and one-third months - December 12th until May 23rd - with a corresponding sum being retained in the coffers of the Corporation.

[para14] However, by the very language of Section 153(1) such a payment was discretionary and, even if this Commission has the power to substitute its own discretion for that of the adjuster and to find that the \$40,000.00 should have been disbursed sooner, that does not, of itself, give us the right to award interest.

[para15] Counsel for K.A.S. refers us, amongst other authorities, to an extract from Professor Terence Ison's text on Workers' Compensation in Canada wherein, at page 120, the following statement is found:

"Where there has been a delay in the payment of compensation, interest may be paid. Indeed, any failure to pay interest would be confiscatory, particularly in view of current rates of inflation."

[para16] While we may agree that the non-payment of interest has, in some extreme cases, confiscatory overtones, the bases for Professor Ison's first quoted statement seem to lie in two Workers' Compensation decisions, neither of which appears to us (with great respect) to be of much persuasive value - not, at least, in the present context:

- (a) Decision No. 108, (1975) 2 Workers' Compensation Reporter 44, at page 57, is a decision of the British Columbia Workers' Compensation Board, holding that a worker's own negligence, and even the worker's own breach of a known safety rule, are not enough to deny that worker the benefits provided by the statute when the injury occurs in the course of the worker's employment - interpreting the latter phrase liberally. Interest is mentioned once only, in the last sentence of the decision, and without explanation: "arrears of benefits will carry interest at 5% per annum, compounded with yearly rests." We note, only, that in a similar situation (i.e. a successful appeal from an earlier ruling of M.P.I.C.) under the Act governing Mrs. Strain's appeal, Section 163 would apply and interest would, indeed, be payable. Mrs. Strain's situation is not similar.
- (b) Decision No. 346 from the Workers' Compensation Reporter, which is merely a policy decision of the British Columbia Workers' Compensation Board of December 16th, 1981, unrelated to any specific appeal, whereby that board decided to abandon an earlier policy which allowed for the payment of interest on certain retroactive lump sum permanent partial disability pension payments, but had not allowed for interest on retroactive lump sum wage loss payments. The board decided that this was inconsistent and that interest should be allowed on both kinds of retroactive payment, subject to a number of conditions precedent.

[para17] Counsel for K.A.S. submits, quite correctly, that where, as is the case here, there are no time limits within which the insurer is required to make payment of a lump sum death benefit, there is no impetus nor any other control on the corporation requiring it to deal with such matters on a timely basis. The payer of the funds, says the Appellant, should not be allowed to benefit by its own delay in making payment, to the detriment of the receiver of the funds. While

that may well be true, we find that we lack the statutory power to correct the apparent inequity.

DISPOSITION:

[para18] For the foregoing reasons, we are obliged to dismiss K.A.S.'s appeal and to confirm the decision of the Internal Review Officer.

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