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Indexed as:  
J.W. and R.W. (Re)

IN THE MATTER OF an appeal by J.W. and R.W.  
AICAC File No. AC-96-61

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[1997] M.A.I.C.A.C.D. No. 2

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Manitoba Automobile Injury Compensation Appeal Commission  
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C.  
and Lila Goodspeed  
Heard: January 10, 1997.  
Decision: January 17, 1997.  
(4 pp.)

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Issue(s):

1. Compensation for clothing worn at the time of the accident;
2. Are parents 'victims' within the meaning of the M.P.I.C. Act.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.  
36, s. 70(1).  
Regulation 40/94, Section 30.

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Appearances:

Manitoba Public Insurance Corporation ('M.P.I.C.')  
represented by Joan McKelvey.  
J.W. and R.W., the appellants, appeared in person.

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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] The Appellants' daughter, B.L.W., a passenger in an automobile that was involved in an accident on November 20th, 1995 near [text deleted], Manitoba, subsequently died from her injuries.

[para2] Their daughter's leather jacket was destroyed in the accident, its replacement value was \$539.00 plus applicable taxes. The Manitoba Public Insurance Corporation ('M.P.I.C.') paid the Appellants the maximum sum of \$400.00 pursuant to Sub-section 30(a) of Regulation 40/94. The Appellants submit that Sub-section 30(b) permits them to be paid for the full replacement cost of the jacket. Section 30 of Manitoba Regulation 49/94 reads as follows:

"Clothing worn at the time of the accident

30. Subject to section 31, the corporation shall pay an expense incurred by a victim for cleaning, repairing or replacing clothing worn at the time of the accident

- (a) to a maximum amount of \$400.00 or,
- (b) in the case of leather garments or a helmet worn by a motorcyclist or cyclist, to a maximum of \$1,000.00."

[para3] The Appellants argue that the jacket was a leather garment worn at the time of the accident and qualified for full payment under this sub-section. We would agree with their position if there were a comma after the words "leather garments". However, there is none and we find that the phrase "leather garments" relates to garments worn by "motorcyclists or cyclists" and this was not the case in this accident. We cannot find in favour of the Appellants on this part of their claim for financial compensation.

[para4] The Appellants were devastated by the loss of the daughter and, to help them cope with the tragedy (and save their marriage), they sought professional help in the form of grief counselling. They asked M.P.I.C. to pay for this cost and M.P.I.C. refused on the grounds that there was no provision in the Act or Regulations to permit them to pay for this type of expense.

[para5] The Appellants argued that the authority to pay for this expense can be found in Sections 138 and 70(1) of the Act. Section 138 requires M.P.I.C. to rehabilitate the victims of an automobile accident and it states:

138. Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

[para6] Section 70(1) defines a victim as a 'person who suffers bodily injury in an accident' and defines bodily

injury as 'any physical or mental injury, including permanent physical or mental impairment and death'. The Appellants argue that because of the accident they have experienced great emotional and mental stress and therefore have suffered a mental injury which is compensatable under the Act. However, it must be noted that the emotional or mental injury suffered by R.W. and J.W., although no less real than if they had been personally present at the scene, cannot be said to have been suffered in an accident. The statute does not say 'as a result of an accident' but, merely, 'in an accident'. Whatever else that latter phrase may mean, it necessarily implies presence at the scene. That concept is given further weight by the definition, also found in Section 70(1) of a 'parent of a victim' as 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. The foregoing definition distinguishes between a victim and the parent of a victim.

[para7] We are bound by the wording in Section 70(1) and find the victim in this case is B.L.W.; R.W. & J.W. are not victims, as defined in the Act, but 'parents of the victim'.

We do not doubt for a moment that R.W. and J.W. have suffered a great deal of mental anguish from the loss of their daughter but, unfortunately, there is no provision in the Act that would permit us to order M.P.I.C. to pay for their counselling services.

[para8] We cannot find in favour of the Appellants on this argument and therefore dismiss their appeal.

DISPOSITION:

[para9] We therefore confirm the Review Officer's decision of July 31st, 1996.

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