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Indexed as:  
D.W. (Re)

IN THE MATTER OF an appeal by D.W.  
AICAC File No.: AC-98-42

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[1998] M.A.I.C.A.C.D. No. 22

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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: August 24, 1998.  
Decision: August 26, 1998.  
(9 paras.)

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Issues(s) :

Jurisdiction - whether election to seek WCB benefits,  
when unsuccessful, precludes claim against MPIC.

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Relevant Sections:

Section 195 of the MPIC Act.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by  
Keith Addison.

The appellant, D.W., was represented by J.H.G. of [text  
deleted].

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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

[para1] D.W. was involved in a motor vehicle accident on  
January 16th, 1998 when the Winnipeg Transit bus that she was  
driving was rear-ended by a car. She filed a claim under the  
Workers Compensation Act. That claim was, initially, accepted  
by the Workers Compensation Board ('WCB'), which started  
paying her some income replacement.

[para2] On appeal by the City of Winnipeg, that decision  
was reversed and only certain minimal medical expenses were

allowed. The WCB in fact demanded repayment of the funds that it had already advanced, save only for those medical expenses. D.W. then filed her claim with MPIC, whose Internal Review Officer denied her claim on the basis of Section 195 of the MPIC Act, which reads as follows:

Election of compensation under this Part or Workers Compensation Act

195(1) Where, as a result of an accident, a person is entitled to compensation under this Part and The Workers Compensation Act or any another Act that relates to the compensation of persons who are victims of accidents arising out of and in the course of employment, and that is in force in or outside Manitoba, the person may elect the compensation under this Part or under the other Act.

Effect of election of compensation under W.C. Act

195(2) Where the person elects compensation under The Workers Compensation Act or any other Act that is in force in or outside Manitoba and that relates to the compensation of a person who is a victim of an accident arising out of and in the course of that employment

- (a) the person is no longer entitled to compensation under this Part in respect of the bodily injury; and
- (b) notwithstanding subsections 9(1), (7) and (7.1) of The Workers Compensation Act and subject to section 78 of this Act, the compensation provided to the person or the person's dependents in respect of the bodily injury under The Workers Compensation Act, stands in lieu of all rights and remedies to which the person or the person's dependants are or might be entitled in respect of the bodily injury, and no action in that respect may be admitted before any court.

Effect of election under this Part

195(3) A person who elects compensation under this Part is no longer entitled to compensation under The Workers Compensation Act in respect of bodily injury.

[para3] When D.W.'s appeal came before the Commission we, also, felt that the effect of Section 195 of the MPIC Act had to be dealt with as a preliminary but vital question, before embarking upon the merits of D.W.'s claim to have been injured in the course of a motor vehicle accident to the extent alleged.

[para4] J.H.G., D.W.'s [text deleted] representative,

advances an interesting and ingenious argument on her behalf. He submits that Section 195(1) is only applicable where a victim of a motor vehicle accident "is entitled to compensation" under both the MPIC Act and the Workers Compensation Act. But, he points out, the Workers Compensation Board has already ruled that Ms White is not entitled to compensation under the WCB Act and, therefore, Section 195 is inapplicable to her situation.

[para5] We are of the view that this interpretation, while at least possible from a mere reading of the language of Section 195(1), would be contrary to the spirit and intent of the entire section. That argument would, in our view, succeed only if the Workers Compensation Board had held, for example, that D.W. had no standing to file a claim with the WCB because, at the time of the accident, she was not driving in the course of her employment. In that latter event, she would have had no right to file that claim in the first place, but would clearly have been entitled to claim against MPIC, although with what outcome we could only speculate.

[para6] If the argument advanced on D.W.'s behalf were to prevail, every person claiming to have been injured while driving in the course of his employment would be at liberty to file a claim against the WCB or MPIC and, if unsuccessful on the merits, to file another claim against the other institution. In our respectful view, the patent intent of the two statutes is to require a claimant to elect a forum of complaint and, having made that election, to stick with it rather than oscillating between the two. In D.W.'s case, the WCB Appeal Board has determined that her present injuries could not rationally be explained by an accident of the type in which she was involved. We cannot be placed in the position of a kind of appellate tribunal to which one can appeal from a decision of the WCB Appeal Board.

[para7] D.W. is caught on the barbed wire of Subsection (2). She elected compensation under the WCB Act. While, in fact, she netted only some minimal medical expenses, the fact is that she is no longer entitled to claim compensation under Part II of the MPIC Act.

[para8] It is noteworthy, also, that on November 9th, 1995 D.W. signed a Notice of Election to Claim Benefits, addressed both to the Workers Compensation Board and Manitoba Public Insurance. After a brief description of the accident of November 4th, 1995, that notice goes on to say, over her signature:

I understand that I must choose the Workers Compensation Board OR Personal Injury Protection Plan (MPI/Autopac). I understand that I cannot change this choice at a later date.

I choose to claim compensation for my injuries  
under.....the Workers Compensation Board of  
Manitoba.....

It may be that the language of the legislation should be made more clear by amending Subsection 195(1) to read "Where.....a person is entitled to seek compensation.....", and by adding the words "to seek" immediately before the word "compensation" in the first lines of Subsection 195(2) and 195(2)(a) and 195(3). Similarly, the language of Subsection 195(2)(b) could be clarified by adding, at the end of the third line, the words "...the award or denial of compensation to the person or the person's dependants.....etc.". But we must interpret the language as we find it, ambiguous though it may be, and we are satisfied that the intent of the Legislative Assembly was to preclude 'forum shopping' once the initial election has been made.

[para9] In consequence, we are obliged to deny D.W.'s claim and to confirm the decision of MPIC's Internal Review Officer.

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