

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by M.H.
AICAC File No.: AC-98-06

PANEL: Mr. Charles T. Birt, Q.C.
Mrs. Lila J. Goodspeed
Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
By Mr. Keith Addison
the Appellant, M.H., appeared on her own behalf

HEARING DATE: May 20th, 1998

ISSUE: Whether injuries were 'caused by the use of' motor vehicle'.

RELEVANT SECTIONS: Section 70(1) and 71(2) of the MPIC Act

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 Appellant, M.H., was alighting from a City of Winnipeg transit bus on April 15th, 1997 when she injured herself. She was getting off the bus when her right foot landed on the icy sidewalk and she twisted her ankle falling on her right shoulder. She got up, slipped on her left side and fell again injuring her lower back.

At the time of the accident M.H. was employed as a home care worker with the [text deleted]. M.H. carried on to work but due to pain and stiffness she attended Dr. Harsony, on April 16th at the Eaton Place Medical Centre. She reported her fall on the ice and injury to her shoulder and ribs and was

referred for an X-ray to her right shoulder.

She returned to see Dr. J. Rusen on April 17th who reported that the X-ray was normal and prescribed tylenol 3 for her pain. At an appointment on April 21st Dr. Rusen's notes indicate that her back X-ray was normal but due to her continuing pain she was unable to do home care duties and was given a note to be absent from work for one week.

On April 24th, 1997, Dr. Rusen completed a report for MPIC outlining the Appellant's condition. He reported that she sought medical assistance, within 24 hours of her motor vehicle accident, for injuries to her right shoulder and left side of her lower back. Due to her heavy home care duties involving lifting clients, her injuries required her to be absent from work until April 29th, 1997. M.H. continued to see Dr. Rusen until her last visit on June 4th, 1997. Her prescribed treatment was rest from work and different types of medication to relieve her pain.

At her appeal, M.H. testified that she placed her right foot on the side walk and as she was bringing her left foot down to the side walk her right foot slipped causing her to fall to her right. She hit her shoulder and fortunately missed the bus. A passenger, who got off ahead of the Appellant, extended a hand to her and helped her to her feet. When she took her next step her feet flew out from under her and she fell to her left and on to her back. She was again helped up and claims that the bus driver asked if she was ok and when she responded in the positive he drove away. Unfortunately the Appellant didn't get the number of the bus, the driver's name or the name of the person who helped her to her feet.

At the time of application for compensation on April 23rd, 1997, M.H. completed a form or check list that clearly indicated that she had been in a motor vehicle accident and the nature of her injuries.

Whether this form was completed for the adjuster or for presentation to Dr. Rusen at the time of her examination is not clear however it was attached to the original medical reports and makes it clear that she had reported her injuries to have occurred as a result of the bus accident.

What we found compelling about this case was the consistency of the Appellant's evidence both in the material contained in her file and in her testimony before the hearing. There were no witnesses to the accident because the Appellant did not ask the woman who assisted her for her name nor did she write down the name of the driver or the number of the bus. There have been situations where people's injuries have occurred without witnesses present and their evidence has been accepted without the need of corroboration. Therefore, we accept M.H.'s evidence as it relates to her accident.

THE ISSUE:

M.H. claims that she was injured as a result of her use of a bus. The only issue before us today is whether she sustained her injuries as a result of her use of the bus. What M.H. must prove is 'was this an accident' as found within the meaning of Section 70(1) of the Act, which reads in part as follows:

'accident' means "any event in which bodily injury is caused by an automobile".

'Bodily injury caused by an automobile' means "any bodily injury caused by an automobile, by the use of an automobile, or by a load...".

The definition of 'automobile' includes the bus that was involved in the incident under review.

In order for bodily injuries to be 'caused by the use of the automobile' there must be a direct or approximate relationship between the use of the automobile and the injuries. In this particular incident it is possible to trace a continuous chain of causation whereby the momentum of the Appellant alighting from the bus precipitated a fall onto her right side and in getting up the continuum of movement caused a fall to the left. We find that, on a balance of probabilities, the accident occurred as she described and that the injuries she sustained by the Appellant were as a result of the use of the bus.

The issue of whether compensation for chiropractic care was not decided at the Internal Review and therefore is not before us. However, in reviewing the medical evidence it is clear that the nature of M.H.'s injuries, as reported by Dr. Rusen on April 24th, 1997, were a strain to her right shoulder and left back. She was prescribed medication for pain and given a note for absence from her demanding home care duties. There was no prescribed physiotherapy or chiropractic treatment. M.H.'s last appointment with Dr. Rusen was on June 4th, 1997, approximately 7 weeks following her accident, when he noted that she was back to work and did feel better. There are no further medical reports until the one of Dr. M. Di Bernardo dated February 12th, 1998 which post dates the Internal Review decision. M.H. did not seek Dr. Di Bernardo's care until December 17th, 1997 some six months after the accident and her diagnosis was different from that of the accident. We are satisfied that M.H. reached pre-accident status at the time of her last appointment with Dr. Rusen on June 4th, 1997 and that the necessity for chiropractic care can not be attributed to her accident of April 15th,

1997.

DISPOSITION:

The decision of MPIC's Acting Internal Review Officer is therefore rescinded and this matter is referred back to the adjuster for settlement of the Appellant's claim for compensation of IRI for her absence from work until April 29th, 1997 and any medication she was prescribed up to and including her last medical appointment of June 4th, 1997.

Dated at Winnipeg this 29th day of June, 1998.

CHARLES T. BIRT, Q.C.

LILA J. GOODSPEED

F. LES COX