

**AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION**

**IN THE MATTER OF an appeal by D.W.**  
**AICAC File No.: AC-98-12**

**PANEL:** Mr. Charles T. Birt, Q.C. (Chairperson)  
Mr. F. Les Cox  
Mrs. Lila Goodspeed

**APPEARANCES:** Manitoba Public Insurance Corporation ('MPIC')  
represented by Mr. Keith Addison;  
the Appellant, D.W., was represented by Mr. Dennis M.  
Troniak

**HEARING DATE:** May 26th, 1998

**ISSUE:** Claim for death benefit following the death of her ex-husband.

**RELEVANT SECTIONS:** Sections 70(1)(c) & 121(2)(a) of the MPIC Act ('the 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 FACTS:**

The Appellant's first husband, R.E.W., was fatally injured in an automobile accident on August 2nd, 1997. D.W. is claiming a death benefit from MPIC as a result of this accident. They were divorced in 1988 and custody of their two children, M. ([text deleted] years old) and Robert ([text deleted] years old), was granted to D.W.. The divorce court did not order R.E.W. to pay support for D.W. or the children. However, R.E.W. filed an affidavit in the divorce proceedings stating "I have in fact been paying the petitioner since our separation, an amount agreed between us, on a monthly basis as

support for our children". There is no reference to support payments for D.W. in the court documentation.

The Appellant married C.D. in 1995 and they separated in the spring of 1997. There was no evidence provided as to whether or not D.W. and C.D. were divorced at the time of R.E.W.'s death. Evidence was provided by way of receipts and a friend's affidavit that R.E.W. gave varying amounts of money to D.W. or his children with instructions to give it to their mother. The amount of these funds varied (i.e.) in February 1997 - \$[text deleted], March - \$[text deleted], April - \$[text deleted], May - \$[text deleted], June - \$[text deleted] and July - \$[text deleted]. There is no evidence who these funds were intended for - D.W., the children or both.

The Appellant contends that these payments were for her and her children's support. She advised that she and R.E.W. did not have any written agreement covering the question of his paying maintenance nor was there a court order requiring him to pay any maintenance for her and/or the children. She believed that she had an understanding with R.E.W. that he would help her and the children when they ran into financial difficulty.

**ISSUE:**

D.W.'s position is that at the time of R.E.W.'s death there was a verbal agreement between them that entitled her to receive support from him and she is therefore entitled, pursuant to Section 121(2) of the Act, to a lump sum death benefit from MPIC. To qualify for this benefit D.W. must meet the

criteria set out in two sections of the Act, namely Sections 121(2)(a) and 70(1)(c) The first section reads as follows:

121(2) A dependant, other than a 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;

D.W. was not R.E.W.'s spouse at the time of his death as they were divorced but was she a dependent within the meaning of the Act. One must look to Section 70(1)(c) for the definition of dependent for the purposes of the Act and Sub-section (c) is applicable in this case:

70(1)(c) a person whose marriage to the victim has been dissolved by a final judgement of divorce or declared null and void by a declaration of nullity of marriage, and who at the time of the accident, is entitled to receive support from the victim under a judgement or agreement.

It is agreed by all parties that from the date of R.E.W. and D.W.'s divorce to the date of his death there was no court order given or written agreement entered into that required R.E.W. to provide support to D.W. The question we have to answer is whether or not there was an enforceable verbal agreement in effect between the Appellant and R.E.W. for her support at the time of his death.

To constitute an agreement there must be a mutual understanding and acceptance of the terms, conditions and obligations of each party concerning the payment of support by R.E.W. to D.W. In this case there is no evidence that the parties agreed to the amount of support to be paid, when it was

to be paid and on whose behalf it was to be paid. R.E.W. decided the amount he would pay, when he would pay it and who should receive it. D.W. never knew if she was going to receive any money, what the amount would be or when she would receive it, if at all.

After a careful review of the evidence and submissions of the parties, we are of the view that there is no verbal agreement compelling R.E.W. to pay support to D.W. at the time of his death. R.E.W. may have felt he had an obligation to pay support but this was a matter of discretion within his control and this did not confer a right to receive support by D.W. The six payments showed a voluntary pattern of giving and without any other evidence this does not confer an enforceable right on behalf of D.W.

There is no evidence to support D.W.'s claim that the money paid in 1997 by R.E.W. was for her support. It could have been for the support of his children and we believe that in all likelihood it was for their support. The two W. children have received the prescribed death benefits under the Act namely, a Dependant Lump Sum and a Spousal Lump Sum Indemnity and these funds are being managed for them by The Public Trustee.

Unfortunately, since D.W. does not have an agreement, she does not qualify for a death benefit under Section 70(1)(c) of the Act and therefore, is not entitled to any lump sum death benefit from MPIC.

**DISPOSITION:**

For the foregoing reasons, the Acting Review Officer's decision of January 12th, 1998 is confirmed

and the appeal is dismissed.

Dated at Winnipeg this 22nd day of June, 1998.

**CHARLES T. BIRT, Q.C.**

**F. LES COX**

**LILA GOODSPEED**