

@B00000141,MAIC
@1
@Z19990603
@2

Indexed as:
P.J.O. (Re)

IN THE MATTER OF an appeal by P.J.O.
AICAC File No.: AC-99-23

@3

[1999] M.A.I.C.A.C.D. No. 21

@4

Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C., and
L. Goodspeed
Heard: May 26, 1999.
Decision: June 3, 1999.
(12 paras.)

@6

Issue(s):

Whether deceased victim was Manitoba resident.

@5

Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993,
c. 36, ss. 123 and 124.
Regulation 37/94, ss. 1, 2, 3 and 6.
Domicile and Habitual Residence Act, ss. 5 and 8.

@8

Appearances:

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

The appellant, P.J.O., appeared in person, accompanied by B.K.

@7

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] The Appellant, P.J.O., is the mother of the late
T.O. T. was fatally injured on October 8th, 1996 when the car
that she was driving in the State of Minnesota, U.S.A., was
struck by an oncoming car that had crossed into her lane of
travel. The only issue before the Commission is whether T.
was "a person resident in Manitoba" at the time of that tragic
accident, and whether her mother, the Appellant, is therefore
entitled to the lump sum indemnity and reimbursement for

actual funeral expenses more particularly described in Sections 123 and 124 of the MPIC Act.

[para2] Section 74(1) of that Act provides that:

Subject to this Part, a victim who is resident in Manitoba at the time of the accident, and any dependent of the victim, is entitled to compensation under this Part if the accident occurs in Canada or the United States.

[para3] It is this latter section, combined with the facts outlined below, that give rise to the question of T.'s residence at the time of her death.

[para4] The decision of MPIC's Internal Review Officer of January 5th, 1999, from which T.'s mother now appeals, contained a carefully detailed weighing of the facts which suggested that T. was a resident of Minnesota, on the one hand, and the facts from which one might have found that she was a resident of Manitoba, on the other. The setting out of those details was a useful exercise but, in our respectful view, the answer to the question posed above is really more simple. T.'s educational and residential history and her perceived future intentions are only marginally relevant: what we need to determine is her residence at the date of the accident.

[para5] The relevant facts, then, are these:

1. Having taken all of her post-secondary education in North Dakota and then in Minnesota, T. obtained her Teaching Licence in Minnesota in August of 1995; it was valid until July, 1997, but was convertible into a five-year licence after one full year of teaching experience in Minnesota.
2. T. signed a one-year lease on an apartment in [text deleted], Minnesota, in August of 1996, although she did leave some of her belongings at the parental home in Winnipeg;
3. she had commenced living in that apartment, having signed a teacher contract with the School Board of Independent School District No. [text deleted] in [text deleted], Minnesota, on July 10th, 1996, whereby she had undertaken to serve that school district as a special education instructor on a full-time basis for the 1996 to 1997 academic year;
4. she had signed an application, on September 12th, 1996, for a so-called "green card" in order to obtain governmental permission to become gainfully

employed on a permanent basis in the United States of America. The application form, prepared for her signature by an official of the [text deleted], described her proposed employment as "new", "full-time" and "permanent";

5. while, at the time of her accident, T. was driving her mother's car with Manitoba licence plates, it is common ground that she merely had the temporary use of it until, when her parents were due to visit her some time in mid-October of 1996, she would be able to buy her own car in [text deleted].

THE LAW:

[para6] In addition to Section 74(1) of the MPIC Act quoted above, the applicable law is to be found in Manitoba Regulation No. 37/94 and in the Domicile and Habitual Residence Act. The definition of a "person resident in Manitoba" contained in the Regulation is

a person whose domicile or habitual residence is in Manitoba, as determined under the Domicile and Habitual Residence Act.

[para7] The remaining, relevant portions of Regulation 37/94 read as follows:

Application

2 This regulation applies to the interpretation of a regulation enacted under Part 2 (Universal Bodily Injury Compensation) of the Act, unless a contrary intention appears in the regulation.

Loss of status as person resident in Manitoba

3(1) Subject to this section, a person resident in Manitoba loses that status

(a) when the person is maintaining a residence outside Manitoba, unless the person is ordinarily in Manitoba for at least 183 days in each year;

Exceptions

3(2) A person resident in Manitoba retains that status in the following circumstances:

(d) the person is residing outside Manitoba for more than 12 consecutive months

(i) for the purpose of assuming a temporary

employment or fulfilling a contract, and

(ii) while maintaining a residence in Manitoba,

and the person notifies the corporation in writing, before the expiration of the 12 months, that he or she is unable return to Manitoba within the 12 months.

Meaning of temporary employment

6 A person holds a regular employment on a temporary basis where the person

- (a) has held the employment for less than one year before the day of the accident;
- (b) during the course of the employment, has been employed for not less than 28 hours per week, not including overtime hours; and
- (c) is not covered by clause 4(b). (Clause 4(b) is not applicable to Miss Oleksuk's situation.)

[para8] The relevant portions of the Domicile and Habitual Residence Act are found in Sections 4, 5 and 8 of that statute. They read as follows:

Requirement of domicile and habitual residence.

4. Every person has a domicile and an habitual residence.

Only one domicile and habitual residence.

5. No person has more than one domicile and one habitual residence at any time.

Basis of domicile and habitual residence.

8(1) The domicile and habitual residence of each person is in the state and a subdivision thereof in which that person's principal home is situated and in which that person intends to reside.

Presumption of intent to reside.

8(2) For the purpose of subsection (1), unless a contrary intention is shown, a person is presumed to intend to reside indefinitely in the state and subdivision thereof in which that person's principal home is situated.

DISCUSSION:

[para9] It has been argued on the part of P.J.O. that T. never did lose her status as "a person resident in Manitoba" because she had never been absent from Manitoba for more than 12 consecutive months. That argument, of course, conveniently avoids the provisions of Section 3(1)(a). T. was, indeed, maintaining a residence outside Manitoba, in the form of the apartment that she had leased in Minnesota, and she had not been ordinarily resident in Manitoba for at least 183 days of 1996.

[para10] It is further argued on behalf of P.J.O. that T. had retained her status as a "person resident in Manitoba" because she fell within the provisions of Section 3(2)(d). However, with the greatest of respect to the Appellant, we have to say that this argument will not hold water. T. was not living in Minnesota 'for the purpose of assuming a temporary employment' because, although she had certainly held her employment for less than one year (thus bringing her within Section 6(a)), she had been employed for more than 28 hours per week; her job was a full-time one.

[para11] Without, for present purposes, debating the question whether T.'s employment was 'temporary' or, as the school division advised the Federal Government of the U.S.A., 'permanent', we note only that Section 5 of the Domicile and Habitual Residence Act tells us that one cannot have more than one habitual residence at any time and we find that T.'s habitual residence at the date of her death was her apartment in Minnesota. The fact that T. kept some of her personal possessions in a room in her mother's home in Winnipeg does not, in our respectful view, constitute that room her habitual residence.

DISPOSITION:

[para12] It hardly needs to be said that this Commission has every possible sympathy with the Appellant. At the same time, we have to administer the law as we find it, and we find that, by virtue of the legislation and Regulation cited above, T. was habitually resident in Minnesota at the time of her death. We must therefore dismiss the present appeal and confirm the decision of MPIC's Internal Review Officer.

@1

@XQL @XUpdate: 991122
qp/d/qlt1m
@H
MVRT
@1<QLDATE U=20010501>