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Indexed as:  
T.S. (Re)

IN THE MATTER OF an appeal by T.S.  
AICAC File No.: AC-99-41

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[1999] M.A.I.C.A.C.D. No. 40

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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 16, 1999.  
Decision: October 26, 1999.  
(10 paras.)

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Issue:

Calculation of permanent impairment benefits re: loss of  
motion of right middle finger and disfigurement of right  
hand.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993,  
c. 36, ss. 126, 127, 129(1), 163, 165(3) and 166.  
Manitoba Regulation 41/94, s. 9 of Part 1 and Table 17  
under Part 2, Schedule A.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by  
Joan McKelvey.

The appellant, T.S., appeared on her own behalf.

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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] T.S. was injured in a motor vehicle accident on  
May 21st, 1994. While she sustained other injuries that are  
not material to this decision, the subject matter of this  
appeal is limited to injuries she sustained to the middle  
finger of her right hand.

[para2] T.S. was the Appellant before this Commission in an earlier hearing in December of 1997, when we awarded her \$1,200.00 (in addition to monies she had already been paid) for ankylosis of that middle finger.

[para3] Since that time, T.S. has undergone further surgery, involving arthroplasty of the proximal phalanx - that is to say, replacement, with an artificial bone, of that bone in her right middle finger that is nearest to the hand itself. We were provided with valuable reports from Drs. Kenneth Murray (the plastic surgeon who performed the surgery in question), Dr. Andreas van Zyl (T.S.'s family doctor in [Text deleted], Manitoba) and Dr. Garnet Fougere, medical consultant to the Claims Services Department of MPIC. Dr. Fougere, in a memorandum that she prepared for MPIC's Legal Department under date of September 30th, 1999, and based to a large extent upon the report by Dr. Murray dated August 31st, 1999, analyzes the situation well and we can do no better than to quote it here, verbatim:

#### Discussion

As a result of the motor vehicle collision of May 21, 1994, the claimant is entitled to permanent impairment benefits for injuries sustained to her right hand.

This reviewer understands from documentation on file that previous awards have been determined for ankylosis of the middle finger of the right hand and for impairment to other body parts.

#### 1. Loss of Movement of the Middle Finger of the Right Hands

The reader is referred to Part 1, Division 2, Subdivision 1, of the Manitoba Public Insurance Manual of Permanent Impairments. This table details benefits entitled to a claimant for ankylosis of individual joints of a specific finger. In the event that a specific joint is not ankylosed but is characterized by restricted range of motion, a percentage value corresponding to the loss of range of motion is calculated based on the full amount that would be given for ankylosis of that particular joint.

#### MCP joint

Dr. Murray documented the claimant's active range of motion to be from 0 to 70 degrees. Standard values for range of motion of the MCP joint are from 0 to 90 degrees. This reflects a loss of 20 degrees of movement from full extension to full flexion. The percent loss of movement is  $20 \text{ degrees} / 90 \text{ degrees} = 0.22$  or 22.2%. Entitlement for ankylosis of the

joint is 0.8%. The entitlement for partial loss of motion of the joint is a percentage of this or  $0.22 \times 0.8\%$ .

#### PIP joint

Dr. Murray noted that active range of motion of the PIP joint was 0. Passive range of motion was documented from 0 to 55 degrees. T.S.'s inability to actively move her PIP joint represents essentially an ankylosed joint. The award for ankylosis of the PIP joint of the middle finger is 1.6%. This entitles T.S. to a benefit of 1.6%.

#### DIP joint

Dr. Murray documented that the claimant was not able to actively move her DIP joint. The claimant demonstrated an extension lag and held the joint at 25 degrees. The physician was able to passively move it between 0 to 60 degrees. Functionally, the DIP joint may be considered as ankylosed and is entitled to a benefit of 1.6%.

The benefit entitled to the claimant for loss of movement of the right middle finger are a sum of the impairments calculated for the three joint or  $0.18\% + 1.6\% + 1.6\% = 3.38\%$ .

[para4] We agree with Dr. Fougere's calculation and we therefore find T.S. entitled to a total of 3.38% of the maximum which, at the time of her accident, was \$100,000.00. Therefore, in the context of loss of movement of the middle finger of her right hand, she is entitled to \$3,380.00 less, of course, the amount that she has already been paid for that ankylosis.

[para5] Turning, now, to the question whether T.S. is entitled to a further impairment award for the resultant disfigurement of her right hand, we quote, again, from Dr. Fougere but, in this instance, only partly agree with her:

#### Disfigurement of the Right Hand

The ulnar deviation of 15 - 20 degrees reported for the PIP joint by Dr. Murray in his assessments of September 28, 1998 and August, 1999, and the extension lag demonstrated at the PIP and DIP joints entitle the claimant to a benefit for change in form and symmetry. This component of disfigurement is based on changes to the hand as a unit. A change to one finger would at worst, be considered a moderate impairment and based on the Manitoba Public Insurance Impairment Manual entitles the claimant to an award of 3%. Scarring also is included under disfigurement. For T.S., post-surgical scarring secondary to arthroplastic surgery

of the PIP joint would be minute in nature and would not surpass the benefit entitled for change in form and symmetry. The Impairment Manual specifies that the more serious of either scarring or change in form and symmetry is awarded but not both.

[para6] We note, firstly, that we do not share Dr. Fougere's interpretation of the Impairment Schedule when she suggests that "the more serious of either scarring or change in form and symmetry is awarded but not both". In our respectful view, if there is cicatricial impairment (i.e., scarring) that may properly be called 'conspicuous', this would entitle a victim to an additional 1% for each square centimetre in area of the scar (subject to any successive remainders that may be applicable) over and above any permanent impairment award for change in form and symmetry of the hand.

[para7] Dr. Fougere only finds the claimant entitled to an award of 3%, based upon the fact that only one finger appears to have sustained a change in form and symmetry; Dr. Murray, on the other hand, placing a somewhat different interpretation upon the language of Table 17 under Manitoba Regulation 41/94, speaks of "...a severe change in the hands with probably conspicuous impairment being 7%. Although the hand has not been amputated there is a severe functional deformity with loss of strength that has given a functional impairment of almost a useless right hand".

[para8] While it is true that only the middle finger sustained direct injury from the motor vehicle accident, giving rise to the need for surgery, we have been able to observe for ourselves the fact that the almost total loss of use of that middle finger has produced not only the functional deformity referred to by Dr. Murray but, as well, a very noticeable change in form and symmetry beyond that described by Dr. Fougere. We find that the change in form and symmetry to T.S.'s right hand is greater than the 'minor/moderate change' to which Table 17 makes reference, and this necessarily takes us into the category of 'severe change', entitling T.S. to an award of 6% in that context - there appears to be no middle ground between the 3% maximum allowed for a moderate change and the 6% for a severe change.

[para9] In sum, therefore, we find T.S. entitled:

- |    |                                                                |       |
|----|----------------------------------------------------------------|-------|
| 1. | for loss of motion of the joints<br>of her right middle finger | 3.38% |
| 2. | for change in form and symmetry to<br>the right hand           | 6.00% |
|    |                                                                | ----- |
|    |                                                                | 9.38% |

[para10] The foregoing, which produces an aggregate of \$9,380.00, is of course inclusive of monies already paid to T.S. with respect to injuries to her right hand. The balance owing to her under the foregoing calculation will bear interest at the statutory rate from February 10th, 1998, the date of her surgery.

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