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Indexed as:  
R.D. (Re)

IN THE MATTER OF an appeal by R.D.  
AICAC File No.: AC-99-104

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[1999] M.A.I.C.A.C.D. No. 48

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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: November 19, 1999.  
Decision: November 23, 1999.  
(9 paras.)

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Issues(s):

Adequacy of compensation for facial scarring.

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Relevant Sections:

Sections 127 and 129 of the MPIC Act and Table 15 forming  
part of the Schedule to Manitoba Regulation No.  
41/94.

[Ed. Note: Please see paper copy for one page  
appendix containing Table 15.]

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by  
Terry Kumka.

The appellant, R.D., appeared on her own behalf, accompanied  
by J.Z.

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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] R.D. was injured in a motor vehicle accident on  
the 5th of October, 1998. The only aspect of her injuries  
that we are called upon to determine relates to the sum of  
\$543.00 that she was awarded for permanent impairment for a  
scar to her upper left cheek. R.D. appeals the quantum of  
that award.

[para2] An award for what the framers of the Regulation call "cicatrical impairment", which is to say scarring, depends in essence upon three factors:

- (a) the nature of the scar itself - whether it is level with the surface of the surrounding skin or otherwise;
- (b) the area of that scarring; and
- (c) whether the scarring causes, or is accompanied by, a change in the form and symmetry of the victim's face (a factor that is compensable even in the absence of visible scarring).

There are gradations of severity and, therefore, of compensation within each of those three basic factors.

[para3] Section 1 of Manitoba Regulation 41/94 provides that

Compensation for permanent impairments shall be determined on the basis of Schedule A.

Part of Schedule A referred to in that section consists of Table 15, of which a copy is annexed to and intended to form part of these Reasons.

[para4] Upon the request of MPIC, R.D.'s family physician, Dr. E. Doermer of the Henderson Medical Centre, measured and described her facial scarring thus:

The length of the scar is 1.5 cm times 2 mm wide. This is confined to the left cheek. This is a very flat minor scar. It is a conspicuous scar in that it is noticeable, however, when she exercises it becomes red and even more noticeable. I don't think that plastic surgery would be able to improve the look of the scar at all.

Dr. Doermer's measurements result in a total area of the scar of 0.3 square centimetres which, calculating the impairment award at 1% of the maximum (which, at the time of R.D.'s accident, was \$108,664.00) would have resulted in an award of \$325.99. However, under Section 127 of the Act, the minimum payable to a claimant for a permanent impairment is the indexed amount of \$543.00, which is the sum awarded and paid to R.D.

[para5] The members of this Commission who heard R.D.'s appeal had the benefit of viewing the affected side of her face closely, at first hand. Her scar is, indeed, flat and, happily, has healed remarkably well. It is barely visible

until one's attention is specifically drawn to it. Again, fortunately, her injuries did not result in any changes to the form or symmetry of her face. There remain a few minuscule marks, apparently caused by tiny fragments of glass. R.D. indicated that a small fragment of glass was still embedded in her left cheek and we have suggested that she consult her adjuster at MPIC with a view to having that tiny fragment extracted by a plastic surgeon at the expense of the insurer.

Unfortunately, the Regulations make no provision for the kinds of marking which, while barely visible to the naked eye, can nevertheless be perceived at very close quarters. Section 129(2) of the Act provides that

The corporation shall determine a percentage for any permanent impairment that is not listed in the prescribed schedule, using the schedule as a guideline.

[para6] The marks left on R.D.'s face by those tiny glass fragments are best described as barely perceptible pitting over a small area. Since the schedule itself makes no provision for that kind of impairment - an omission that can only be addressed by the Lieutenant Governor in Council, we have attempted to apply Subsection 129(2). We have come to the conclusion, based upon our own visual inspection of the site of the injury, that even were it possible in some fashion to amalgamate all of R.D.'s non-cicatricial marks into one and add the result to her acknowledged scar, the end product would still not raise her impairment award above the minimum level.

We are pleased to find that R.D. has sustained no change in the form or symmetry of her face, and has no conspicuous cicatricial impairment beyond the scar described above.

[para7] The Appellant's Notice of Appeal makes the point that her passenger was awarded much greater compensation for a scar on his leg than she received for what she describes as "clearly conspicuous scars on my face". We can only comment that the facts of her passenger's claim are not before us and, even if they were, they are not relevant to the present appeal.

[para8] R.D. also questioned why a 'conspicuous impairment' and a 'conspicuous impairment that holds one's attention' are each valued at the same percentage per square centimetre. That question stems from a misinterpretation of Table 15, in which each of the two middle columns must be read separately. That is to say, the phrase 'conspicuous change that holds one's attention' relates to changes in the form and symmetry of a victim's face; conspicuous impairment (the phrase that is common to both Class 3 and Class 4 scarring) does apply the same 1% of the maximum for each square centimetre of flat scarring. It is the change in form and symmetry that is required to 'hold one's attention' if the Class 4 awards are to be brought into play. We felt it

necessary to emphasize this point, since the decision of MPIC's Internal Review Officer implies that the phrase 'conspicuous change that holds one's attention' is also applicable to the so-called 'cicatrical impairment'; we do not interpret the Regulation in that way.

[para9] It follows, then, that R.D.'s appeal must be dismissed.

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