

@B00000223,MAIC
@1
@Z20000519
@2

Indexed as:
L.J.L. (Re)

IN THE MATTER OF an appeal by L.J.L.
AICAC File No.: AC-00-19

@3

[2000] M.A.I.C.A.C.D. No. 17

@4

Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), Y. Tavares, and
C.C. Settle, Q.C.
Heard: May 5, 2000.
Decision: May 19, 2000.
(7 paras.)

@6

Issues(s) :

Whether the Appellant's injury was caused by the use of
an automobile.

@5

Relevant Sections:

Sections 70 and 71(1) of the MPIC Act.

@8

Appearances:

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

The appellant, L.J.L., was represented by Ellery G. Strell.

@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, L.J.L. ("L.J.L."), attended at the
McDonald's Restaurant located at 630 Pembina Highway on June
25, 1997, at approximately 5:30 a.m. L.J.L. purchased a
McDonald's extra value breakfast meal through the drive-thru
window. The breakfast meal included a cup of coffee. L.J.L.
placed the cup of coffee in a Rubber Queen beverage cup holder
which was located immediately to his right on the center of
the front bench seat of the 1977 El Camino that he was driving
at the time. L.J.L. proceeded to exit the McDonald's parking
lot and head north on Pembina Highway. He then gradually made

his way across three lanes to the left turning lane, at which time he realized that the coffee had spilled onto the seat and onto his right leg and buttocks. He stopped his vehicle in the left turning lane, got out of his car and proceeded to clean up the spill before continuing on to his place of employment. L.J.L. testified that as a result of the coffee spill, he received second- and third-degree burns to his right thigh and buttocks, which necessitated medical treatment. Further, he was required to be absent from work for three days in order to recover from his injuries.

[para2] L.J.L. initially filed a Statement of Claim in the Court of Queen's Bench against McDonald's Restaurants of Canada Limited, seeking damages for the injuries he suffered as a result of the coffee spill. McDonald's defended the claim and relied in part upon Section 72 of The Manitoba Public Insurance Corporation Act (the "Act"), which reads as follows:

Notwithstanding the provisions of any other Act, compensation under this Part stands in lieu of all rights and remedies arising out of bodily injuries to which this Part applies and no action in that respect may be admitted before any court.

L.J.L. then filed a claim with the Manitoba Public Insurance Corporation ("MPIC") seeking benefits pursuant to Part 2 of the Act. Coverage under the Personal Injury Protection Plan was denied to L.J.L. by MPIC. L.J.L. is now appealing the decision of the Internal Review Officer dated December 17, 1999. The issue before the Commission therefore is whether or not L.J.L.'s injuries were caused by the use of an automobile and accordingly whether L.J.L. is entitled to claim benefits pursuant to Part 2 of the Act.

THE LAW:

[para3] Part 2 of the Act provides as follows:

Definitions

70(1) In this Part,

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

"bodily injury" means any physical or mental injury, including permanent physical or mental impairment and death;

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

"load" means any property carried in or on an automobile;

Application of Part 2

71(1) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

[para4] The Commission was also referred to the decision of the Manitoba Court of Appeal in *McMillan v. Thompson (Rural Municipality)* (1997) 115 Man. R. (2d) 2.

DISCUSSION:

[para5] It was argued on behalf of L.J.L. that his claim arose out of the use of an automobile and was occasioned by a load in the automobile. As such his injury came within the definition of "bodily injury caused by an automobile" set out in the Act. Counsel for MPIC argued that the approach to be taken when considering such claims was to look at the cause of the "injury", not at the cause of the accident. Applying that approach to the case at hand, counsel for MPIC argued that the cause of L.J.L.'s injury was the excessive temperature of the coffee, not the operation of the motor vehicle.

[para6] Applying the facts of the case at hand to the legislation, the Commission relied on *Helper, J.A.*'s decision in *McMillan v. Thompson (Rural Municipality)*, supra. At page 21 of her decision, *Helper, J.A.* states that:

The only question which required determination was: Were the respondents' injuries caused by (in the sense of being related to) the use of an automobile? The answer to that question is undoubtedly "yes."

The Commission is thus required to ask in the present circumstances, were L.J.L.'s injuries caused by the use of an automobile? After careful consideration of the evidence presented before it, the Commission finds that the coffee spill and L.J.L.'s resultant injuries were caused by the use of the automobile, or by a load.

[para7] By the authority of Section 184(1) of the Manitoba Public Insurance Corporation Act, the Commission, without attempting to determine the benefits (if any) to which L.J.L. may be entitled, therefore orders that:

- A. the Appellant's claim be referred back to MPIC for processing in light of the foregoing finding; and
- B. the decision of MPIC's Internal Review Officer, bearing date December 17th, 1999, is therefore

rescinded and the foregoing substituted for it.

@1

@XQL @XUpdate: 20000627

qp/d/qlrds

@H

MVRT

@1<QLDATE C=20000627 U=20010501>