

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-67**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by
Mr. Terry Kumka
the Appellant, [text deleted], appeared in person

HEARING DATE: October 19th, 1998

ISSUE: (i) Whether victim entitled to reimbursement for
transportation by private vehicle;
(ii) calculation of IRI - whether potential business income
should be included.

RELEVANT SECTIONS: Section 23(1)(a) of Manitoba Regulation 40/94, Section
81(2)(a)(iii) of the MPIC Act and Sections 2(a) and 3(2) of
Manitoba Regulation 39/94

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY
AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S
PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION
HAVE BEEN REMOVED.**

REASONS FOR DECISION

There are two aspects of [the Appellant's] appeal that are before us. They were dealt with separately by MPIC's Internal Review Officer and we shall follow the same pattern.

Travel Expenses

Section 22 of Manitoba Regulation 40/94 requires the Corporation to pay an expense incurred by a victim for transportation by bus or train. Where such public transportation is available but a victim elects to travel by private vehicle, the victim receives 11¢ per kilometer - a figure which does not, of course, come close to covering the victim's actual transportation costs and which seems to this Commission to be lower than is necessary to discourage the use of private vehicles. Where transportation on a common carrier is not reasonably possible because of the state of health of the victim, then the victim is entitled to reimbursement for travel expenses at the rate of 29.1¢ per kilometer by virtue of Schedule B to that Regulation. We note that the travel allowance for provincial civil servants has recently been increased to 30.4¢ and for those who, like [the Appellant], live north of the 53rd parallel, to 34.0¢ per kilometer for the first 10,000 km. per year. Those figures will be increased again as of January 1st, 1999, to 31.3¢ and 35.0¢ respectively. It is not clear to us whether the allowance provided by Schedule B to Regulation 40/94 are similarly indexed. If they are, then the original 29.1¢ per km. allowance should now be closer to 30.4¢, at least; if they are not, we respectfully suggest to the Corporation that it consider recommending to the Lieutenant-Governor in Council an updating of the figures in that Regulation. That said, however, we must apply the law as we find it.

[Text deleted], the Appellant, gave evidence that, within two to three weeks immediately following his motor vehicle accident of July 28th, 1994 he developed an abnormal sensitivity to light and, as well, a greatly enhanced olfactory sensitivity, both of which created a disabling series of headaches. His photophobia was confirmed by his optometrist, [text deleted], who prescribed one pair of dark lenses for outdoor use and a second pair of medium tinted lenses for indoor use;

these were obtained for him at the expense of MPIC. With respect to his sensitivity to perfumes and other strong odours, MPIC declined to apply the exemption contained in Section 23(1)(a) of Regulation 40/94 in the absence of medical evidence supporting his claim. A copy of that section, and of all other sections referred to in these reasons, is annexed hereto.

At the hearing of [the Appellant's] appeal, his own evidence in this context was supported by a letter from [Appellant's doctor] which, while falling short in terms of objective evidence, does contain the blanket statement that, as a result of a variant of fibromyalgia syndrome from which [Appellant's doctor] found [the Appellant] to be suffering, "He has significant problems with sensory input including those of smell and he is unable to ride on public transport because of this". In the absence of any medical evidence to the contrary adduced on behalf of the Corporation, and while we may have some serious question as to the connection between fibromyalgia syndrome and the Appellant's problem with his olfactory system, we do not feel that we are in a position to second guess [Appellant's doctor] and we therefore accept his opinion that "This will necessitate him ([the Appellant]) using his own personal vehicle when traveling to [text deleted] for MPIC reviews".

We therefore find that the Appellant is entitled to be paid the difference between 11¢ per kilometer and 29.1¢ per kilometer for his numerous journeys from [text deleted] to [text deleted] and return. This aspect of his claim will therefore be referred back to [the Appellant's] Adjuster for recalculation of his travel expenses. He will be entitled to interest at the statutory rate on the resultant figure and this, unfortunately, will require a large number of separate calculations, since

interest will run on the payment for each of his journeys from the date when that journey was made to the date of actual payment.

Calculation of IRI

[The Appellant] disputes the quantum of income replacement indemnity that he has been paid by MPIC, which was based solely upon his earned income as a corrections officer at [text deleted]. He claims that he was also in the businesses of cutting timber, operating a sawmill, completing a subdivision and constructing houses on it. He submits that, although his income tax returns for the years 1994 and 1995 show substantial, net, business losses of approximately \$33,000.00 in each of those years, his injury deprived him of potential profits and he believes that his income replacement indemnity should have been based upon maximum allowable annual insurable earnings, namely \$55,000.00 plus the increase in that amount provided by the indexing provisions of the Act.

In this context we can do no better than to adopt the reasoning of MPIC's Internal Review Officer bearing date April 14th, 1997, of which a copy is annexed to these reasons. In particular, but without limiting the entirety of the Internal Review Officer's decision, there is no coverage under the MPIC Act for potential losses of profit which a business enterprise might have enjoyed in some period following a motor vehicle accident. Other forms of insurance are available to cover such losses, but the MPIC Act does not extend into that area.

This facet of [the Appellant's] appeal must, therefore, be dismissed and the decision of the Internal Review Officer confirmed.

Dated at Winnipeg this 19th day of October 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

F. LES COX