Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-154

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., Chairman** **Mr. Charles T. Birt, Q.C.** **Mr. F. Les Cox**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by Ms Joan McKelvey;** **the Appellant, [text deleted], appeared on his own behalf**
HEARING DATE:	**April 19th, 1999**
ISSUE(S):	**Claim for permanent impairment of teeth.**
RELEVANT SECTIONS:	**Sections 127, 129(1) and 130 of the MPIC Act and Manitoba Regulation No. 41/94.**

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

The only issues before us in this appeal relate to claims by the Appellant that he has sustained permanent impairment to two separate areas of his teeth: tooth #36 and teeth # 15 and 17. Both claims arise from the same incident.

Sections 127, 129(1) and 130 of the MPIC Act are the ones that provide compensation for permanent impairments; they read as follows:

> Lump sum indemnity for permanent impairment
>
> 127 Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than $500. and not more than $100,000. for the permanent impairment.
>
> Evaluation of permanent impairment under schedule
>
> 129(1) The corporation shall evaluate a permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.
>
> Computation of lump sum indemnity
>
> 130 The lump sum indemnity payable under this Division for a permanent impairment is an amount equal to the product obtained by multiplying the maximum amount applicable under section 127 on the day of the accident by the percentage determined for the permanent impairment.

The relevant Manitoba Regulation is No. 41/94. It provides that compensation for permanent impairment is to be determined on the basis of Schedule A; a copy of that Schedule is annexed to these Reasons. It follows, then, that with respect to each claim of the Appellant we must ask ourselves three questions:

(a) was the tooth altered or damaged?

(b) did that alteration or damage constitute a permanent impairment? and

(c) was the permanent impairment the result of a motor vehicle accident - that is to say, was it caused by a motor vehicle or by the use of a motor vehicle within the meaning of the MPIC Act?

With respect to teeth #15 and 17, the situation seems to be quite clear. [The Appellant] required the installation of a bridge to join teeth #45 and 47, in the course of which it became necessary to adjust teeth #15 and 17 in order to ensure that [the Appellant] had an even bite, with no high spots. An adjustment of that kind entails the grinding away of one or more minimal portions of the enamel on the biting surfaces of the subject teeth, but the procedure is normal and standard, causing no deterioration nor any increased susceptibility to decay nor sensitivity to heat and cold. Therefore, while the adjustment to [the Appellant's] teeth #15 and 17 may properly be called an "alteration", that alteration was not of a kind that could reasonably be called an impairment, and this aspect of [the Appellant's] appeal must, therefore, fail.

The status of [the Appellant's] tooth #36, both before and after his motor vehicle accident, is more troubling, due to seriously conflicting evidence. [The Appellant's] evidence was that tooth #36 was cracked in the accident that took place on April 1st, 1997. [The Appellant] further testified that it was not until mid-June (the date, even now, is uncertain) that work was actually done on #36, by way of root canal treatment and a distal occlusal amalgam filling. In the interim, he submits, the tooth had become grossly decayed as a result of that delay, making the foregoing procedures necessary.

This aspect of [the Appellant's] claim had been before this Commission on May 25th, 1998 and had been dismissed on the basis of records made available at that time. The Commission had been provided with records from [hospital] which, more recently, were shown to have been both

erroneous and confusing. Even now, we have a letter on file from [text deleted], dental surgeon at [hospital], to the effect that the distal occlusal amalgam filling was performed on June 13th,1997. [Appellant's dental surgeon #1's] letter goes on to say

> Therefore, tooth #36 was treated on June 13th, 1997 as a result of the accident. The damage was first noted in our Clinic on April 21st, 1997. On radiographs taken prior to that time, tooth #36 appeared intact.

On the other hand, a letter from MPIC's Internal Review Officer, addressed to [the Appellant] on March 4th, 1998, says in part

> I ……..contacted [Appellant's dental surgeon #1's] office. I was informed that a filling was done (to tooth #36) on June 16th. However, that filling was done because the tooth was grossly decayed and in need of a root canal. I was also informed that on January 23rd a temporary filling had been put in before the motor vehicle accident and only after the motor vehicle accident was a permanent filling placed in, not because of the accident but only because it was scheduled at the time.

However, [Appellant's dentist], of the [text deleted] Dental Centre, who treated [the Appellant] on July 15th, 1997, could find no evidence in the files of the [hospital] of any work having been done on tooth #36 prior to April 1st, 1997. He reported that, upon examining [the Appellant] in mid-July of that year, he found that [the Appellant] "had a new filling on 36 which was percussion and cold sensitive…….#36 did not subside. Therefore I opened the filling to find that the pulp chamber had been impinged upon". At that juncture, [Appellant's dentist] was recommending root canal therapy, to be followed by a new crown for #36.

[Appellant's dental surgeon #2], of the Department of Oral and Maxillo-facial Surgery at [hospital] appears to have examined [the Appellant] on April 21st, 1997, specifically and

exclusively with respect to the Appellant's tooth #36. [Appellant's dental surgeon #2's] report of that date reads, in part, as follows:

> …..Patient feels tooth 36 worse after accident. Trauma to face – head went through windshield possible traumatic to 36…..No significant change since last visit……36 percussion sensitive - IRM *(temporary filling)* still intact.

(*We note that the comment "head went through windshield" is something of an exaggeration: [the Appellant's] head was almost undoubtedly in contact with the windshield which, however, remained undamaged.)*

[Appellant's dental surgeon #2's] notes later indicate that [the Appellant] was given several options for the treatment of his tooth #36 and "patient will evaluate later".

[Appellant's dentist], in a letter of July 14th, 1998 addressed "To whom it may concern", suggests that the records of [hospital] were misleading

> …….as there is reference to tooth 36 after the accident when it appears that they were actually working on tooth 46 (April 21, 97). Also later in the records tooth 37 was mentioned but ([the Appellant]) did not have a tooth 37 (June 16, 97) at that time as [hospital] had already removed it (March 4, 97). Therefore you must assume that tooth 36 was the one worked on.

More recent evidence makes it clear that [Appellant's dentist] was correct, at least in his suggestion that it was number 46 that was actually treated on April 21st, 1997. That fact does not detract from the importance of [Appellant's dental surgeon #2's] memorandum of April 21st, referred to above, which deals exclusively with tooth #36. The comment that the "patient feels tooth 36 worse after accident" seems to indicate that [the Appellant] had experienced some trouble with that tooth before the accident. Similarly, the comment that the temporary filling was still intact indicates, quite clearly, that the temporary filling had been place in tooth #36

before April 21st, 1997, at the latest, and there is no record at [hospital] of tooth #36 having been given a temporary filling at any time between April 1st and April 21st. It must be added that even that absence of evidence is not, of itself, conclusive; the accuracy and completeness of some of the clinical notes at [hospital] with which we were furnished is certainly questionable.

Upon a careful review of all of the available evidence including, of course, the oral testimony of [the Appellant] himself, we have reached the conclusions that:

(a) despite the unreliability of some of the other records generated by [hospital], the memorandum of [Appellant's dental surgeon #2] is highly unlikely to have been in error in its reference to tooth #36, since that figure appears in no less than four different places in that memorandum;

(b) [The Appellant] appears to have advised MPIC's Internal Review Officer on January 22nd, 1998 that #36 had had a new cavity fitted with a filling before his motor vehicle accident, although it is still unclear when that work was done. Whether or not tooth #36 was, in fact, cracked as a result of [the Appellant's] accident, it is abundantly clear that a temporary filling had been inserted by April 21st, at the latest, and probably pre-accident.

(c) in the course of that initial, temporary filling, the pulp had been exposed, giving rise to an unusual sensitivity;

(d) if tooth 36 had been cracked or otherwise damaged as a result of the motor vehicle accident, and even had that damage not been revealed by the radiograph taken immediately after the accident (quite possible), it is highly improbable that damage of that sort would not have been noted by [Appellant's dental surgeon #2] on April 21st ,

since his entire examination was focussed on that one tooth, yet his report of that date makes no mention of it;

(e) even had the tooth been cracked at the time of the accident, the degree of decay found by [Appellant's dentist] on July 15th, 1997 could not have occurred during the short spell of three and one-half months between the date of the accident and the date of that examination, and we have to conclude that the temporary filling mentioned by [Appellant's dental surgeon #2] must have been installed with a view to subsequent and more radical work on that tooth.

We are not able to find, on a reasonable balance of probabilities, that the work required for [the Appellant's] tooth #36 was made necessary by his motor vehicle accident, and this aspect of his appeal must also therefore fail.

Dated at Winnipeg this 22nd day of April, 1999.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

F. LES COX