

AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION

IN THE MATTER OF an appeal by [the Appellant]

AICAC File No.: AC-98-72

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairman)
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC')
represented by Mr. Keith Addison;
Appellant represented by [Appellant's representative]

HEARING DATE: December 2nd, 1998

ISSUE(S): Injury caused by an automobile in motion

RELEVANT SECTIONS: Section 71(2) of the Manitoba Public Insurance Corporation Act ('the Act'),

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 FACTS:

On August 21st, 1997 the Appellant was visiting a friend at his farm and was asked if he would help remove of an engine from a combine . He drove with his friend in a pickup truck out to the friend's field where the combine was located. It was the friend's intention to use his farm tractor

with a hay bailer attached to the rear and a fork lift attached to the front to lift out the engine and place it in the bed of the pickup truck. The hay bailer had two wheels which were located on either side of the machine.

The pickup truck was parked next to the combine, the ignition turned off and the two individuals exited the vehicle. The Appellant's role in this procedure was to stabilize the engine when it was placed on the back of the truck in order to prevent it from falling over. To do this job he had to stand near the end of the truck on the passenger side as the combine was on the other side of the truck. The tractor was driven to the combine, the pickup truck was parked to its right, and the tines of the forklift were inserted through a loop of chain that was around the engine and then lifted it out of the combine. The tractor backed up past the pickup truck with the engine suspended from the tines and then driven forward towards the truck and then lowered the engine on to the back of the truck. At this moment the Appellant was standing between the truck and the tractor. When the engine was placed on the truck bed the weight caused the truck to move 6 to 8 inches backwards or to the left of the Appellant. The Appellant had to move slightly to his left as the truck shifted in order to maintain his position in relation to the engine.

The chain was removed after the engine was resting on the truck bed and then tractor backed up with the Appellant still standing next to the rear passenger wheel well holding on to the engine. His friend went to get some wooden blocks to place under the engine to help stabilize it. The driver of the tractor backed the machine up in order to clear the site and then drove forward swinging to the Appellant's left. When the bailer (still being towed by the tractor) approached the rear of the

truck its right wheel struck the Appellant pinning his leg against the truck. He suffered a broken leg as a result of this impact.

THE ISSUE(S):

The Appellant claims he is entitled to PIPP benefits pursuant to Section 71(2) of the Act which states in part:

“71(2) Notwithstanding subsection (1), this part does not apply to bodily injury that is

(b) The result of an accident that is caused by a farm tractor, other than a farm tractor that is required to be registered as a motor vehicle under subsection 5(6) of the Highway Traffic Act, and that occurs off a highway, unless an automobile in motion is involved in the accident;

He argues that his injury was caused by an automobile in motion when:

(a) the movement of the truck forced him to move thus placing him in the path of the hay bailer;

or in the alternative

(b) when the wheel pushed his leg into the truck it caused the truck to move.

The Appellant argues that you must look at all of the facts in their totality and it was the motion of the truck that caused the injury (ie) the movement of the truck the 6 to 8 inches that caused the Appellant to move into the path of the wheel that caused the injury. With respect we can not accept

this argument. The pickup truck moved and then came to a full stop and the chain was removed from the engine and the tines of the forklift. The tractor then backed up and then moved forward towing the bailer, swinging to the Appellant's left and then the hay bailer's right wheel struck his leg. The appellant agreed that approximately a half a minute passed between the movement of the truck and the wheel striking his leg. The time lapse was too great and there were too many separate and distinct acts between the movement of the truck and the accident to treat it all as one action. Therefore at the time of the accident there was no automobile in motion that was involved in the accident and this argument must fail.

The Appellant's second argument is that the hay bailer's wheel forced the Appellants leg into the truck and this caused the truck to move. The Appellant testified that he passed out when his leg was hit and the next thing he remembers were his friends helping him into the truck to take him to the Hospital. He did not know if the truck moved when his leg was pinned and no evidence was adduced that showed the truck had moved at the time of the accident. He argues that it must have moved. What the Appellant wants us to believe is that when his leg was forced against the truck it caused the truck to move and therefore there was an automobile in motion and it was involved in the accident.

There is no evidence before this Commission that supports this contention. Even if we accept the Appellant's hypothesis it still does not allow him to qualify for compensation under Section 71(2) of the Act. There may have been movement of the pickup truck but it would have been caused by the movement of the Appellant and this is not what is contemplated by this

section of the Act. This section does not apply when the automobile is put in motion by an individual being pushed against it. This argument fails and therefore the appeal is dismissed.

DISPOSITION:

The Acting Review Officer's decision of February 27th, 1998 is, confirmed.

Dated at Winnipeg this 2nd day of February, 1999.

J. F. R. TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED