Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-57

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., Chairman** **Ms. Yvonne Tavares** **Mr. Wilson MacLennan**
APPEARANCES:	**The Appellant, [text deleted], was represented by [Appellant's counsel];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Keith Addison.**
HEARING DATE:	**January 22nd, 2001**
ISSUE:	**Whether falsehood must be 'material' to justify use of Section 160(a).**
RELEVANT SECTION:	**Section 160(a) of the MPIC 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 in this case are simply stated.

[The Appellant] was involved in two motor vehicle accidents, the first on February 1st, 1996, and the other on February 20th, 1997. At a point at which [the Appellant] was about to start a graduated return to work following his first accident, the second accident occurred.

On May 6th, 1997, [the Appellant's] case manager at MPIC interviewed him and, using questions prepared for her by MPIC's Special Investigations Unit, obtained a statement from him. In the course of that statement, [the Appellant] made certain representations about his physical condition. More specifically, he is reported to have said:

> My neck is restricted movement. I cannot move my neck forwards, backwards either side and I have pain. My low back is restricted movement and I cannot bend forwards, backwards or side to side. I cannot put on my socks or tie my shoes and my wife must do this for me.
>
> I can lift at this time a maximum of five to ten pounds but really don't know because I haven't weighed what I lifted. I get my sons to do the lifting when needed. I can lift my hands over my head to my ears. I cannot lift my arms over my head.

Reports by MPIC's Special Investigations Unit, which included videotapes, indicate that most, if not all, of the portions of his statement quoted above are false. Indeed, their falsity is admitted by the Appellant's counsel. As a result of those false statements, a criminal charge of fraud under $5,000 was laid against [the Appellant] but was dismissed. The presiding judge found, as a fact, that [the Appellant] had been untruthful in his statement to MPIC ("…what I consider, at least, to be misstatements of fact, or falsehoods, or perhaps even active deceit.") but found that he could not necessarily draw the conclusion that, because there was falsehood, there was automatically a fraud; the other essential elements to establish fraud were missing.

MPIC terminated all benefits to which [the Appellant] might otherwise have been entitled under the Personal Injury Protection Plan, basing its decision upon Section 160(a) of the MPIC Act, which reads as follows:

> **Corporation may refuse or terminate compensation**
> **160** The corporation may refuse to pay compensation to a person or may reduce the amount of indemnity or suspend or terminate the indemnity, where the person
>
> > (a) knowingly provides false or inaccurate information to the corporation.

The issue before us in this appeal is whether, in order to give rise to a right of termination by MPIC under Section 160(a), the 'false or inaccurate information' must be material to the Appellant's claim.

Submissions of Counsel for the Appellant

[Appellant's counsel], on behalf of the Appellant, submits that a falsehood can only give the insurer a right to terminate benefits if that falsehood is material, that is to say, if the statement is capable of affecting the mind of the insurer, either in the management of a claim or in its decision to pay that claim. In support of this position, [Appellant's counsel] refers us to Gilchuk v. the Insurance Corporation of British Columbia [1994] 1 W.W.R. 572 (B.C.C.A.), at page 577.

[Appellant's counsel] also refers us to the case of Bay Lee Supermarket Limited v. the Herald Insurance Company [1985] I.L.R. 1-1932 (N.S.S.C.), and to the further case of Hadani v. I.C.B.C. [1994] I.L.R. 1-3098 (B.C.S.C.). These latter cases confirm the established principle of insurance law that a statement that would not cause an insurer to pay more than it is legally obliged to pay is not a 'willfully false statement'.

Simply put, the argument advanced on behalf of [the Appellant] is that his lies did not cause MPIC to pay him money; the insurer already knew that [the Appellant] had lied and also knew that, although he could do light work, he was nevertheless incapable of performing substantially all the essential duties of his former employment. Therefore, truthful or otherwise, [the Appellant] was entitled to his benefits under the Personal Injury Protection Plan because his falsehoods had not caused the insurer to pay out more monies than would otherwise have been the case.

[Appellant's counsel] submits that, if materiality is not to be a prerequisite, then even a picayune misstatement such as a wrong initial or a wrong place of birth could be used as a reason for denying benefits.

Submission by Counsel for MPIC

Mr. Addison, for the insurer, agrees that the application of the normal principles of insurance law not only require the parties to deal with each other in the utmost good faith but, as well, would require a purposeful misrepresentation by an insured to be relevant, or 'material', to the claim.

But, submits Mr. Addison, this is not a contract of insurance. It is a statutory, no-fault insurance scheme, applicable to all residents of Manitoba. There is no "insured"; they are called "victims", or "claimants".

The basic rule of statutory interpretation is that words are to be given their ordinary or plain meaning, in the absence of some ambiguity that requires some special interpretation. The language of Section 160(a) is clear and unequivocal; there is no reason to read any additional wording into the statute. If the legislature had intended materiality to be a factor, it would have said so. Other subsections of Section 160 contain the qualification that the insurer may only refuse benefits when the claimant neglects, refuses or prevents something "without valid reason", but no such qualification appears in Section 160(a).

In Mr. Addison's further submission, MPIC's Internal Review Officer did, in fact, address the question of materiality, even though it was unnecessary for him to have done so. Indeed, the Internal Review Officer specifically quotes from the Gilchuk decision referred to above, and goes on to say, in his decision letter addressed to [the Appellant] on January 24th, 2000:

> Clearly when you made the statement of May 6, 1997, you were advancing a claim for ongoing income replacement indemnity benefits. You were well aware that the nature and extent of your condition was important to your ongoing claim for benefits and, to that end, your false statement reflected upon that issue. Having been asked to provide the subsequent statement, you were being afforded the opportunity to tell the truth which you chose not to do. I have little doubt that your false statements, as made, are clearly capable of affecting the mind of the insurer.

Discussion

While it is true that the interpretation of Section 160(a) being urged upon us by counsel for the insurer could, taken to its limits, allow MPIC to deny or terminate benefits to a claimant by reason of some totally insignificant misstatement of fact, the wording of Section 160 is permissive rather than mandatory ("…may refuse…or may reduce…or suspend or terminate…") but the Internal Review Office and this Commission were both established for the purpose, *inter alia*, of correcting such a patent inequity. But here, we are not dealing with false statements that are in no way connected with the basic nature of [the Appellant's] claim. When a claimant seeks benefits based upon personal injuries sustained in a motor vehicle accident, surely his physical condition is one of the most material factors in the management of the claim. [Appellant's counsel] argues that this is insurance legislation but that principles of common law should not be abandoned. He suggests that the *contra preferentum* principle should be applied in the present case, so that any doubt as to the meaning or intent of the legislature should be resolved against the interests of the corporation that is attempting to invoke the section now under review.

We do not find it necessary to determine whether other, specific canons of the common law apply in the present case. In our view, it is only necessary that we address the specific language of Section 160. We are, in effect, being asked by counsel for the Appellant to read into Subsection 160(a) the additional words "resulting, or likely to have resulted, in a payment by the corporation in excess of that which the corporation would otherwise have made". We cannot find this legislative intent.

It may well be that MPIC was aware that [the Appellant] was unable to return fully to his former employment since, had they believed him capable of a full return to work, MPIC could have invoked Section 110 of the Act to terminate his benefits. As Mr. Addison puts it, Section 160(a) contemplates a person who, whether or not he is able to return to work, nonetheless lies about his physical condition.

As we have noted above, and even though in our respectful view the materiality of a claimant's lies is not an essential factor in the application of Subsection 160(a), in the present case MPIC's Internal Review Officer did, indeed, consider the question of materiality and found, correctly, that [the Appellant's] misstatements were indeed material, in the sense that his statements were capable of causing the insurer to manage the file differently. It is not necessary for the insurer to establish actual prejudice which, in the present case, MPIC was able to avoid by establishing the truth from sources other than [the Appellant's] own testimony.

Disposition

We do not find that a false statement contemplated by Subsection 160(a) must necessarily be material to the claim, provided it was knowingly made. Were we able to find that [the Appellant's] statements, although knowingly made, were so inconsequential that a resultant denial of benefits would work an inequity, we would be at liberty to substitute our own decision for that of MPIC's Internal Review Officer and either restore [the Appellant's] benefits or have recourse to some lesser measure such as a suspension, rather than termination, of those benefits. We are not able to make such a finding in the present case; [the Appellant's] statements were patently intended to mislead the insurer although, in the event, that attempt was destined to fail since the insurer already knew the true facts of the case.

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

Dated at Winnipeg this 6th day of February, 2001.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

WILSON MacLENNAN