

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

AICAC File No.: AC-01-69

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Laura Diamond
Dr. Patrick Doyle

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.

HEARING DATE: September 25, 2002

ISSUE: Whether permanent impairment benefits were correctly assessed and calculated.

RELEVANT SECTIONS: Sections 127, 129(1), and 130 of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') and Schedule A (Section 1), Part 1, Division 1, Subdivision 1, Section 2(c) and Division 2, Subdivision 1, Section 5(b) of Manitoba Regulation 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 Appellant, [text deleted], was involved in a motor vehicle accident ('MVA') on October 29, 1998, and sustained significant whiplash, neck and back injuries, as well as a significant chest injury involving multiple rib fractures. [Text deleted], the Appellant's personal physician, treated her in respect of her injuries and advised MPIC, in a written report dated July 30, 2000,

that the Appellant attended at the [hospital] as a result of the MVA injuries, and that the initial assessment of the hospital did not discover significant chest contusion and multiple rib fractures.

[Appellant's doctor] reports that he saw the Appellant on November 6, 1998, and, as a result of his examination, he referred her for right rib X-rays which revealed fractures of the 3rd, 4th, 5th, 6th, 7th, and 8th ribs along the anterolateral margins. [Appellant's doctor] further reports that the Appellant continued to experience severe and unrelenting chest pain originating from the MVA and was treated with Tylenol #2 for pain relief.

[Appellant's doctor] further reports that, as a result of a follow-up visit on November 12, 1998, he referred the Appellant for X-rays of her left ribs and thoracic spine. [Appellant's doctor] reports that these X-rays revealed numerous fractures involving the lateral and anterolateral margins of the 5th, 6th, 7th, and 8th ribs. [Appellant's doctor] stated that:

She was noted to have bilateral rib fractures with severe, ongoing pain as a result of the injuries sustained in the motor vehicle accident of October 29, 1998.

In this report, [Appellant's doctor] indicates that the Appellant continued to suffer from significant pain in respect of her right rib cage as of July 19, 2000, the last time he saw her prior to his report to MPIC dated July 30, 2000.

[Appellant's doctor] further reports that, in his opinion, the Appellant sustained a significant acceleration deceleration injury to her neck, back, and lower back. She was also noted to have a contused rib cage bilaterally, as well as a contused right shoulder, left hip, and left calf. [Appellant's doctor] stated:

It is my opinion that [the Appellant] continues to have a significant degree of ongoing disability as a result of the injuries sustained in the motor vehicle accident of October 29, 1998. I suspect this disability will persist for the foreseeable future.

On receipt of this report, the case manager requested [MPIC's doctor], a medical consultant of MPIC's Health Care Services Team, to provide an assessment in respect of permanent impairment. In an inter-departmental memorandum dated August 16, 2000, the case manager advised [MPIC's doctor] as follows:

This file is being referred for the assessment of permanent impairments.

On October 29, 1998, [the Appellant], age [Text deleted] was a passenger in vehicle which was rear-ended while stopped.

[The Appellant] was taken to the [hospital by ambulance, examined and released. She is under the care of [Appellant's doctor]. [Appellant's doctor] diagnosed [the Appellant] with the following injuries:

- Multiple bilateral rib fractures
- Whiplash
- Contused abdominal wall
- Contused left hip
- Back injury
- Contused left calf

Please review the attached medical information and rate the impairments according to our Schedule of Impairments. [*underlining added*]

On November 28, 2000, [MPIC's doctor] replied to the case manager in an inter-departmental memorandum and in respect of rib fractures stated:

PERMANENT IMPAIRMENT AWARDS

...

2. Rib Fractures

The Schedule of Permanent Impairments Part 1, Division 1, Subdivision 1, Item 2(c) allows for awards of 0.5% for rib fractures. I would assume that there would probably be a degree of malalignment of these fractures and an award of 0.5% would be applicable.

In addition, [MPIC's doctor] recommended a 0.5% award in respect of the concussion suffered by the appellant.

On December 21, 2000, the case manager wrote to the Appellant and advised her that MPIC had completed an assessment in respect of her entitlement to a permanent impairment award pursuant to Section 127 of the MPIC Act, based on the medical investigation and the Health Care Services Team's assessment. The case manager advised the Appellant that her permanent impairment award is broken down as follows:

Minor alteration in cerebral tissue following a concussion	.5%
Misalignment of rib fracture	.5%

Based on the above information, your entitlement is 1% of the legislated maximum for 1998, \$108,665.00, which gives you a total award of \$1,086.64. You have already received a cheque in this amount.

The Appellant made Application for Review of the case manager's decision dated February 2, 2001.

The Internal Review Officer met with the Appellant on April 3, 2001, and, in a written decision dated April 5, 2001, rejected the Application for Review and confirmed the decision of the case manager dated December 21, 2000. The Internal Review Officer states:

FACTS

The facts relevant to this review can be briefly stated.

On October 28, 1998, you were a passenger in a car, driven by your late husband, which was struck heavily from the rear by a semi-trailer unit while stopped at a pedestrian corridor in [text deleted]. You were [Text deleted] years of age at the time.

You were conveyed to [hospital], but released a short time later. You sustained multiple undisplaced rib fractures (9 or 10 in total) as well as soft tissue injuries to your neck and back which continue to cause you considerable discomfort and inconvenience.

The rib fractures have healed satisfactorily, but you continue to receive treatment for the residual aches and pains attributable to your various injuries.

The Internal Review Officer indicated that he had reviewed the entire medical file and concluded that [MPIC's doctor], having regard to the relevant provisions of the Schedule, had correctly assessed and calculated the permanent benefit in respect of the Appellant's displaced rib fractures. As a result, the Appellant filed a Notice of Appeal to this Commission, dated June 27, 2001.

Appeal

The issues under appeal are governed by Sections 127, 129(1) and 130 of the MPIC Act.

Section 127 of the MPIC Act provides:

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.

Section 129(1) of the MPIC Act provides:

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.

Section 130 of the MPIC Act provides:

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.

Schedule A (Section 1), Part 1, Division 1, Subdivision 1, Section 2(c) of Manitoba Regulation 41/94 ('the Schedule') provides:

2. Clavicle, scapula and thoracic cage

(c) Rib fractures: pseudoarthrosis or misalignment: 0.5%

At the appeal hearing, the Appellant submitted that she suffered a number of significant injuries in the MVA of October 29, 1998, including multiple bilateral rib fractures. Since the date of the accident, she has had significant pain in respect of her rib cage, which is confirmed in the reports provided by her physician, [text deleted].

In his most recent report to this Commission, dated June 9, 2002, [Appellant's doctor] concluded this report by stating:

It is clearly my opinion that [the Appellant] sustained a very significant acceleration deceleration injury to her neck, back and lower back as well as multiple trauma in the motor vehicle accident on October 29, 1998. She sustained a very serious and significant chest wall injury with bilateral rib fractures. She was also noted to have contusion to her right shoulder, left hip and left calf. It is my opinion that [the Appellant] continues to have a degree of ongoing disability as a result of the injury in her motor vehicle accident of October 29, 1998. She continues to experience significant episodes of exacerbation of her back and left hip. I suspect that she will continue to have some degree of ongoing disability as a result of the injury of the motor vehicle accident of October 29, 1998 for the foreseeable future. She will require assistance with her usual household chores as well as assistance with her yard work and snow clearance as a result of the ongoing disability. It is my opinion that she will continue to have difficulty managing the usual activities of her household as a result of the injuries sustained in her motor vehicle accident of October 29, 1998.

I would also note that she underwent a significant degree of pain and suffering as a result of serious and initially undiagnosed chest wall trauma resulting in bilateral rib fractures of a serious and significant nature. [underlining added]

The Appellant further submitted that:

- a) the award of 0.5% in the amount of \$543.27, in respect of the permanent impairment relating to the ten displaced rib fractures, is unfair and unreasonable and should be rejected by the Commission; and
- b) the compensation that she receives for this permanent impairment should be 0.5% in respect of each of the ten ribs which were fractured and displaced as a result of the MVA.

In reply, legal counsel for MPIC submitted that the Schedule provides for 0.5% for all of the rib fractures that the Appellant suffered and does not provide for 0.5% for each of the rib fractures that she suffered. Legal counsel for MPIC submitted that the language is clear and unambiguous and that the submission made by the Appellant should be rejected.

In construing a statute or a regulation, the Commission is required to interpret the language of a statute or regulation by giving effect to the plain and ordinary meaning of the statute or regulation. It is only if the language of the statute or regulation is unclear and/or ambiguous, or if the normal or ordinary meaning of the words in the statute or regulation could result in an absurdity, that the Commission would not be required to interpret the language of the statute or regulation in its normal or ordinary sense.

In the text *Driedger on the Construction of Statutes, Third Edition*, the authors state, at pages 4 and 5:

In *R. v. McGraw* [1991] 3 S.C.R. 72, at page 80, Cory J. stated:

It is well settled that words contained in a statute are to be given their ordinary meaning. Other principles of statutory interpretation only come into play where the words sought to be defined are ambiguous.

The authors further refer to:

In *Sunnyside Nursing Home v. Builders' Contract Management Ltd.* [1990] 5 W.W.R. 289, at 296 (Sask. C.A.), Wakeling J.A. stated:

[C]ourts must be guided by the language of the statute to determine the intent of the legislators, and only in the event of ambiguity is there justification for seeking the assistance of other guidelines for interpretation.

At page 7, the authors state:

Summary of the ordinary meaning rule: the basic propositions. As understood and applied by modern courts the ordinary meaning rule consists of the following propositions.

- (1) It is presumed that the ordinary meaning of a legislative text is the intended or most appropriate meaning. In the absence of a reason to reject it, the ordinary meaning prevails.
- (2) Even where the ordinary meaning of a legislative text appears to be clear, the courts must consider the purpose and scheme of the legislation, and the consequences of adopting this meaning. They must take into account all relevant indicators of legislative meaning.
- (3) In light of these additional considerations, the court may adopt an interpretation in which the ordinary meaning is modified or rejected. That interpretation, however, must be plausible; that is, it must be one the words are reasonably capable of bearing.

MPIC's legal counsel submits that the words "Rib fractures" in the Schedule refer to multiple fractures of the Appellant's ribs, and not to a single fracture of her ribs. In order to accept this interpretation of these words, the Commission would be required to amend the language of the Schedule, rather than interpret the Schedule, and to do so would be beyond the scope of the Commission's jurisdiction.

If the words used in the Schedule were ‘Fractured ribs’ (the word ‘ribs’ is used in the plural), rather than “Rib fractures” (the word “Rib” is used in the singular), then the Commission would have found that MPIC’s legal submission was correct since this interpretation is consistent with the ordinary meaning of the words used in the Schedule. However, since the words used in the Schedule were “Rib fractures”, the Commission rejects MPIC’s interpretation as being contrary to the ordinary meaning of these words.

An examination of the words “Rib fractures” in the Schedule indicates that the word “Rib” is used in the singular and not in the plural, but the word “fractures” is used in the plural. Having regard to these words, the Commission determines that the ordinary meaning of the words “Rib fractures” in the Schedule means a single rib, located in a person’s rib cage, which has been fractured, and does not mean multiple ribs which have been fractured. The Commission, therefore, finds that the words “Rib fractures” in the schedule are clear and unambiguous and should be interpreted having regard to their ordinary meaning.

The Commission concludes that the Appellant’s interpretation of the words “Rib fractures”, as set out in the Schedule, is correct since it is consistent with the ordinary meaning of the words “Rib fractures.” The Commission agrees with the Appellant that, in respect of her permanent impairment relating to the ten displaced fractured ribs, she should be compensated on the basis of 0.5% in respect of each of these ten ribs.

The Commission also notes that the Appellant's submission is totally consistent with Section 12 of *The Interpretation Act*, R.S.M. 1987, c.180:

Enactments deemed remedial.

12 Every enactment shall be deemed remedial, and shall be given such fair, large, and liberal construction and interpretation as best insures the statement of its objects.

In *Driedger on the Construction of Statutes* (supra), the authors state at page 39:

In *Jodrey's Estate v. Province of Nova Scotia and the Attorneys General of British Columbia* [1980] 2 S.C.R. 774, at 807, Dickson J. stated:

The correct approach, applicable to statutory interpretation generally, is to construe the legislation with reasonable regard to its object and purpose and to give it such interpretation as best ensures the attainment of such object and purpose.

The Commission must be aware of the consequences when interpreting a statute or regulation.

In *Driedger on the Construction of Statutes* (supra), the authors state at page 79:

Relevance of consequences in interpretation. When a court is called on to interpret legislation, it is not engaged in an academic exercise. Interpretation involves the application of legislation to facts in a way that affects the well-being of persons for better or worse. Not surprisingly, the courts are interested in knowing what the consequences will be and judging whether they are acceptable. Consequences judged to be good generally are presumed to be intended and are regarded as part of the legislative purpose. Consequences judged to be unjust or unreasonable are regarded as absurd and are presumed to have been unintended. Whether it appears that the consequences of adopting an interpretation would be absurd, the courts are entitled to reject it in favour of a plausible alternative that avoids the absurdity. As Mr. Justice O'Halloran explained in *Waugh v. Pedneault* [1949] 1 W.W.R. 14, at 15 (B.C.C.A.):

The Legislature cannot be presumed to act unreasonably or unjustly, for that would be acting against the public interest. The members of the Legislature are elected by the people to protect the public interest, and that means acting fairly and justly in all circumstances. Words used in enactments of the Legislature must be construed upon that premise. That is the real "intent" of the Legislature. That is why words in an Act of the Legislature are not restricted to what are sometimes called their "ordinary" or "literal" meaning, but are extended flexibly to include the most

reasonable meaning which can be extracted from the purpose and object of what is sought to be accomplished by the statute.

The Commission further finds that to accept MPIC's interpretation in respect of the words "Rib fractures", as set out in the Schedule, would lead to an unjust and unreasonable result. The Appellant has suffered greatly from a significant permanent impairment because of ten displaced rib fractures caused by the MVA four years ago and, as a result thereof, the degree of her permanent impairment should be reflected in the amount of indemnification she receives pursuant to Sections 127, 129(1), and 130 of the MPIC Act and the Schedule. MPIC has determined that the Appellant did sustain permanent physical impairment in respect of the ten displaced rib fractures she received in the MVA but, having regard to its interpretation of the Schedule, is only prepared to indemnify the Appellant in respect of one displaced rib fracture.

Having regard to the purpose of Sections 127, 129(1) and 130 of the MPIC Act and the language used in the Schedule to describe the permanent impairment that the Appellant suffered from, the Commission finds that these provisions were intended to provide the Appellant with indemnification on the basis of 0.5% in respect of each of the ten displaced rib fractures she suffered as a result of the MVA.

In respect of the case manager's assessment relating to the Appellant's concussion, the Commission confirms that this assessment of 0.5% was correct and dismisses the Appellant's appeal in this respect.

The Commission, therefore, determines that:

- A. the Appellant's appeal in respect of the Internal Review Officer's decision bearing date April 5, 2001, relating to compensation for her permanent impairment in respect of her concussion, is dismissed;
- B. pursuant to Sections 127, 129(1) and 130 of the MPIC Act and the Schedule, the Appellant be compensated for permanent impairment in respect of the ten displaced rib fractures on the basis of 0.5% in respect of each of these displaced rib fractures, together with interest to date of payment;
- C. it shall retain jurisdiction in this matter and, if the parties are unable to agree on the amount of compensation, either party may refer this issue back to this Commission for final determination; and
- D. subject to paragraph A hereof, the decision of MPIC's Internal Review Officer, bearing date April 5, 2001, is varied and the foregoing substituted for it.

Dated at Winnipeg this 18th day of October, 2002.

MEL MYERS, Q.C.

LAURA DIAMOND

DR. PATRICK DOYLE