Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-95-11

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairperson)** **Mr. Charles T. Birt, Q.C.** **Mrs. Lila Goodspeed**
APPEARANCES:	**Manitoba Public Insurance Corporation ('M.P.I.C.') represented by Ms Joan McKelvey** **[Appellant's representatives] appeared on behalf of the Appellant**
HEARING DATE:	**December 5th, 1995**
ISSUE(S):	**1. Quantum of I.R.I. - can potential, future increase in earnings be considered?** **2. Amount to be paid under Income Replacement Indemnity. Income Tax and C.P.P. deducted from gross earnings to compute I.R.I. - whether compensible loss.**
RELEVANT SECTIONS:	**Sections 81(2), 111, 112, 165, 166 and Reg. 39/94 Section 10 of the M.P.I.C. 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:

[The Appellant] was riding a mountain bike south on [text deleted] when he was struck from behind by an automobile. The accident occurred on July 2nd, 1994 and [the Appellant] was taken to a hospital in a coma where he was diagnosed with closed head injuries and numerous

scrapes and bruises. The nature of the injuries were such that, as of the date of hearing 17 months later, [the Appellant] requires constant supervision and care and will not be able, for the foreseeable future, to return to the life and work he enjoyed prior to the accident. At the time of the hearing [the Appellant] had just established residency at [text deleted], a special home operated by the [text deleted].

[The Appellant] graduated from the [text deleted] with a [text deleted] in 1991 and at the time of the accident had been employed by [text deleted] Ltd for three years. [The Appellant] took a number of post graduate courses and programs related to his work to upgrade his skills. Just prior to the accident he had qualified as a [text deleted] under the [text deleted] Act of Manitoba.

[The Appellant's] base salary was $48,048.00 per annum and he was entitled to receive additional income under a profit-sharing plan which, in 1994, amounted to $2,192.96 for a gross income of $50,240.96. M.P.I.C., using this figure, calculated his net income for Income Replacement Indemnity (>I.R.I.=) purposes for 1994 after deductions for income tax, U.I.C. and C.P.P. to be $33,003.24, [the Appellant] receives 90 % of this sum or $1,142.42 bi-weekly.

[The Appellant] contributed to a company pension plan as well as his own R.R.S. Plan. He made contributions of $2,000.00 in 1992, $2,078.00 in 1993 and $3,150.00 in 1994 to his R.R.S. Plan.

The appeal was filed and argued by [the Appellant's] parents, [text deleted] and they were assisted by [text deleted].

THE LAW:

[The Appellant`s parents] did not quarrel with the way or amount of I.R.I. that [the Appellant] was receiving based on his salary of $50,240.96. They believed that [the Appellant] would have earned a higher salary in the future given the nature of his work and his professional development. They tendered evidence from the 1994 Salary Survey produced by the Association [text deleted] of Manitoba. [The Appellant`s parents] recognized that the legislation imposed a salary cap on income for I.R.I. calculation purposes which was $56,000.00 for 1995. They submitted that [the Appellant]=s earnings would naturally have increased over time and that his income would soon have reached the maximum insurable limits. They wanted M.P.I.C. to build some future increment into [the Appellant`s] I.R.I. entitlement by taking account of those potential earnings of which the driver of the automobile had deprived him.

Section 70.(1) of the Manitoba Public Insurance Corporation Act (>M.P.I.C. Act=) defines a full-time earner as

> a victim who, at the time of the accident, holds a regular employment on a full-time basis...

[The Appellant] was a A full-time earner at the time of his accident. There is no dispute that [the Appellant] was unable to continue his full-time employment as a result of the accident, as contemplated by Section 81(10)(a) of the M.P.I.C. Act.

The determination of I.R.I. for a full-time earner is set out in Section 81(2) (a) of the Act; it is based on his gross income earned from his employment at the time of the accident.

Section 111 of the Act provides that a victim's I.R.I. is equal to 90% of his or her net income computed on a yearly basis. Section 112 of the Act provides a formula for determining net income, i.e. the victim's gross yearly employment income less deductions for income tax, Canada Pension Plan contributions and Unemployment Insurance premiums. 90% of the resultant net income becomes a tax-free I.R.I. to which the victim is entitled. But the formula set out in Section 112 is just that - a formula; the Act does not contemplate that M.P.I.C. must then also remit to the Government the amounts thus deducted from gross income for income taxes, Canada Pension and Unemployment Insurance contributions. As a result, the victim receives no credit of any kind for those deductions; he can make no further contributions to his R.R.S. Plan, since those have to be based on his earned income, of which [the Appellant] will have none. For the same reason, he can make no further contributions to the Canada Pension Plan.

We are bound by the wording of the M.P.I.C. Act and Regulations which clearly state that, in calculating income and I.R.I. benefits for a victim, one can only look at the income earned at the time of the victim's accident. One cannot take into consideration what a victim might have earned in the future. [The Appellant's] gross annual income from employment at the time of the accident was $50,240.96 for the purposes of calculating I.R.I.

The Act does provide a mechanism for adjusting the victim's I.R.I. annually on the anniversary of the accident, commensurate with any increase in the consumer price index. This indexing is found in Division 9 of the M.P.I.C. Act. One such adjustment has already been made to [the Appellant's] I.R.I.

It was also argued on behalf of the Appellant that, as M.P.I.C. has deducted amounts for income tax, C.P.P. and U.I. from [the Appellant's] salary in order to calculate his I.R.I., then these sums should be tendered to the Federal Government. By the failure to tender these funds on his behalf, [the Appellant] is deprived of certain benefits under federal legislation. Taxpayers can claim medical expenses, C.P.P. payments and R.R.S.P. contributions against their income taxes and receive refunds from their tax contributions where appropriate. [The Appellant], it is argued, is being deprived of his claim for medical expenses, contributions to an R.R.S. Plan and the opportunity to build up a C.P.P. pension plan.

The Appellant's position is that the phrase income replacement indemnity should entitle a victim to receive all income and benefits lost as a result of the accident, and that M.P.I.C. should therefore tender the deductions for taxes, C.P.P. and U.I. contributions to the appropriate federal authorities in order that [the Appellant] can enjoy all of the rights he had as a taxpayer prior to the accident.

The M.P.I.C. Act does not provide a definition of I.R.I. but sets out a formula for its calculation. The I.R.I. benefit under the Act is similar to disability income under almost any other disability insurance policy. The victim purchases insurance for income replacement due to a disability out of after tax dollars. The income derived from the insurance policy is not deemed to be income for purposes of the federal Income Tax Act and is therefore not subject to income tax. As the cash flow is not income then it cannot be used to claim various federal tax credits or benefits.

Similarly the I.R.I. received by a victim under the M.P.I.C. Act is not taxable income under the Income Tax Act and therefore the victim cannot claim the federal tax credits or benefits, nor use that income to build a R.R.S. Plan.

DISPOSITION:

For the reasons stated above we are obliged to dismiss [the Appellant's] appeal and confirm the decision of M.P.I.C..

One point raised on the Notice of Appeal dealt with the amount one is entitled to receive for personal care cost. This matter had not been dealt with by the Internal Review Officer and we advised the Appellant's representatives that they must first take this matter up with M.P.I.C. at the internal review level as we did not have the jurisdiction to deal with it until that has been done.

Dated at Winnipeg this 15th day of December, 1995.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED