

AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION

IN THE MATTER OF an appeal by [the Appellant]

AICAC File No.: AC-98-12

PANEL: Mr. Charles T. Birt, Q.C. (Chairperson)
Mr. F. Les Cox
Mrs. Lila Goodspeed

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

HEARING DATE: May 26th, 1998

ISSUE: Claim for death benefit following the death of her ex-husband.

RELEVANT SECTIONS: Sections 70(1)(c) & 121(2)(a) of the MPIC 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:

The Appellant's first husband, [text deleted], was fatally injured in an automobile accident on August 2nd, 1997. [The Appellant] is claiming a death benefit from MPIC as a result of this accident. They were divorced in 1988 and custody of their two children, [text deleted] ([text

deleted] years old) and [text deleted] ([text deleted] years old), was granted to [the Appellant]. The divorce court did not order [Appellant's first husband] to pay support for [the Appellant] or the children. However, [Appellant's first husband] filed an affidavit in the divorce proceedings stating "I have in fact been paying the petitioner since our separation, an amount agreed between us, on a monthly basis as support for our children". There is no reference to support payments for [the Appellant] in the court documentation.

The Appellant married [Appellant's second husband] in 1995 and they separated in the spring of 1997. There was no evidence provided as to whether or not [the Appellant] and [Appellant's second husband] were divorced at the time of [Appellant's first husband's] death. Evidence was provided by way of receipts and a friend's affidavit that [Appellant's first husband] gave varying amounts of money to [the Appellant] or his children with instructions to give it to their mother. The amount of these funds varied (i.e.) in February 1997 - \$350.00, March - \$400.00, April - \$270.00, May - \$410.00, June - \$300.00 and July - \$600.00. There is no evidence who these funds were intended for - [the Appellant], the children or both.

The Appellant contends that these payments were for her and her children's support. She advised that she and [Appellant's first husband] did not have any written agreement covering the question of his paying maintenance nor was there a court order requiring him to pay any maintenance for her and/or the children. She believed that she had an understanding with [Appellant's first husband] that he would help her and the children when they ran into financial difficulty.

ISSUE:

[the Appellant's] position is that at the time of [Appellant's first husband's] death there was a verbal agreement between them that entitled her to receive support from him and she is therefore entitled, pursuant to Section 121(2) of the Act, to a lump sum death benefit from MPIC.

To qualify for this benefit [the Appellant] must meet the criteria set out in two sections of the Act, namely Sections 121(2)(a) and 70(1)(c). The first section reads as follows:

121(2) A dependant, other than a spouse, of a deceased victim is entitled to

(a) a lump sum indemnity in the amount opposite the age of the dependant in Schedule 3;

[The Appellant] was not [Appellant's first husband's] spouse at the time of his death as they were divorced but was she a dependent within the meaning of the Act. One must look to Section 70(1)(c) for the definition of dependent for the purposes of the Act and Sub-section (c) is applicable in this case:

70(1)(c) a person whose marriage to the victim has been dissolved by a final judgement of divorce or declared null and void by a declaration of nullity of marriage, and who at the time of the accident, is entitled to receive support from the victim under a judgement or agreement.

It is agreed by all parties that from the date of [the Appellant's first husband] and [the Appellant's] divorce to the date of his death there was no court order given or written agreement entered into that required [Appellant's first husband] to provide support to [the Appellant]. The question we have to answer is whether or not there was an enforceable verbal agreement in effect between the Appellant and [Appellant's first husband] for her support at the time of his death.

To constitute an agreement there must be a mutual understanding and acceptance of the terms, conditions and obligations of each party concerning the payment of support by [Appellant's first husband] to [the Appellant]. In this case there is no evidence that the parties agreed to the amount of support to be paid, when it was to be paid and on whose behalf it was to be paid. [Appellant's first husband] decided the amount he would pay, when he would pay it and who should receive it. [The Appellant] never knew if she was going to receive any money, what the amount would be or when she would receive it, if at all.

After a careful review of the evidence and submissions of the parties, we are of the view that there is no verbal agreement compelling [Appellant's first husband] to pay support to [the Appellant] at the time of his death. [Appellant's first husband] may have felt he had an obligation to pay support but this was a matter of discretion within his control and this did not confer a right to receive support by [the Appellant]. The six payments showed a voluntary pattern of giving and without any other evidence this does not confer an enforceable right on behalf of [the Appellant].

There is no evidence to support [the Appellant's] claim that the money paid in 1997 by [Appellant's first husband] was for her support. It could have been for the support of his children and we believe that in all likelihood it was for their support. The two [text deleted] children have received the prescribed death benefits under the Act namely, a Dependant Lump Sum and a Spousal Lump Sum Indemnity and these funds are being managed for them by The Public Trustee.

Unfortunately, since [the Appellant] does not have an agreement, she does not qualify for a death benefit under Section 70(1)(c) of the Act and therefore, is not entitled to any lump sum death benefit from MPIC.

DISPOSITION:

For the foregoing reasons, the Acting Review Officer's decision of January 12th, 1998 is confirmed and the appeal is dismissed.

Dated at Winnipeg this 22nd day of June, 1998.

CHARLES T. BIRT, Q.C.

F. LES COX

LILA GOODSPEED