



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-19**

PANEL: Mr. J.F. Reeh Taylor, Q.C., Chairman
Ms. Yvonne Tavares
Mr. Colon C. Settle, Q.C.

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

HEARING DATE: May 5, 2000

ISSUE: Whether the Appellant's injury was caused by the use of an automobile.

RELEVANT SECTIONS: Sections 70 and 71(1) 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 Appellant, [text deleted], attended at the [text deleted] on June 25, 1997, at approximately 5:30 a.m. [The Appellant] purchased a [text deleted] breakfast meal through the drive-thru window. The breakfast meal included a cup of coffee. [The Appellant] placed the cup of coffee in a RubberQueen beverage cup holder which was located immediately to his right on the center of the front bench seat of the [text deleted]

that he was driving at the time. [The Appellant] proceeded to exit the [text deleted] parking lot and head north on [text deleted]. He then gradually made his way across three lanes to the left turning lane, at which time he realized that the coffee had spilled onto the seat and onto his right leg and buttocks. He stopped his vehicle in the left turning lane, got out of his car and proceeded to clean up the spill before continuing on to his place of employment. [The Appellant] testified that as a result of the coffee spill, he received second- and third-degree burns to his right thigh and buttocks, which necessitated medical treatment. Further, he was required to be absent from work for three days in order to recover from his injuries.

[The Appellant] initially filed a Statement of Claim in the Court of Queen's Bench against [text deleted], seeking damages for the injuries he suffered as a result of the coffee spill. [Text deleted] defended the claim and relied in part upon Section 72 of *The Manitoba Public Insurance Corporation Act* (the "Act"), which reads as follows:

Notwithstanding the provisions of any other Act, compensation under this Part stands in lieu of all rights and remedies arising out of bodily injuries to which this Part applies and no action in that respect may be admitted before any court.

[The Appellant] then filed a claim with the Manitoba Public Insurance Corporation ("MPIC") seeking benefits pursuant to Part 2 of the Act. Coverage under the Personal Injury Protection Plan was denied to [the Appellant] by MPIC. [The Appellant] is now appealing the decision of the Internal Review Officer dated December 17, 1999. The issue before the Commission therefore is whether or not [the Appellant's] injuries were

caused by the use of an automobile and accordingly whether [the Appellant] is entitled to claim benefits pursuant to Part 2 of the Act.

THE LAW:

Part 2 of the Act provides as follows:

Definitions

70(1) In this Part,

“**accident**” means any event in which bodily injury is caused by an automobile;

“**bodily injury**” means any physical or mental injury, including permanent physical or mental impairment and death;

“**bodily injury caused by an automobile**” means any bodily injury caused by an automobile, by the use of an automobile, or by a load ...

“**load**” means any property carried in or on an automobile;

Application of Part 2

71(1) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

The Commission was also referred to the decision of the Manitoba Court of Appeal in McMillan v. Thompson (Rural Municipality) (1997) 115 Man. R. (2d) 2.

DISCUSSION:

It was argued on behalf of [the Appellant] that his claim arose out of the use of an automobile and was occasioned by a load in the automobile. As such his injury came within the definition of “bodily injury caused by an automobile” set out in the Act. Counsel for MPIC argued that the approach to be taken when considering such claims

was to look at the cause of the “injury”, not at the cause of the accident. Applying that approach to the case at hand, counsel for MPIC argued that the cause of [the Appellant’s] injury was the excessive temperature of the coffee, not the operation of the motor vehicle.

Applying the facts of the case at hand to the legislation, the Commission relied on Helper, J.A.’s decision in McMillan v. Thompson (Rural Municipality), *supra*. At page 21 of her decision, Helper, J.A. states that:

The only question which required determination was: Were the respondents’ injuries caused by (in the sense of being related to) the use of an automobile? The answer to that question is undoubtedly “yes.”

The Commission is thus required to ask in the present circumstances, were [the Appellant’s] injuries caused by the use of an automobile? After careful consideration of the evidence presented before it, the Commission finds that the coffee spill and [the Appellant’s] resultant injuries were caused by the use of the automobile, or by a load.

By the authority of Section 184(1) of the Manitoba Public Insurance Corporation Act, the Commission, without attempting to determine the benefits (if any) to which [the Appellant] may be entitled, therefore orders that:

- A. the Appellant’s claim be referred back to MPIC for processing in light of the foregoing finding; and
- B. the decision of MPIC’s Internal Review Officer, bearing date December 17th, 1999, is therefore rescinded and the foregoing substituted for it.

Dated this 19th day of May, 2000.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

COLON C. SETTLE, Q.C.