

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-99-106**

PANEL: Mr. J. F. Reeh Taylor, Q.C., Chairman
Ms. Yvonne Tavares
Mr. F. Les Cox

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC')
represented by Mr. Keith Addison;
the Appellant, [text deleted], appeared on his own behalf

HEARING DATE: August 25th, 2000

ISSUE(S): (i) whether Appellant entitled to reimbursement for
damage to clothing and loss of eyeglasses;
(ii) whether Appellant entitled to reimbursement for
damages to watch, loss of keys and personal documents.

RELEVANT SECTIONS: Section 136(1) of the MPIC Act and Sections 34 and 36 of
Manitoba Regulation No. 40/94

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 a passenger on a [text deleted] Transit bus which skidded when making a left turn, coming to a sudden stop when it collided with the curb, at about 1 p.m. on December 25th, 1997. [The Appellant] testified that his left knee came into heavy contact with the back of the seat in front of him, causing pain. Although [the Appellant], himself, appears to have responded affirmatively when the driver of the bus asked all seven of her

passengers whether they were all right, one of his fellow passengers, noticing that he was rubbing his left knee and in some apparent pain, suggested that an ambulance be called.

[The Appellant] testified that, because the ambulance personnel could not get a stretcher onto the bus, they had to carry him off the bus bodily and transfer him to the ambulance. In doing so, he said, they picked him up by the sides of the leather jacket that he was wearing, using the jacket as a form of sling and, in so doing, ripped the jacket down the back. He also testified that somehow, in the course of that transfer—whether while on the bus, on the ground or in the ambulance he was unsure—his eyeglasses became lost and, as well, his keys, a bus pass, his social insurance identity card and his watch were either lost or damaged. He seeks reimbursement for all of the foregoing.

With respect to the keys, bus pass, watch and SIN card, it is unnecessary to touch upon the paucity of evidence. It is enough to say that those items are not within the contemplation of the MPIC Act and the Regulations passed pursuant to that Act. More particularly, Section 136(1) of the MPIC Act reads as follows:

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation

The applicable Regulation is No. 40/94, of which Sections 34 and 36 are the relevant ones. They read as follows:

Prescribed appliance, medical equipment, clothing

34 Subject to sections 35 to 37 and Schedule B, the corporation shall pay an expense incurred for the purchase, rental, repair, replacement, fitting or adjustment of clothing or a medical appliance or medical equipment if the expense is incurred for a medical reason related to the accident, and on the prescription of a physician, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist.

Where victim wore or used object before accident

35 Where an expense is incurred under section 34 for an object the victim wore or used before the accident, the corporation shall pay the expense only once, unless an expense is incurred owing to a change in a condition that results from the accident, in which case the corporation shall pay the expense.

It is clear from the foregoing that the items of personal property that [the Appellant] claims to have lost in the course of the incident briefly described above are not covered by the Act and Regulation.

With respect to the leather jacket, [the Appellant] has never shown the jacket to his adjuster nor, despite his testimony to the contrary, is there any evidence that he ever produced a receipt or anything else in proof of its original purchase. He says that he destroyed the jacket some time ago and replaced it with another one. He says that he bought the jacket about two months before the accident and that it cost him between \$400 and \$500.

With respect to his eyeglasses, the driver of the bus does not remember that he was wearing glasses (although that, of itself, is no proof of their absence), no glasses were found on the bus and no inquiry has ever been made by [the Appellant] of the ambulance personnel. Similarly, there is no evidence of the original purchase of eyeglasses, nor any prescription that might help us in determining whether he ever was, in fact, wearing prescription glasses before the accident.

On the foregoing grounds alone, then, we have to agree with MPIC's Internal Review Officer that there is insufficient evidence that [the Appellant's] jacket was torn and his eyeglasses lost in the course of this incident.

More compellingly, however, even accepting [the Appellant's] evidence in entirety, we are unable to find that the damage to his jacket and the loss of his eyeglasses were caused by or by the use of a motor vehicle. He, himself, testified that the motor vehicle accident was not the cause of his alleged loss or damage, other than the impact to his knee. It was apparently the actions of the ambulance personnel that caused the loss of or damage to any of his personal possessions, and it is not clear from his evidence whether any of those alleged events took place inside the bus, on the ground outside the bus, or in the course of lifting him into the ambulance. In any event, he was not unconscious but, he says, although aware of the loss of his glasses he said nothing to anyone about their disappearance at the time.

We are unable to find, on any balance of probabilities, that [the Appellant] sustained loss of or damage to personal possessions that are compensable under the MPIC Act. It follows that his appeal must be dismissed.

Dated at Winnipeg this 25th day of August, 2000.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

F. LES COX