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Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
(ESTATE OF [the Deceased].)**

AICAC File No.: AC-11-094

PANEL: Ms Laura Diamond, Chairperson
Mr. Wilf De Graves
Mr. Paul Johnston

APPEARANCES: The Appellant, [text deleted] (Estate of [the Deceased]),
appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Cynthia Lau.

HEARING DATE: March 20, 2012

ISSUE(S): 1. Whether the Appellant is entitled to Income Replacement
Indemnity benefits
2. Whether the death benefit and funeral expenses were
correctly calculated.

RELEVANT SECTIONS: Sections 70(1), 71(1), 123 and 124 of The Manitoba Public
Insurance Corporation Act ('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

On November 10, 2010, the Appellant's son was fatally injured as a result of a motor vehicle accident. The Appellant contacted a case manager for MPIC enquiring if she would be eligible for income she had lost due to her inability to return to work following her son's passing. The case manager issued a decision letter on January 26, 2011 stating that there were no provisions in the MPIC Act to allow her reimbursement or compensation for her lost income.

On February 16, 2011, the case manager issued a decision letter outlining payments made under the MPIC Act for a non-dependent death benefit and allowable funeral expenses.

The Appellant sought an Application for Review in regard to these decisions. She stated that the amount she received from MPIC was not an adequate sum to compensate for the loss of her son's life. She sought compensation for the time she was unable to work (November 12, 2010 to January 3, 2011) as a result of her son's death, and indicated at the Internal Review hearing that she was not satisfied with the amount of the funeral expenses, which were insufficient to cover expenses at her son's grave.

On May 16, 2011, an Internal Review Officer for MPIC upheld the case manager's decision. The Internal Review Officer indicated that the amounts for death payments and funeral expenses are set by legislation and at the time of the Appellant's son's death, the non-dependent death benefit was set at \$12,201.00 with a maximum allowable limit for reimbursement of funeral expenses of \$7,467.00. Neither the case manager nor the Internal Review Officer had the authority to vary these amounts and the decision was upheld.

In regard to the Appellant's loss of income for the time she was unable to work following her son's passing, the Internal Review Officer noted that there was no provision in the legislation to allow her to be reimbursed for this claim. In order to be reimbursed for lost income, one must meet the definition of "victim" under the MPIC Act and as the Appellant was not a person who suffered bodily injury in an accident, there was no provision under the legislation to allow her to be reimbursed for the income loss she had sustained. Accordingly, the case manager's decision was upheld.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

The Appellant testified at the hearing into her appeal. She described the huge burden she had felt since her son's passing and the necessity for her to take six weeks off of work to deal with her suffering. As a result, she had to borrow from her upcoming vacation and repay that in order to be able to take a vacation in the year that followed. This placed both a financial burden and emotional stress upon her.

The Appellant described how the accident had affected her life and her daily routines, noting that it was unfair, unjust, and outrageous that she should suffer in this way, with no compensation for loss of income and with inadequate compensation for funeral and other expenses. She described the pain she suffered following her son's fatal injuries, losing 80 pounds and finding herself unable to sleep. She described it as a life sentence.

The Appellant also described the debt that her son left behind in regard to the car which was smashed in the accident. She has struggled to repay this debt.

The Appellant also took issue with MPIC's award of a death benefit to the victim's biological father, who did nothing to contribute to any of the expenses following her son's death and funeral.

The Appellant submitted that both she and the victim's brother suffered daily, that this was wrong and that there need to be huge changes in the system.

Counsel for MPIC addressed both the issue of the Appellant's entitlement to Income Replacement Indemnity ("IRI") benefits and whether the death benefit and funeral expenses were correctly calculated in this case. She indicated that MPIC had great sympathy for the hardship that the Appellant had suffered as a result of her son's passing.

However, she indicated that MPIC was bound by the legislation and regulations which determine the entitlement to IRI benefits and the calculation of death benefits and funeral expenses. MPIC does not have any discretion to pay excess amounts, even in a situation as difficult as this one.

Counsel noted that in applying the MPIC Act and Regulations, MPIC had correctly assessed the entitlement benefits in the amounts at issue.

The Appellant had confirmed on cross-examination that at the time of the motor vehicle accident, the victim was single with no dependents, and had been living with his aunt and uncle and paying rent to them.

Counsel reviewed Section 123 of the MPIC Act which sets out the entitlement of a parent of a deceased child to a death benefit, as well as the funeral expenses set out in Section 124(1) of the MPIC Act.

Accordingly, the case manager's letter of December 20, 2010, correctly set out the indemnities available as a lump sum payment to his parents, for funeral expenses, and for grief counselling.

Counsel also reviewed Section 70(1) of the MPIC Act which contained a definition of victim. She also referred to the Commission's decision in *[text deleted]* (AC-03-73), which sheds some light on this appeal. In that case, the Appellant had family members who were tragically and fatally injured in a motor vehicle accident. She sought to receive IRI benefits pursuant to Part 2 of the MPIC Act. The Commission dismissed her appeal. This was upheld by the Manitoba Court of Appeal in *Krzsik v. Manitoba Public Insurance Corp.*, 2008 MBCA 29. The Court of Appeal reviewed the application of the MPIC Act under Section 70(1) as well as the definitions of "bodily injury", "victim", "accident" pursuant to Section 71(1) of the MPIC Act. The Court of Appeal stated:

"In my opinion, the respondent's argument is correct. Section 71(1) serves a gatekeeping role by stipulating the parameters as to eligibility for compensation under Part 2. And, the critical requirement is that a claimant be a "victim", a specifically defined term under s. 70(1) of the *Act*. If one reviews Part 2, it is apparent that in order to be entitled to compensation in whatever category provided thereunder, a claimant must be a "victim" or, where required, enjoy a status of relationship to a "victim". Absent that, Part 2 affords no benefit or compensation."

Therefore, counsel submitted, "in an accident" means just that. The injury preventing employment must have occurred in the course of or during the motor vehicle accident in question. The Court of Appeal stated:

"The point is that just as the word "in" is used in the phrase "in an accident," it is also used by the applicant in the phrase "in any event." That is, in either phrase, the word "in" is pivotal. The legislature did not choose to use, nor did the applicant in her example, the language "by reason of" or "as a result of." Rather, the word used is "in"...

In my view, a plain reading of the phrase "in an accident" means just that. The bodily injuries suffered by the claimant must have occurred in the course of or during the accident in question."

The Court of Appeal concluded:

“In my opinion, the Commission correctly interpreted the phrase “in an accident” and thus correctly concluded that the applicant was not a victim and hence did not come within the scope of Part 2 as provided for in s. 71(1) of the *Act*...

I would point out, however, that under Part 2, the section she would have relied upon in support of her claim for an IRI benefit was s. 81(1) of the *Act*. That section pertains to a full-time earner, which the applicant had been and was at the time of the accident.”

Counsel concluded that the MPIC Act and Regulations govern how much must be paid for this particular loss, and the decision was consistent with what the Manitoba Court of Appeal has ruled in a similar case. In situations of fatality where there are no dependents, the amounts provided in the legislation are not large, but MPIC has paid to the Appellant everything that the legislation authorizes it to pay. It does not have any discretion to pay more, even when the situation is as sympathetic as the one before the Commission now.

Discussion:

The MPIC Act provides:

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;

"victim" means a person who suffers bodily injury in an accident.

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.

Entitlement of child and parent of deceased victim

[123](#) Where a deceased victim has no dependant on the day he or she dies, each child and parent of the deceased victim, although not a dependant of the deceased victim, is entitled to a lump sum indemnity of \$5,000.

Reimbursement of funeral expenses

[124](#) The corporation shall reimburse the estate of a deceased victim for the actual cost of funeral expenses, including the cost of any grave marker, to a maximum of \$6,000.

The Commission has reviewed the Appellant's evidence as well as the submission made by the Appellant and counsel for MPIC.

The Commission wishes to extend condolences and sympathies to the Appellant for her tragic loss. However, we must agree with counsel for MPIC that the legislation is clear and must be followed. The MPIC Act and Regulations, as interpreted by the Commission and by the Manitoba Court of Appeal, do not provide for IRI benefits to flow to an individual who does not meet the definition of "victim" under Section 71(1) of the MPIC Act. Unfortunately, the Appellant did not meet the test of having suffered bodily injury which occurred in an accident, pursuant to the particular definitions set out in the MPIC Act.

We are bound by the wording in Section 70(1) and find the victim in this case was the Appellant's son. The Appellant was not a victim as defined in the MPIC Act, but the parent of a victim. We do not doubt for a moment that she has suffered a great deal of mental anguish as

well as financial loss with the loss of her son, but unfortunately, we cannot find in favour of the Appellant. The decision of the Internal Review Officer dated May 16, 2011 is upheld and the Appellant's appeal dismissed.

Dated at Winnipeg this 2nd day of May, 2012.

LAURA DIAMOND

WILF DE GRAVES

PAUL JOHNSTON