Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-35

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. The Appellant, [text deleted], appeared in person.
HEARING DATE:	July 28th, 1997
ISSUE:	Whether accident was 'caused by the use of an automobile'.
RELEVANT SECTIONS:	Section 70 (1) and 136 (1) of the Manitoba Public Insurance Corporation Act ('the Act'), and Section 26 of Regulation 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 FACTS:

The appellant, [text deleted], is one of a reliably estimated 75,000 Manitobans who have been

diagnosed with diabetes. [Text deleted] years of age at the time of his motor vehicle accident on March 4th, 1996, he had been diagnosed with Type 1 diabetes only about 8 months prior to his accident; his medical team was still in the process of working out an appropriate regimen in order to keep his blood sugar within therapeutic range. As later appeared, the insulin dosage that had been prescribed for him in the weeks prior to his accident proved to have been excessive. He had, in the interim, been diligent and conscientious in following the advice and directions of his medical advisors in all respects.

On March 4th, 1996, [the Appellant] left his Tai Kwon Do class, accompanied by a friend, having consumed a quantity of soft drinks which, in the ordinary course, would have contained ample sugar to tide him over until his next snack and to prevent the attack that followed. He and his friend then entered [the Appellant's] automobile, and the Appellant commenced driving towards a fast food outlet. Part way there, he suffered an attack of what is called 'hypoglycemic unawareness' which caused him to start driving erratically but in a manner of which he has no recollection whatsoever. His vehicle ran into the rear end of a parked car, leaving him slumped over the wheel, unconscious. It is not certain whether the collision resulted from the erratic driving during the period of hypoglycemic unawareness and was followed by loss of consciousness, or whether the collision followed the total black-out.

Fortunately, neither [the Appellant] nor his passenger was seriously injured. The passenger suffered a mild sprain to his back which appears to have been corrected with a few chiropractic treatments; [the Appellant], himself, sustained a scraping and consequent bleeding of his right

shin, a large bump on the left side of his head and, perhaps, some serious swelling to his left arm. We use the word 'perhaps', because although [the Appellant] and his mother both say that, when he regained consciousness in hospital, his left arm was badly swollen from the wrist right up to the shoulder ([Appellant's mother] describes it as being "about three times its normal size") it remains unclear whether that swelling resulted from the accident itself or from attempts by paramedics or hospital staff to make use of an intravenous line. It is also unclear whether the impact of his head against some part of the car caused or prolonged the period of his unconsciousness.

It is common ground however, that the period of hypoglycemic unawareness and subsequent loss of consciousness are a result of [the Appellant's] diabetes. In the event, some unnamed person who observed the accident called for an ambulance, which arrived very shortly thereafter and took [the Appellant] to [hospital]. It is only the cost of that ambulance service that is the subject of this appeal, since Manitoba Public Insurance Corporation ('M.P.I.C.') denies liability for that expense on the ground that the ambulance service was not required as a result of the motor vehicle accident but, rather, simply as a result of [the Appellant's] hypoglycemic attack.

THE LAW:

The relevant portions of the M.P.I.C. Act and Regulations are found, firstly in Section 70 (1) of the Act, which contains the following definitions, amongst others:

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

"Accident" means any event in which bodily injury is caused by an automobile;

> ***"Bodily injury caused by an automobile" means any bodily injury caused by an automobile, (or) by the use of an automobile . . .***

Section 136 (1) of the Act reads, in part, as follows:

> ***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 one of the following:***
>
> > ***(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care; . . .***
> >
> > ***(b) such other expenses as may be prescribed by Regulation.***

Section 26 of Regulation 40/94 provides that:

> ***The Corporation shall pay an expense incurred by a victim for expenses incurred for emergency transportation when circumstances warrant its use.***

If M.P.I.C.'s position is valid, then had [the Appellant's] passenger been seriously injured in the motor vehicle accident the insurer would have been in a position to deny liability while using that same argument - that is, that the injury was not caused by the use of a motor vehicle but, rather, by [the Appellant's] hypoglycemic attack. In that event, since it is clear that the accident was not

caused by any willful or negligent act or omission on the part of [the Appellant], that hypothetically injured passenger would have had no recourse at all. That, clearly, is not the intent of the Act.

In the case of Meek and McMillan v. R. M. Thompson, a case decided by the Manitoba Court of Appeal on February 10th, 1997, the plaintiffs were the driver and the passenger respectively in a vehicle which fell into an unmarked wash-out on an approach to a bridge; both were injured. The question before the Court was whether, in effect, the plaintiffs had the right to sue the negligent Municipality for failing to keep the highway in reasonable repair, or whether the provisions of Part 2 of the M.P.I.C. Act were applicable and they were therefore precluded from suing the Municipality in tort, as the Municipality argued. The Court, in a unanimous ruling, held that the plaintiff's could not sue the Municipality and that their remedies were limited to those set out in Part 2 of the M.P.I.C. Act, since their injuries had been caused by the use of an automobile within the meaning of that statute. As Helper, J.A. commented in her reasons for that judgment;

> "Surely the legislation is to be interpreted in a manner that results in equality and equity. A restrictive interpretation of the words "caused by" would defeat many of the objectives identified by the legislators prior to the introduction of the enactment . . . nor could it have been the legislative intent to provide different remedies for victims depending upon the proximate cause of an accident. The exact opposite intent is clear from the reading of Part 2 (of the Act) . . ."

It is not open to us to speculate whether, had [the Appellant] been on foot when he blacked out, he would have sustained greater or lesser injuries. The fact is that, immediately after a motor vehicle collision, he was found slumped over the wheel of the vehicle that he had been driving, causing some unnamed Samaritan to call for an ambulance. The extent of [the Appellant's] physical injuries could not be determined until after a thorough examination by the medical staff at the [hospital].

While, in the Meek et al v. the R. M. of Thompson case referred to above, the plaintiffs sustained serious physical injuries and the question before the Court of Appeal was whether the plaintiffs could sue the Municipality for damages rather than being restricted to the benefits contained within the M.P.I.C. Act, the principle facing us here is, for all practical purposes, identical: we still have to decide whether the expense of the ambulance was 'caused by the use of an automobile'. A careful reading of the language used by each of the three learned members of the Court of Appeal in the Meek case persuades us that the answer to that question must be in the affirmative. Using, again, some of the language of Helper, J. A.:

> "In the case at bar, the (*expense incurred*) resulted from an accident which occurred while the automobile was being driven in the ordinary course of events.
>
> . . .nor do I accept the submission that the court is required to determine the proximate cause of an accident where the plan under review uses the phrase "caused by" to describe the circumstances in which injuries or damages will be covered by the plan.

> . . . There must be some link between the injuries (for which, read "expense") sustained and the use of the automobile. An ordinary reading of Section 70 (1) leads to the same conclusion. The legislation does not require more. It does not seek out causation in terms of the accident. It specifically eliminates the concept of fault. In light of the elimination of fault, there is no support for the submission that the proximate cause of an automobile accident determines the application of Part 2.
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> . . . The use of those concepts (that is, of "proximate cause" and "chain of causation") as tools to assist in the interpretation of the legislation results in the application of factors which the legislature has specifically rejected in enacting the plan. The reliance upon those factors ignores one of the objectives of the plan - immediate compensation to victims of bodily injuries sustained (or, it may be added, medical or paramedical expenses incurred) in accidents involving automobiles."

Similarly, Philp, J.A. paraphrasing the language of Major, J. in Amos v. Insurance Corp. of British Columbia [1995] 3 SCR 405, says, in part

> ". . . While Section 70 (1) of the Act must not be stretched beyond its plain and ordinary meaning, it ought not to be given a technical construction that defeats the object and insuring intent of the legislation providing coverage.
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> Applying those principles to Part 2 of the Act, I conclude (again paraphrasing the words of Major, J.) that:
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> > *generally speaking, where an automobile or the use of an automobile in some manner contributes to or adds to the injury, Part 2 of the Act applies."*

Philp, J. A., adopted the disposition of the appeal in the Meek case set out in the reasons of Madame Justice Helper as, to a very large extent - albeit with some qualifications - did Kroft, J. A.

We are not prepared to say, upon the basis of all of the evidence presented to us, that the ambulance that took [the Appellant] to [hospital] was only required by reason of his hypoglycemic attack and not related to the use of an automobile. We note, also, that the hospital report says clearly that [the Appellant] was treated for multiple injuries and not merely for hypoglycemia, but even that enquiry is not, in our respectful view, a necessary one. As we have noted, it is our view that the accident, resulting as it did during the course of the use of that vehicle in the ordinary course, must be said to have been caused by the use of an automobile; we do not need to enquire into the proximate cause any more than we need to look into the existence or non-existence of fault on the part of [the Appellant] or of any third party.

In summary, then, we find the appellant entitled to be reimbursed for the cost of the ambulance service that took him from the scene of the accident back to the [hospital].

Dated at Winnipeg this 31st day of August 1997.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED