

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-9**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C. Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented by
Ms Joan McKelvey
[Text deleted], the Appellant, appeared on his own behalf

HEARING DATE: April 20th, 1998

ISSUE: Whether Appellant entitled to be paid cost of replacement
workers.

RELEVANT SECTIONS: Sections 70(1), 83(1)(a) and 83(2)(a)(ii) of the MPIC Act and
Section 6 of Regulation 37/94

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

[Text deleted], the Appellant, was a self-employed general contractor when, on August 14th, 1997, he was riding his bicycle and was hit by a bus. Because he had only commenced his own business in May of 1997, he was properly classified as a temporary earner under Section 70(1) of the MPIC Act. He sustained some injuries, received some income replacement indemnity and was referred to [Appellant's vocational rehab consultant] of [vocational rehab consulting company] for assistance.

The only question that we are required to address in this appeal stems from the facts that, at the time of his accident, [the Appellant] had a number of work orders outstanding, whereby he had undertaken certain renovation works as a subcontractor for [text deleted] and, as a result of what he alleges was a mishandling of his claim by MPIC, he lost those jobs. He seeks compensation for the profit that he would otherwise have made from those contracts that had to be cancelled.

By letter dated September 9th, 1997 the Adjuster looking after [the Appellant's] claim wrote to tell him that his income replacement indemnity had been fixed at \$521.91 every two weeks. He objected to that and was then told that his IRI would be increased to \$987.53 every two weeks, only to be told shortly thereafter that this second calculation was incorrect and that his IRI would revert to the original figure of \$521.91.

It was not until December 2nd, 1997, as the result of a decision made by MPIC's Internal Review Officer on November 25th, that [the Appellant] was formally advised that his income replacement entitlement had again been increased from \$521.91 to \$987.53 bi-weekly. That decision, and the cheque to make up the arrears, arrived too late to enable [the Appellant] to retrieve the contracts that had been cancelled as a result of the delay - contracts which, he testified, he would have been able to complete had he been paid the proper amount from the beginning and thus enabled to hire substitute labour to do the work for him. [The Appellant] therefore seeks compensation, by way of a lump sum award of damages for his resultant loss of business. He points out that not only did he lose the specific contracts to which he had committed himself prior to the accident, but that he also lost a large measure of credibility which he was obliged to start rebuilding again from scratch.

Unfortunately, situations of this kind are not covered by the MPIC Act. The statute is, in effect, an insurance policy, and one has to look to the language of that policy in order to determine the extent of the coverage. Unless a particular kind of loss or damage is specifically covered by the wording of the statute and the regulations, there is no available remedy from which a claimant can benefit. In [the Appellant's] case, the only additional benefit to which he was entitled - namely, interest on the monies that should have been paid to him sooner - has already been awarded and paid to him. He has no further entitlement under the statute.

While this result, to [the Appellant], undoubtedly appears inequitable, it has to be said that the insurance coverage contained within the MPIC Act and Regulations does not purport to compensate every victim for every kind of loss; it is only those kinds of loss, impairment or expense that are specifically covered by the statute that are compensable.

It necessarily follows, therefore, that [the Appellant]' appeal must be dismissed and the decision of the Internal Review Officer of MPIC confirmed.

Dated this 29th day of April 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED