

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]**  
**AICAC File No.: AC-04-47**

**PANEL:** Ms Yvonne Tavares, Chairperson  
Ms Mary Lynn Brooks  
Ms Deborah Stewart

**APPEARANCES:** The Appellant, [text deleted], was represented by [text deleted];  
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

**HEARING DATE:** November 9, 2006

**ISSUE(S):** Entitlement to Personal Injury Protection Plan ('PIPP') Benefits

**RELEVANT SECTIONS:** Sections 70(1) and 71(1) of *The Manitoba Public Insurance Corporation Act* (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], is appealing the Internal Review decision dated February 9, 2004 with respect to his entitlement to PIPP benefits arising out of an incident which took place on April 26, 2001. The Internal Review Officer, in his decision of February 9, 2004 determined that this incident did not constitute a "bodily injury caused by an automobile" within the meaning of Section 70(1) of the MPIC Act and therefore the Appellant was not entitled to PIPP benefits in connection with this incident.

### **Facts and Background**

Based upon the Appellant's testimony at the hearing of this appeal, and the written documents submitted to the Commission, we find the following facts with regards to the incident which occurred on April 26, 2001 and the events thereafter:

- On April 26, 2001, at approximately 12:30 p.m., the Appellant attended at the [text deleted] on [text deleted] to pick-up materials for a home renovation project. He drove his pick-up truck to the self-serve lumber yard, parked the truck alongside the lumber piles and proceeded to choose his lumber and load the lumber onto a roof rack on the back of his truck.
- After he had loaded the lumber, the Appellant proceeded to secure the lumber with straps. He hitched the straps onto the passenger side of the truck and then threw them over the lumber to the driver's side. He then proceeded to the driver's side of the truck to finish tightening the straps. He was standing on the box of the truck immediately behind the driver's door with a strap in his left hand. He then proceeded to dismount from the truck. As he stepped backwards off the truck, his foot caught a piece of lumber, he lost his balance and the strap broke. He fell backwards onto a steel post (a U-Tube) and then fell onto the ground and rolled under his truck.
- He was transported by ambulance to the [text deleted] Emergency Department. As a result of this accident, the Appellant sustained multiple serious injuries, including a punctured lung, three fractured ribs, two chipped teeth and various cuts and bruises.
- Initially the Appellant proceeded against [text deleted] and filed a Statement of Claim in the Manitoba Court of Queen's Bench on January 29, 2002. In the course of that proceeding, the Appellant was advised to also initiate a claim with MPIC, as the accident

might be covered by the provisions of the MPIC Act. The Appellant contacted MPIC on May 6, 2002 in order to file a claim. The Appellant completed an Application for Compensation on May 16, 2002.

- The matter was subsequently investigated by MPIC's case manager. In a decision dated November 5, 2002, MPIC's case manager advised the Appellant that:

As your injuries were not caused by an automobile within the meaning or intent of the Manitoba Public Insurance Corporation Act, there is no entitlement to benefits under The Personal Injury Protection Plan.

- A Statement of Defence was filed in the civil action on [text deleted]. Amongst the defences pleaded, [text deleted] pleaded that the action by the Appellant was statute-barred by virtue of the provisions of Sections 71 and 72 of the MPIC Act, as any injury sustained by the Appellant arose by virtue of the use of a motor vehicle or by virtue of a load thereon.
- The Appellant then sought an internal review of the case manager's decision of November 5, 2002. As noted above, the Internal Review Officer in his decision dated February 9, 2004 dismissed the Appellant's Application for Review and confirmed the case manager's decision of November 5, 2002, on the basis that the injury sustained by the Appellant was not a "bodily injury caused by an automobile".
- Subsequently, in the civil suit, [text deleted] made an application to the Court of Queen's Bench for summary judgment dismissing the Appellant's claim. In a written decision dated [text deleted], [text deleted] found that the Appellant's claim was linked to the use of his truck and that his injuries occurred while using an automobile. Accordingly his action against [text deleted] was statute-barred.

- The Appellant is now pursuing his appeal of the Internal Review decision dated February 9, 2004 on the basis that his injuries were caused by an automobile or by the use of an automobile.

### Relevant Statutory Provisions

The relevant sections of the MPIC Act are as follows:

#### **Definitions**

70(1) In this Part,

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

"**automobile**" means a vehicle not run upon rails that is designed to be self-propelled or propelled by electric power obtained from overhead trolley wires;

"**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, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused

(a) by the autonomous act of an animal that is part of the load, or

(b) because of an action performed by the victim in connection with the maintenance, repair, alteration or improvement of 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.

### Discussion

Counsel on behalf of the Appellant argued that the Appellant's claim arose out of the use of an automobile and accordingly, his injuries came within the definition of "bodily injury caused by an automobile" set out in the MPIC Act. Relying upon the decision of the Manitoba Court of Appeal in *McMillan v Thompson (Rural Municipality)* (1997) 115 MAN. R. (2d) p 2, he submitted that the Commission was required to take an extremely liberal interpretation of the MPIC Act when considering whether the incident giving rise to the Appellant's claim constituted an accident within the meaning of the MPIC Act. Counsel for the Appellant also maintained that the Commission was bound by the decision of [text deleted], and his finding that this accident

was caused by the use of an automobile and therefore fell under the provisions of the MPIC Act. As a result, counsel for the Appellant urged the Commission to find that the incident was an accident within the meaning of the MPIC Act and accordingly that the Appellant is entitled to benefits pursuant to Part 2 of the MPIC Act.

Counsel for MPIC referred to a two-part test set out by the Internal Review Officer at page 7 of the Internal Review decision. The two-part test was set out as follows:

- a. Did the accident result from the ordinary and well-known activities to which automobiles are put?
- b. If so, is there a causal nexus between the injuries and the ownership, use, or operation of the automobile, or is the relationship “merely incidental or fortuitous”?

Counsel for MPIC submits that this test is to be used to determine whether this incident comes within the provisions of Part 2 of the MPIC Act. He maintains that while the first branch of the test may be satisfied, the second branch of the test has not been met. He argues that the actual cause of the injury was the Appellant’s loss of balance when he stepped on the loose lumber, as he was disembarking from the vehicle. Counsel for MPIC contends that the Commission is not bound by the decision of [text deleted], since MPIC has exclusive jurisdiction to decide any matter related to compensation under Part 2 of the MPIC Act and to review any such decision pursuant to Section 169(1) and Section 170(1) of the MPIC Act. Counsel for MPIC further argues that, pursuant to Section 188 of the MPIC Act, a decision of the corporation or the Commission is final and binding and not subject to appeal or review by a court, except the Court of Appeal pursuant to Section 187(6). As such, he asserts that the Court of Queen’s Bench does not have jurisdiction to adjudicate the entitlement to benefits pursuant to Part 2 of the MPIC Act. Accordingly, counsel for MPIC submits that the Internal Review decision dated February 9, 2004 should be confirmed and the Appellant’s appeal dismissed.

**Decision:**

Upon a review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant's injuries were caused by an automobile, and accordingly, he is entitled to benefits pursuant to Part 2 of the MPIC Act.

Applying the facts of the case at hand to the legislation, the Commission relied upon the decision of Helper, J.A. 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 respondent's 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. The answer to that question is undoubtedly "yes". The Commission finds that the Appellant's accident and the Appellant's resultant injuries occurred while he was disembarking from his vehicle. As a result, his injuries were caused by (in the sense of being related to) the use of an automobile.

At the outset of the hearing, the parties in this matter had asked that the Commission make a declaration as to whether or not the Commission considered itself bound by the Court of Queen's Bench decision of [text deleted] Since the determination made by the Commission in this case is in agreement with the decision made by [text deleted] in the action in the Court of Queen's Bench, the Commission finds that it is not necessary to make such a declaration.

By the authority of Section 184(1) of the MPIC Act, the Commission therefore orders that,

- a. The Appellant's claim be referred back to MPIC for processing in light of the

foregoing findings; and

- b. The decision of MPIC's Internal Review Officer, bearing date February 9, 2004, is therefore rescinded and the foregoing substituted for it.

Dated at Winnipeg this 5<sup>th</sup> day of March, 2007.

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**YVONNE TAVARES**

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**MARY LYNN BROOKS**

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**DEBORAH STEWART**