

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *K.M. v. Saskatchewan Government
Insurance, 2003 SKAIA 006*
Date: 20030822
File: 023 of 2003

BETWEEN

K.M., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
K.M., For the Applicant
Lynn Henderson, For the Respondent

Before: **Ann Phillips, Q.C., Chair**

**THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL AND HEALTH
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND
OTHER IDENTIFYING INFORMATION.**

Heard at Regina, Saskatchewan
July 16, 2003

DECISION

FACTS

[1] The Appellant, K.M., appeals a February 10, 2003 decision of Saskatchewan Government Insurance (“SGI”) with respect to his permanent impairment benefits.

[2] The Appellant was seriously injured in a motor vehicle accident September 2, 1999, sustaining a broken right hip, multiple bumps and bruises, scalp lacerations and a bruised right shoulder. He was then [in his late eighties].

[3] He needed and obtained a right hip joint replacement but he testified that his right shoulder is just as bad as the hip. He was awaiting surgery for the shoulder, but it was cancelled. Now, it is painful, and difficult to move, he can’t get his right hand to his mouth, except by lifting it with the left hand. He can’t drink a cup of tea, he finds it very difficult to put his clothes on, although not impossible. Combing his hair and toileting are difficult. He uses his left hand for shaving.

[4] He has other health problems about which he is admirably stoic. He has bladder and bowel incontinence, he now requires a walker, and he has balance problems and dizzy spells. He requires a nurse for tub baths, he has great difficulty getting in and out of a car, his appetite is poor and his strength has declined. His wife is afflicted with lupus.

[5] Because of his problems climbing stairs, he (and his wife) had to sell their house, a four level split, and move into an apartment.

[6] The Appellant was assisted in his presentation by his son-in-law, who also testified. The Appellant’s son-in-law described the Appellant as having been very active up until the time of the accident. The shoulder problem emerged after the very real difficulties with the hip replacement had been rectified.

[7] He had had previous assessments by physicians in connection with his right shoulder: a possible projection of normal bone, a ganglion or swelling, some degenerative arthritis in the A.C. joint, and a possible chronic rotator cuff tear. All were asymptomatic.

[8] SGI filed pre-accident medical and x-ray reports. A 1998 x-ray report referred to:

“Elevation of the right humeral head in relation to glenoid and acromion is suggestive of previous rotator cuff injury.”

[9] Dr. Jugdeo, orthopaedic surgeon, saw him later in 1998 in connection with his right shoulder. He diagnosed a ganglion that was “asymptomatic”. He added:

“He may have a chronic rotator cuff tear, but again this is asymptomatic and requires no treatment at his age.”

[10] The shoulder became symptomatic.¹ The Appellant was seen in January, 2000 by Dr. Kim, an orthopaedic surgeon, who reported to the family physician as follows:

“This patient complained of pain in both shoulders. Apparently his right shoulder pain is worse than the left shoulder pain. Apparently his shoulder condition worsened after he was involved in a motor vehicle accident on September 2nd of last year. He also stated that he gradually developed stiff and painful shoulders some time before the accident and he has had difficulty combing his hair for a long time. In 1974 he also underwent surgery to his right AC joint and had a right hip arthroplasty in September of last year.²

His right shoulder appeared to be swollen and was somewhat tender to palpation. Abduction was limited to 70 degrees and flexion to 80 degrees. External rotation was limited to 15 degrees with pain. The left shoulder was also slightly tender. Abduction and flexion lacked 15 degrees with limited external rotation of 25 degrees. Neck movements were well-preserved and painless.

X-rays showed proximal migration of the humeral head in relation to the glenohumeral joint with a somewhat widened AC joint on the right side.

The findings suggest a chronic frozen shoulder and a long-standing rotator cuff tear. I put him on physiotherapy and advised him to do shoulder exercises at home as well. I would like to re-assess him in a month or so. Ultrasound will be obtained for further clarification.”

[11] The shoulder condition did not improve, and in January, 2001, Dr. Lwanga examined him on consultation from Dr. Kim, with a view to surgery to repair the right rotator cuff. Dr. Lwanga concluded that:

¹ Dr. Kim’s report indicates the development of symptoms may have happened before the accident. There is no other evidence of this, other than the fact that the Appellant did consult with doctors in 1994 and 1998 about the shoulder, even if asymptomatic at the time of consultation.

² Dr. Jugdeo was mistaken. In fact, this surgery was to his left shoulder in 1974.

“This gentleman does not appear to have any significant risk factors apart from his advanced age which is not a contraindication. Provided the pending tests are acceptable, there should be no contraindication to surgery.”

[12] In fact, the proposed operation did not take place, and has still not occurred. SGI advised that there had been a letter from Dr. Kim referring to a statement by the Appellant that he was not having problems with the shoulder, so he therefore cancelled the operation, and had not proceeded further. The Appellant and his son-in-law were under the impression that the operation had been postponed because of insufficient operating space for day surgeries. It appears as if there was a significant breakdown in communication between this patient and his several doctors. In any event, the Appellant had not returned to Dr. Kim, and nothing further was done in connection with his shoulder.

[13] The Appellant’s son-in-law testified that his father-in-law is now being seen by his own family physician, and there is some reason to hope that he will now have properly managed medical care, rather than a piecemeal approach often encountered by the elderly and which may have deprived him of timely shoulder surgery.

[14] Eventually, in July, 2002, SGI forwarded the shoulder documents to Dr. Alexander for review in connection with a permanent impairment benefit. Dr. Alexander stated:

“Although there was some problem with the shoulders as noted in the medical records, this specific problem of the torn rotator cuff on the right side, involving two of the four tendons, and the decreased range of motion, is partly due to the MVA. Although Dr. Kim mentions in 1974 there was surgery of the right AC joint, it is my impression that it was the left AC joint as this is the area of injury indicated in Dr. Lwanga’s letter and other medical information.

[The Appellant] has also had the misfortune of suffering from an olecranon bursitis which is not SGI responsibility. In January of 2000, Dr. Kim gave an indication that there was a decrease in range of motion of the right shoulder. An up-to-date assessment by a physical therapist or family physician regarding the range of motion would enable us to do an impairment rating.”

[15] This was done August 13, 2002 with the following results for the right shoulder:

	Normal	Actual
Abduction	180°	60°
Adduction	50°	20°
Superior rotation	90°	0°
Inferior rotation	90°	45°

Flexion	180°	60°
Extension	50°	50°
External rotation	90°	10°
Internal rotation	40°	40°

[16] SGI had previously assessed³ a benefit for the permanent impairment due to his hip replacement, loss of range of motion in the hip and leg scarring at 24.1% of the maximum of \$133,192, or \$32,099.27. This amount was not in issue.

[17] In assessing the permanent impairment benefit for the shoulder, Dr. Alexander stated:

“It is very likely that there have been a number of influences changing the power, strength and range of motion of the shoulder. There have been a number of situations including an aspiration of a ganglion at this site, however, the torn rotator cuff was possibly a direct result of the MVA.”

[18] He calculated the permanent impairment as follows:

(a)	Loss of abduction	3.9%
(b)	Adduction	0.5%
(c)	Loss of forward flexion	1.9%
(d)	Loss of external rotation	1.7%
(e)	Loss of internal rotation	1.0%

[19] These totalled 9%, and combining the 9% with the previous 24.1% (rounded up to 25%) for the hip, brought the overall total to 32% using the Table for the Calculation of Successive Remainders in Appendix C of the Personal Injury Benefits Regulations then in force (“PIBR”).

[20] This entitled the Appellant to an additional \$10,522.17 (the total being \$42,621.44, which is 32% of \$133,192.00, the maximum benefit for permanent impairment.

³ In April, 2002.

[21] I have reviewed the PIBR Schedule of Permanent Impairments in Appendix B of the PIBR.⁴ Paragraph 4(c)⁵ allows the following percentages for restriction of movement of the shoulder joint:

- | | | |
|-----|--|-----------|
| (a) | Partial to complete loss of abduction: | 0.5 to 6% |
| (b) | Partial to complete loss of front elevation | 0.5 to 3% |
| (c) | Partial to complete loss of external rotation | 0.5 to 2% |
| (d) | Partial to complete loss of internal rotation | 1% |
| (e) | Partial to complete loss of adduction or extension | 0.5% |

[22] The maximum impairment obtainable for shoulder restriction under these regulations is 12.5%.⁶ While 9% seems low to a layperson in terms of the impairment of the Appellant's actual ability to use his arm and hand, and in terms of what is now available,⁷ there was no evidence of any error, and indeed it appears (although unfortunately there was no evidence provided) that Dr. Alexander assessed, giving the Appellant the benefit of the doubt and without discounting for the condition of the shoulder (even if asymptomatic) before the accident.

[23] There is no question that this gentleman's condition is much worse since the accident. There is no doubt in my mind that the present restriction in the use of his shoulder was brought about by the accident. In this review of SGI's decision, I cannot assess the other problems outlined above in paragraph 4: there was simply no medical evidence available from which it could be concluded that the need for a walker, the balance problems and the dizzy spells, were attributable to the accident, even though he mentioned he had had a knock on the head. The loss of appetite, mobility and strength, the incontinence: all are great losses to a vigorous, active old man, but there is no medical evidence that any of these losses – except mobility – were caused

⁴ Chapter A-35, Reg 3 at page 46 of the November, 1998 version.

⁵ Part 1, Division 1, Subdivision 1, Upper Limb and Scapula.

⁶ For injuries since January 1, 2003, the maximum is now 21%, and the Appellant's impairment on the current scale would be 14%: Personal Injury Benefits Regulations as amended by SR 70/2002 and 121/2002, Appendix B., Division 1, Subdivision 1 Upper Limbs, Part 1, Shoulder and Arm, section 1.5.

⁷ See previous footnote.

by the accident, only that they first happened after the accident, which is not the test to be applied.

CONCLUSION

[24] SGI's decision of February 13, 2003, reviewing its earlier decision cumulating permanent impairment benefits at 32%, is upheld.

Dated at Regina, Saskatchewan, on August 22, 2003.

Ann Phillips, Q.C., Chair