

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *R.O. v. Saskatchewan Government Insurance,*
2004 SKAIA 051
Date: 20041108
File: 015 of 2004

BETWEEN

R.O., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
R.O., Applicant and R.V.
Tamara Harasen, for the Respondent

Before: **Jeffrey Scott, Chair**
Beverly Cleveland, Commission Member
Joy Dobko, Commission Member

**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
October 12, 2004

DECISION

[1] This is an appeal by the Appellant, R.O., of a decision made by Saskatchewan Government Insurance (“SGI”) dated December 5, 2003. In its decision, SGI informed the Appellant that pursuant to section 101(2)(e) of **The Automobile Accident Insurance Act (the “Act”)** he is not entitled to benefits for the injuries that he suffered in an accident on November 19, 2003. The issue is whether section 101(2)(e) of the **Act** applies to the facts presented in this appeal.

FACTS:

[2] On November 19, 2003, the Appellant was in the process of unloading a water tank from his farm truck when the truck unexpectedly lurched forward causing the water tank to slide off of the back of the raised truck box and onto the Appellant. The Appellant suffered a crushed left foot and a broken right ankle.

[3] In the letter dated December 5, 2003 Gary Kraft, Supervisor, Bodily Injury Unit, SGI informed the Appellant that pursuant to s. 101(2)(e) of the **Act** he was not entitled to benefits. Section 101(2)(e) states as follows:

“Notwithstanding subsection (1), this Part does not apply to a bodily injury caused by a motor vehicle arising out of an accident if the bodily injury:

(e) is caused while putting a load on or a load off the motor vehicle”.

LAW AND ANALYSIS

[4] The Commission can review the legal correctness of SGI’s decision. In reviewing a decision of SGI, the Commission has the same jurisdiction under section 193(7) of the **Act** that the Court of Queen’s Bench previously had under section 198(3) of the **Act** then in force to set aside, confirm or vary the insurer’s decision or make any decision that the insurer is authorized to make pursuant to this Part.

[5] The discretion to make decisions must be exercised in a judicial manner. The discretion can only be exercised in favour of the applicant if it is demonstrated that the decision of SGI (i.e. not allowing benefits under the **Act**) was erroneous, or based on erroneous assumptions, or at the very least, the decision was unreasonable.¹ The Commission will exercise its discretion in the same way.²

[6] In this case, we are all of the view that SGI's decision to deny benefits to the Appellant pursuant to section 101(2)(e) of the **Act** is correct in law. The Appellant was in the process of unloading the water tank from his truck when the truck, unexpectedly lurched forward, causing the water tank to move and fall off of the truck box and onto the Appellant resulting in very significant injuries to the Appellant. Those factual circumstances fall squarely within the exception provided in section 101(2)(e) of the **Act**. In coming to that conclusion we have considered **Marathon Realty Co. v. Laidlaw Waste Systems Ltd.**;³ **Reavely v. Regina (City)**;⁴ and **Krieger v. Saskatchewan Government Insurance**.⁵

[7] We, also, considered Ms. Harasen's admission that SGI does not dispute that the truck moved forward just prior to the water tank falling off of the truck and onto the Appellant. However, in our view the movement of the truck is not the determinative factor in this case. The determinative factor is that the Appellant was injured in an accident while he was in the process of unloading the water tank from the truck.

CONCLUSION

SGI's decision that the Appellant is not entitled to benefits pursuant to the statutory exception provided in section 101(2)(e) of the **Act** is upheld.

Dated at Regina, Saskatchewan, on November 8, 2004.

¹ Belchamber v. Saskatchewan Government Insurance [1997]TWL QB97557; Donan v. Saskatchewan Government Insurance [1998] TWL QB98224; Collis v. Saskatchewan Government Insurance, [1998] TWL QB98113

² R.C. v. Saskatchewan Government Insurance 2003 SKAIA 001

³ (4- 112 Sask. R., 207

⁴ 190 Sask. R., 148

Jeffrey Scott, Chair

Beverly Cleveland, Commission Member

Joy Dobko, Commission Member

⁵ 240 Sask. R.11