

Automobile Injury Appeal Commission

Province of Saskatchewan

Citation: *A.L. v. Saskatchewan Government Insurance,*
2005 SKAIA 043

Date: 20050907

File: 081 of 2004

BETWEEN:

A.L., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:

A.L., for the Applicant

Dale Brown, for the Respondent

Before: **Beverly Cleveland, Chair**
Stan Loewen, Commission Member
Conrad Hnatiuk, 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 Prince Albert, Saskatchewan
May 11, 2005

DECISION

[1] The Appellant, A.L., appeals SGI's decision of March 3, 2004 wherein SGI awarded injury benefits of 16% for whole body impairment, consisting of 15% for scarring and symmetry alteration, plus 1% for clavicle fracture. No successive remainders were applied as there is only one item of permanent impairment exceeding 5%. Further assessments were to be determined at a later date.

FACTS

[2] The Appellant was injured as a seat-belted passenger in a single vehicle roll-over in March 2003.

[3] Injuries sustained were a complex facial soft tissue injury with multiple abrasions to upper eye-brow, the scalp on the right side forehead, the tip of the nose and the cheek - the right eye-lid was lacerated, resulting in incomplete closure and chronic exposure of right cornea and conjunctiva.

[4] The Appellant wears contact lenses, which has been impaired as a result of the accident and this eye is now susceptible to conjunctivitis.

[5] The lid laceration resulted in cornea distortion and astigmatism. The astigmatism is correctable with spectacles and vision returns to 20/20. With contact lenses, best vision is 20/30. He has been fitted with extended wear lenses due to difficulty with inserting and removing lens due to laceration incurred in accident.

[6] On April 13, 2004 S.G.I. awarded a further 6.3% for permanent whole body impairment. The potential for additional award was referenced in the original March 3, 2004 decision...

"Further assessments to be determined at a later date".

The additional 6.3% was awarded to address scarring, based on measurements of scarring to left leg.

[7] The Appellant, supported by his parents seeks additional payment for proper functioning of right eye which makes it susceptible to chronic recurrent conjunctivitis - due to lack of proper tearing.

[8] Vision has not been affected. The Appellant has been advised not to wear contact lenses. Dr. Malac testified that "the astigmatism almost totally disappeared, eye is back to original shape --- minimal changes for prescription for glasses --- no change for contacts." All medical evidence indicates vision is back to normal, problem of eye drying due to lubrication will continue and therefore will be prone to infection. Use of eye drops and ointment will continue to be of benefit and S.G.I. agrees to compensate for same.

[9] August 30, 2004 the Appellant was awarded an additional 3% for permanent impairment based on new regulations - Division 3, Sub-division 2, 1.2 (a) (ii) "disruption of medial or lateral canthus" (2%) and 1.3 Subsection A "disruption of lacrimal apparatus unilateral" (1%).

[10] The Appellant and his parents are concerned about the future, particularly that the cornea may be affected by chronic dryness resulting from lack of tearing and feel more compensation should be paid for what might happen in the future.

LAW AND ANALYSIS

[11] Division 6, Section 154 (1) states:

"The insurer shall evaluate an insured's permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments."

Section 154 (2) further states:

"If an insured's permanent impairment is not listed on the prescribed schedule of

permanent impairments, the insurer shall determine a percentage for the permanent impairment using the prescribed schedule as a guide."

[12] SGI, based on advice from Dr. Alport has provided under the new regulations --- Division 3, Subdivision 2, 1.2 (a) (ii) that:

"disruption of medial or lateral canthus is a "major" disruption on the basis that the regulations have not described the difference between "major" and "minor" disruption -- resulting in a 2% award - giving the Appellant the broadest and more favourable interpretation.

[13] As per Regulation 1.3 Subsection A, "disruption of lacrimal apparatus unilateral", the Appellant received 1%. This total of 3%, additional to previous award addresses the issue of lack of ability for the eye to tear properly.

[14] The Appellant and his parents expressed concern that the Appellant has not been compensated for "what may happen in the future". The example provided was future potential need for a cornea transplant, due to infections resulting from improper tearing.

CONCLUSION

[15] There are no provisions to award for "what might happen". The Commission finds SGI has applied all the existing available benefits reasonably and properly. Should new evidence become available in the future, the Appellant can make further application.

[16] SGI agrees to continue to cover costs of medication (lubrication for eye) associated with the problem of lack of proper tearing. The Commission finds in favour of SGI.

Dated at Regina, Saskatchewan on September 7, 2005.

Beverly Cleveland, Chair

Stan Loewen, Commission Member

Conrad Hnatiuk, Commission Member