

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *I.S. v. Saskatchewan Government
Insurance, 2006 SKAIA 023*
Date: 20060410
File: 003 of 2003

BETWEEN

I.S., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
Daniel N. Tangjerd, for the Applicant
Dale W. J. Brown, for the Respondent

Before: **Ann Phillips, Q.C., Chair**
Beverley Cleveland, Commission Member
Mukesh Mirchandani, Commission Member

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

DECISION

BACKGROUND

[1] On January 3, 2006, the Saskatchewan Court of Appeal allowed the appeal of Saskatchewan Government Insurance (“SGI”) from our decision dated November 13, 2003, and remitted the matter to the Commission “for reconsideration by an appropriate panel” in light of their decision.

[2] Specifically, the Commission was directed to apply the law with respect to determination of causation, and to determine the question of fact as to whether the Appellant was a “thin skull” victim entitled to fully recover the no fault benefits available under *The Automobile Accident Insurance Act*, or whether she was a “crumbling skull” victim, entitled only to a proportion of those benefits.

[3] The Court of Appeal also directed the Commission to a reference in Dr. Vassos’ notes dated August 14, 1995 that the Appellant was “depressed” on that date.

[4] The Court of Appeal also suggested that the Commission should reconsider whether three motor vehicle accidents that followed the August 20, 1995 accident should have been considered at all.

IS THE ORIGINAL PANEL “AN APPROPRIATE PANEL”?

[5] The members of the original panel are of the view that it would not be reasonable for a new panel to have to familiarize itself with the file and review the transcript simply to apply the law correctly to the evidence which they heard in 2003, and to deal with the additional points raised by the Court of Appeal referred to in paragraphs [3] and [4].

RECONSIDERATION OF THE CAUSATION ISSUE

[6] What we found after hearing and reading the evidence at the original hearing (and stated badly in our decision)¹ was that the Appellant’s condition of depression was caused by the accident, primarily the August 20, 1995, but also by the three later motor vehicle accidents for

¹ We also reviewed the evidence following the Court of Appeal’s decision.

which SGI is also responsible². While the Court of Appeal characterized the first accident as the one which gave rise to the proceedings, in fact, all four accidents occurring under the non-fault regime gave rise to the proceedings. The two earlier motor vehicle accidents under the tort regime are, of course, a different matter³, and so would any injuries or illnesses not caused by a motor vehicle.

[7] In doing so, we did indeed consider Dr. Vassos' notation of August 14, 1995⁴, just a few days before the first "no fault" accident, that she was "depressed" on that date. Unfortunately, we did not think it necessary to expressly refer to that notation. In Commissioner Mirchandani's experience as a practising psychiatrist, a single reference to "depressed" is properly considered a symptom, rather than a diagnosis, and was so considered by Dr. Vassos, who at that time was treating her (by hypnotherapy, principally) for anxiety, not for depression.

[8] It was Dr. Vassos' practice to specifically indicate his diagnosis at each session. From April 1995 to August 14, 1995, he notes "Diagnosis —anxiety". After the accident of August 20, he treated her on several occasions, with the diagnosis indicated as follows:

- (1) August 28, 1995 Anxiety/Chronic Pain
- (2) October 27, 1995 Anxiety/Chronic Pain
- (3) November 3, 1995 Chronic Pain
- (4) November 8, 1995 Chronic Pain
- (5) November 15, 1995 Chronic Pain
- (6) December 4, 1995 Depression

[9] We observe that Dr. Alport found no special significance to the notation. Indeed, it is common to describe someone as "depressed" without necessarily implying clinical depression.

[10] We also considered the fact that Dr. Truchan, a rheumatologist, prescribed fluoxetine (Prozac) at 20 mg doses, beginning September 26, 1995. We do not have Dr. Truchan's reports.

² By aggravating her physical symptoms (especially pain), they would tend to prolong and/or deepen the depression.

³ They were considered as part of the Appellant's "original position" in our previous decision: paragraphs [46] to [60].

⁴ This is referred to at paragraph [21] of the Court of Appeal decision.

Dr. Glover, the family physician, mentions Dr. Truchan's prescription of this and Imovane (sleep disorders) in connection with nightmares.⁵

[11] Does Dr. Vassos' reference to "depressed" in itself suggest that the depression was not "caused" by the accident, because it came before the accident? It has frequently been argued before us that if symptoms (a sore neck, a sore knee, headaches) do not develop within a very short time after an accident, the causal link between the accident and the symptom has not been made, and in general, we take this analysis into account in our decisions. Psychiatry and common experience both lead us to conclude that one would not expect full blown depression to develop overnight following a motor vehicle accident. We did consider the existing physical problems, relationship problems, her reaction to subsequent physical problems, her sporadic use of recreational drugs and alcohol, the court disputes with her former spouse, with special reference to those documented by Dr. Vassos in the interval immediately before and after the August 20 accident as "causes" of the depression, and we thought one or more of them might well be factors equivalent to a "thin skull", -predisposing her to depression, or (alternately), if there had been no motor vehicle accidents, one or more of them might have led independently to depression.

[12] In the end, however, we did conclude that the accident was a cause of the depression⁶. It may not have been the sole cause of the depression, but as the Supreme Court of Canada pointed out in *Athey v. Leonati*⁷, that has never been required, if it contributes materially.

[13] We found that the 1995 accident was 25% responsible for the Appellant's ensuing depression⁸. We were of the view that 25% was a "material contribution", and outside the *de minimis* range, referred to by the Supreme Court. We made the finding of 25% in case we were wrong in law that 25% was a "material contribution". We regret the confusion that this created.

[14] To elaborate, we did not think the Appellant's condition before the 1995 accident was such that she would inevitably become severely depressed as the result of her various problems unrelated to the accident. It was certainly possible: we thought she was at risk. On the other hand, the other factors involved had been present for some time, and the evidence is that she was coping, although she was being treated for anxiety. We did not believe, however, that this made

⁵ Dr. Glover added Diazepam (anti-anxiety) and Tylenol 3.

⁶ The three later "no fault" accidents caused the continuation of the depression.

⁷ [1996] S.C.R. 458, <http://www.canlii.org/ca/cas/scc/1996/1996scc97.html>.

⁸ Paragraph [90].

her a “crumbling skull” victim for depression. In her case, the pain from the injuries was the straw that broke the camel’s back.

[15] It is important to reiterate that *The Automobile Accident Insurance Act*⁹ provides no fault coverage for “bodily injuries caused by an automobile arising out an accident”¹⁰. It does not limit coverage to injuries *solely* caused by the automobile accident. We are of the opinion that “material contribution” is simply one that is not trivial, that is outside the *de minimis* range.

[16] As a result, we held SGI fully responsible for restoring the Appellant to her “original position”, without pro-rating benefits, including rehabilitation benefits, income replacement benefits and benefits for expenses¹¹, although not (yet) for a permanent impairment benefit.¹²

[17] The Appellant is entitled to the costs of her initial appearance on February 23, 2006, specifically fees and disbursements according to double column 3 of the Tariff of Costs of the Court of Queen’s Bench, not to exceed \$2,500.

Dated at Regina, Saskatchewan, on April 10, 2006.

Ann Phillips, Q.C., Chair

Beverley Cleveland, Commission Member

Mukesh Mirchandani, M.D., Commission Member

⁹ In force at the time of the Appellant’s 1995 accident.
¹⁰ Section 101
¹¹ Paragraph [94]
¹² Paragraph [93]