

Automobile Injury Appeal Commission

Province of Saskatchewan

Citation: *S.A. v Saskatchewan Government
Insurance, 2006 SKAIA 031*

Date: 20060503

File: 067 of 2005

BETWEEN

S.A., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:

S.A., for the Applicant

Joan Eremko, for the Respondent

Before: **Beverly Cleveland, Chair**
Peter Bergbusch, 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 Regina, Saskatchewan
December 14, 2005

DECISION

[1] The Appellant, S.A., appeals from a decision of Saskatchewan Government Insurance (“SGI”) to deny compensation for a miscarriage she says resulted from a motor vehicle accident on September 19, 2004.

FACTS

[2] The Appellant testified that, while traveling at approximately 100 – 105 km per hour, she was distracted by her 15 month old daughter, lost control and rolled the truck she was operating. Both were belted. The Appellant remembers awakening to the smell of smoke and her crying child, then proceeded to extract both herself and daughter from the vehicle.

[3] With the assistance of a passerby, the Appellant and daughter attended at the Yorkton Regional Hospital.

[4] The Appellant presented in the emergency department with a pulse rate of 113, blood pressure of 136/97, cramping, sore neck, head and shoulder, lacerations and bruising.

[5] The Appellant and her child spent about four hours at the Yorkton Hospital. She testified that she “passed a clot” while at the hospital and she believes this was a miscarriage of her pregnancy. She went home to [City] with her husband who came and got them from the Yorkton Hospital.

[6] The Appellant had a positive pregnancy test on September 14, 2004, five days prior to the motor vehicle accident (“MVA”). It was her second pregnancy.

[7] On September 29, 2004, an ultra-sound was conducted and showed no evidence of pregnancy. A pregnancy test the following day was also negative.

[8] The Appellant testified that she has been pregnant three times and has had no other miscarriages but for the one alleged to have been caused in the accident. In all three pregnancies the Appellant experienced bleeding and what she and her family doctor referred to as “a menstrual cycle” and “period” during the first two months.

[9] The Appellant’s doctor, Dr. Christie, stated:

“This lady usually has two periods at the beginning of every pregnancy while she is pregnant. This does not alter the fact that she was pregnant before the accident and not pregnant after the accident. The accident was only five days after the positive pregnancy test and she was not bleeding at that time. There was no evidence of any bleeding at the time of the accident. She did not bleed until the 29th of September and had a pregnancy test done on the 30th of September which was negative. This miscarriage must have happened at least the week before this bleeding as the pregnancy test usually stays positive for a week after a miscarriage.”

[10] Dr. Radford in his written evidence stated:

“...she was extremely early in her pregnancy, i.e. 6 weeks gestation. At this stage of pregnancy the uterus is deep within the pelvis and well protected by the pelvic bone and surrounding tissues. There was no documentation made of any injury to the pelvic structure at the time of the MVA it appears that this woman was in the process of already having begun the miscarriage. Although it is unfortunate, I see no relation between the miscarriage and the Motor Vehicle Accident”

[11] Dr. Alport stated in his written evidence that:

“...it is a little unfair to suggest that regular menstrual periods in the first trimester are a matter of routine for this claimant.”

[12] Dr. Alport states that it is not possible to state with absolute certainty that the psychological trauma that may have occurred would have been the factor that “pushed her over the edge” from a threatened miscarriage to a completed miscarriage----“but my best

guess” is that the miscarriage was inevitable, was spontaneous and unrelated to the motor vehicle collision.”

[13] On September 7, 2005, Dr. Alport writes to SGI Legal Counsel, regarding the fact that the Appellant is again pregnant and bleeding in the early stages of pregnancy -- this has no bearing on his earlier opinion. He states:

“From a medical point of view that is bad news for the claimant as it certainly increases the likelihood that she might miscarry once again.....The fact that miscarriages are common and not caused by trauma such as that which occurred in this lady’s motor vehicle collision”.

ANALYSIS

[14] The Commission panel is faced with two opposing views.

[15] Dr. Alport and Dr. Radford stated the MVA was not sufficient to cause psychological trauma leading to spontaneous miscarriage; that the fetus was sufficiently protected at this stage of the Appellant’s pregnancy; that pre MVA bleeding indicated a miscarriage was likely in progress. Both opinions, however, are unclear about the number of times she has been pregnant and also discounted the Appellant’s history of bleeding during the first trimester of her pregnancy.

[16] The Appellant testified the accident that occurred at highway speed was very traumatic, particularly because she was accompanied by her infant daughter, and that she passed a “clot” at the Yorkton Hospital. After the accident she had an elevated heart rate and increased blood pressure. The Appellant testified her second pregnancy was the same as her first and third pregnancies and that she experienced early bleeding.

[17] Dr. Christie confirmed that, in all three pregnancies, the Appellant presented with bleeding in the first trimester and, with the exception of the second pregnancy, the other pregnancies were carried to success. She did not have a history of miscarriage.

[18] The Appellant also testified that her menstrual history was consistently irregular and for ten years controlled by oral contraception except for periods of time when she and her husband planned to have children.

LAW

[19] In reviewing a decision of SGI, the Commission has jurisdiction under Section 193(7) of *The Automobile Accident Insurance Act*, R.S.S. 1978, c. A-35 (the “Act”), to:

- (a) set aside, confirm or vary the insurer’s decision, or
- (b) make any decision that the insurer is authorized to make pursuant to Part VIII of the *Act*.

Discretion will be exercised in favour of the Applicant if it is demonstrated that the decision of SGI was erroneous; or based on erroneous assumptions; or at the very least, the decision was unreasonable. (*R.C. v. Saskatchewan Government Insurance*, 2003 SKAIA 001)

[20] We find the Appellant to be credible witness. She testified in a frank and candid manner and her story is believable. It is also supported by the facts and by her family doctor who confirmed she experienced bleeding during the first trimester of each pregnancy. The Appellant has been pregnant three times and successfully carried to term pregnancies one and three.

[21] The Appellant has the burden of proof on a civil standard to show she is entitled to benefits. She has met that burden. We are satisfied on a balance of probabilities that the miscarriage of her second pregnancy was caused by the motor vehicle accident on September 19, 2004. We prefer the evidence of the Appellant and her treating family doctor to that of Drs. Alport and Radford in this case. Overall we find the materials filed and the testimony of the Appellant leads us to reasonably conclude the MVA caused the miscarriage of her second pregnancy.

CONCLUSION

[22] We find that SGI's decision is unreasonable and set it aside. SGI is ordered to assess the permanent impairment for loss of fetus. (Section 3.3 of *The Personal Injury Benefits Regulations*, Division 5, Part 3, assigns 7% for loss of fetus.)

[23] As the Appellant has been successful in her appeal she is also entitled to a refund of her appeal fee of \$75 and her reasonable expenses for the appeal including mileage and meals paid at the government rate in place at the date of the appeal upon submission of same to SGI.

Dated at Regina, Saskatchewan, on May 3, 2006.

Beverly Cleveland, Chair

Peter Bergbusch, Commission Member

Conrad Hnatiuk, Commission Member