

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *R.N. v. Saskatchewan Government
Insurance, 2006 SKAIA 064*
Date: 20061102
File: 163 of 2004

BETWEEN

R.N., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
Jonathan Abrametz, for the Applicant
Dale Brown, for the Respondent

Before: **Stephanie Pfefferle, Chair**
Carolyn Jones, Commission Member
Jane Lancaster, Q.C, 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 Saskatoon, Saskatchewan
September 20, 2006

DECISION

[1] This is an appeal by the Appellant, R.N., against Saskatchewan Government Insurance, (hereinafter “SGI”), of two decision letters dated May 31, 2004 and November 2, 2005. Counsel for SGI and for the Appellant confirmed that the appeal dated May 31, 2004 had been successfully resolved and the only outstanding issue was the appeal of the Appellant with regard to the payment of income replacement benefits pursuant to section 113 of *The Automobile Accident Insurance Act*, (hereinafter “the Act”). The Appellant argued that her income replacement should be calculated as a Family Enterprise which would compensate her for the salary of a substitute worker.

Preliminary Issues:

[2] Counsel for SGI noted that the application form for the Appellant’s appeal was not signed by the Appellant as required under section 87 of *The Personal Injury Benefits Regulations*(hereinafter “the Regulations”). Counsel for the Appellant had signed the appeal pursuant to a power of attorney. No power of attorney was attached to the material and nor was there any information explaining why the Appellant was unable to sign the appeal as required pursuant to section 87(1) of the *Regulations*. Subsection 86(1) of the *Regulations* states that the claimant must personally sign the appeal to the Appeal Commission and pursuant to subsection 87(1), if the appeal is signed by a person authorized to represent the claimant, then proof of the capacity to act must be filed with the application.

[3] Counsel for the Appellant indicated that he had a power of attorney signed by the Appellant which provided him with the authority to sign on behalf of the claimant. Counsel undertook to perfect the appeal application by providing to the appeal panel proof of his authority to act by filing a copy of the power of attorney. The panel has reviewed the document dated August 17, 2004, entitled “power of attorney” signed by the Appellant and filed by Counsel. This document does not provide Counsel with the authority to sign the appeal application on behalf of the Appellant but only to “endorse for deposit all or any cheques and orders for payment of money from Saskatchewan Government Insurance, on

account of a PIPP claim.” In the present case, we have no evidence as to why the Appellant did not sign the appeal application or why she was incapable of so doing. In addition, we note the power of attorney provided to the panel does not provide the authority for Counsel to do so on her behalf.

[4] We were not asked by Saskatchewan Government Insurance to rule on the validity of the appeal application as a result of the procedural deficiencies and we have not done so in light of the decision that the panel has made on the substantive issues in this appeal.

Background:

[5] The Appellant was injured in a motor vehicle accident on April 30, 2004. As a result of this accident, she sustained injuries to her back, left arm and leg requiring medical attention and rehabilitation. She was unable to return to work until March 31, 2005.

[6] The Appellant and her husband operate a trucking company called [Trucking Co. Ltd.] incorporated in Saskatchewan since 1999. The Appellant’s husband is the president of the company owning 100 Class A Common shares and the Appellant is secretary-treasurer owning 100 Class B Common shares. They are the only shareholders and directors of the company.

[7] The Appellant’s husband testified at the hearing that Trucking Co. Ltd. was involved in trucking and he drove the trucks, and his wife, the Appellant, did the banking and payroll. He advised that the Appellant entered invoices in the computer, paid bills, did banking and mail duties, arranged and picked up parts for the trucks, delivered the parts and picked up drivers who needed a ride when the truck broke down. They owned two trucks and employed several drivers. At the time of the accident, they were hauling salt water from the oil drills and this work continued to June 2005.

[8] The Appellant’s husband testified that they had incorporated their business on the advice of their accountants and the practice was to take a monthly draw based on profit and loss and then at the end of the year to determine if a bonus could be paid. In the three

months preceding the Appellant's accident, Trucking Co. Ltd. paid \$4000 into the joint bank account of the Appellant and her husband. The Appellant's husband testified that he and his wife shared equally receiving each \$2000 per month as income.

[9] Prior to the accident, the Appellant declared on her income tax for January-March 2004, the sum of \$6500. In 2003, the Appellant's income was \$11,000 using the same process of equally dividing the profit of the company between herself and her husband.

[10] The Appellant's husband testified that he met with the personal injury representative for SGI and filled out the Application for Injury Benefits on April 12, 2004 for his wife. He had explained to the representative that his wife did not receive wages but that funds were advanced to both of them. He characterized this as a draw rather than a salary and had indicated that they were in a partnership as self employed persons. In the Application, he indicated that the monthly income of \$2000 was called salary because there was no category in the printed form for identifying the funds as a draw.

[11] The Appellant's husband testified that as a result of his wife's injuries, he took over her duties in the company and hired a driver to take over his responsibilities. The Appellant's husband hired [D.I.] on April 8, 2004 on the terms that he would make 30% of what the truck would make. This is apparently standard and accepted remuneration in the trucking industry where the Appellant's husband operates. He filed a T4 Income Tax form for D.I. indicating that D.I. had earned \$33,795 from April to December 2004. He indicated that D.I. earned comparable earnings from January to March 2005 or approximately \$4000 per month.

[12] The personal injury representative, Sherri Roger, testified that they calculated the income replacement for the Appellant on the basis of an annual salary of \$2000 per month plus an annual bonus of \$1000 for a total of \$25,000 for 12 months.

[13] Mr. Teneycke, Income Replacement Calculation Manager for SGI, whose job it is to calculate Income Replacement for claimants testified as to how he calculated the work sheets for the Appellant with regard to the payments owed to her.

[14] Mr. Teneycke testified that after receiving the documentation which verified that the Appellant received \$2000 per month and an annual bonus, he prepared the worksheet which showed that she would be entitled to \$680.68 (90%) from her license insurance biweekly and \$75.64 biweekly from her package policy (the remaining 10%). On November 2, 2005, the Appellant was sent a cheque for \$13,871.14 in addition to \$3000 she had received in November 2004, for a total of \$16,871.14.

[15] The Appellant has appealed this November 2, 2005 decision letter on the basis that she should have received compensation under the Family Enterprise Benefits and that compensation should be the salary of the substitute worker, D.I.

ISSUE:

[16] Is SGI correct in compensating the Appellant for the loss of her income due to the motor vehicle accident pursuant to section 113(2)(a) of the *Act* rather than pursuant to section 118 (Family Enterprise Benefits)?

LAW AND ANALYSIS:

[17] Subsection 113(2) of the *Act* reads as follows:

s.113 (2) An insured is entitled to an income replacement benefit if, as a result of an accident, the insured:

(a) is unable to continue an employment held by the insured at the date of the accident;

[18] Subsection 118 (1)(a) of the *Act* states as follows:

s.118 (1)An insured is entitled to a benefit pursuant to this section if the insured:

(a) was working without remuneration in a family enterprise at the date of the accident; and

(b) is unable, because of the accident, to perform his or her regular duties in the family enterprise.

[19] Subsection 118(2) and (3) state as follows:

- (2) Subject to subsections (3) and (4), the amount of the benefit pursuant to this section is the amount required to hire a substitute worker to perform the duties of the insured during the period that the insured is unable to work in the family enterprise.
- (3) The maximum amount of the family enterprise benefit for all duties carried out in a family enterprise is \$631 per week.

ANALYSIS:

[20] In order to be considered eligible for the Family Enterprise Benefits, an insured must be working without remuneration and the substitute worker must perform the duties that the insured performed during the period that the insured is unable to work.

[21] There is ample evidence that the Appellant received remuneration for her work in Trucking Co. Ltd. including:

- her income tax for 2003 showing business income of \$11,000;
- her income tax return 2004 showing business income of \$6500;
- the verification of income signed on April 12, 2004 by the Appellant's husband as President of Trucking Co. Ltd. showing an income of \$2000 per month for the Appellant with a \$1000 annual bonus;
- a copy of the credit union statement of Trucking Co. Ltd. for January 31, 2004 showing a transfer out of \$4000 to an account number which the Appellant's husband advised was the joint bank account of the Appellant and himself;
- a copy of the credit union statement of Trucking Co. Ltd. for February 29, 2004 showing a transfer out of \$4000 to an account number which the Appellant's husband advised was the joint bank account of the Appellant and himself;
- a copy of a credit union statement of Trucking Co. Ltd. for March 31, 2004 showing a transfer out of the \$4000 to an account number which the Appellant's husband advised was the joint bank account of the Appellant and himself;
- a letter from DmData Holdings Inc. dated August 25, 2005 to counsel for the Appellant confirming that they act as bookkeeper for Trucking Co. Ltd. and

that the Appellant received \$2000 deposited directly to her account from Trucking Co. Ltd.; and

- correspondence from counsel for the Appellant to the SGI personal injury representative dated June 24, 2005 stating “As you are already aware, in the months preceding the motor vehicle accident, the Appellant was receiving a monthly draw from the family enterprise of \$2000.

[22] As the Appellant was not working without remuneration, the Family Enterprise Benefits do not apply to her situation.

[23] Counsel for the Appellant also argued that the compensation for a substitute worker was the wages of D.I. which was \$33,795 from April to December 2004 and approximately \$4000 per month thereafter. Subsection 118(2) of the *Act* states that a substitute worker “performs the duties of the insured during the period that the insured is unable to work in the family enterprise.”

[24] We have determined that the Appellant is not entitled to Family Enterprise Benefits because she regularly received remuneration. In addition, we note that D.I. was hired to perform the duties of the Appellant’s husband and the Appellant’s husband was performing the duties of the Appellant. The Appellant’s husband is not the insured, the Appellant is.

CONCLUSION

[25] The decision of SGI with regard to the Appellant’s income replacement compensation is confirmed.

[26] Although the Appellant is not successful with regard to this appeal, SGI has indicated that she was successful in the reversal of the first decision letter dated November 15, 2004 and would not oppose the appeal panel awarding costs on this appeal to recognize the reversal of the first decision letter.

[27] Therefore, SGI shall reimburse the Appellant for her costs for this appeal in accordance with subsection 193(11) of the *Act*, to a maximum of \$2500 as prescribed by section 96 of the *Regulations*.

Dated at Saskatoon, Saskatchewan, on November 2, 2006.

Stephanie Pfefferle, Chair

Jane Lancaster, Q.C., Commission Member

Carolyn Jones, Commission Member