

Automobile Injury Appeal Commission

Province of Saskatchewan

Citation: *E.I. v. Saskatchewan Government
Insurance, 2007 SKAIA 072*
Date: 20070530
File: 046 of 2004

BETWEEN

E.I., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
Bruce Slusar, for the Applicant
Dale Brown, for the Respondent

Before: **Peter Bergbusch, Chair**
Marjory Gammel, Commission Member
Darleen Topp, 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
May 28, 2007

[4] As is evident, the Commission did not comment at all on the application of s. 40 or the calculation of successive remainders. Rather, we directed SGI to recalculate the Appellant's total award for permanent impairment benefit taking into account a permanent impairment rating of 6% for the left hip loss of range of motion.

[5] Section 40 of *The Personal Injury Benefits Regulations* provides:

40(1) Where an insured has more than one permanent impairment, the percentage of the most severe impairment is computed on the basis of 100% and the percentages of the other impairments, starting with the highest, are computed on the successive remainders, in accordance with Appendix C.

(2) Notwithstanding subsection (1), a percentage of 5% or less attributed to a permanent impairment is not to be computed on the successive remainders, but is to be added to the percentage resulting from the computation of the most severe impairment pursuant to subsection (1).

[6] There is nothing optional or discretionary about the decision to calculate a total permanent impairment rating on successive remainders. Applying Section 40 is mandatory. If an insured has more than one permanent impairment to which a percentage of 6% or greater has been attributed, the total permanent impairment is to be calculated on the basis of successive remainders. If the percentage attributed to a permanent impairment is 5% or less, it is simply added to the percentage calculated for the insured's more severe impairments.

[7] The conceptual framework for calculating a combined impairment rating is set out at the start of Appendix B of the Regulations and was explained by the Commission in *R.C. v. Saskatchewan Government Insurance*, 2003 SKAIA 1, paragraphs 29 and 30. The purpose of combining values is to ensure that the total impairment rating does not exceed 100%.

[8] Accompanying SGI's decision letter dated December 24, 2003, regarding the permanent impairment benefit was a detailed calculation prepared by SGI's medical consultant. After setting out the percentages attributable to distinct impairments for the Appellant, Dr. Howlett then explained how these percentages should be combined:

Final List of Permanent Impairments:

Permanent Impairment for Scarring of the Right Lower Limb:	8.0%
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Permanent Impairment for Scarring of the Left Lower Limb:	6.2%
Permanent Impairment for Range of Motion Loss of the Right Hip:	6.0%
Permanent Impairment for Fracture of the Pelvis:	2.0%
Permanent Impairment for Alteration of Transverse Processes x 3:	1.5%

As there are 2 or more items of permanent impairment that exceed 5%, one needs to access the Table of Successive Remainders for those items.

Combining 8% with 7% (6.2% rounded up) gives 14%
Combining 14% with 6% gives 19%

The amount of benefit derived from the impairments determined by accessing the Table of Successive Remainders (those greater than 5%) comes to **19.0%**

The amount of benefit derived from the impairments 5% or less that are simply added together, without accessing the Table of Successive Remainders comes to **3.5%**

The above-mentioned benefits are added together for a total of 22.5%

[9] We accept that Dr. Howlett's method of calculating the permanent impairment rating for the Appellant is correct. Of course, the calculation must now be revised to take into account the additional impairment rating. Since the permanent impairment rating for the Appellant's left hip loss of range of motion is greater than 5.0%, the rating (of 6.0%) must be combined with 19.0% using the Table of Successive Remainders found at Appendix C of the Regulations (Alternately we could perform the calculation explained at the beginning of Appendix B of the Regulations – the net result would be the same). The combined impairment rating, according to the table, is 24.0%. As Dr. Howlett indicated, this figure must then be added to 3.5%, leaving a revised total permanent impairment rating of 27.5%.

[10] As Mr. Brown suggested, the difference between the Appellant's original permanent impairment rating, set out in the decision letter dated December 23, 2004, and the revised permanent impairment rating is 5.0% (27.5% less 22.5%). SGI shall pay to the Appellant a supplementary permanent impairment benefit based upon this increase.

[11] In our March 7, 2007 decision, we directed SGI to pay to the Appellant the increase of his permanent impairment benefit with interest. Mr. Brown requested that we clarify the date from which interest is to be calculated. It appears that SGI paid the original permanent impairment benefit to the Appellant at the date of the decision letter, December 24, 2003.

The Appellant was successful, in part, on his appeal from that letter, in that we have held that the permanent impairment benefit should include an amount in relation to his left hip loss of range of motion. Accordingly, SGI shall calculate and pay interest on the supplementary permanent impairment benefit from December 24, 2003, to the date of payment.

[12] As this hearing was held to clarify certain aspects of our earlier decision, in which the Appellant was partly successful, we award to the Appellant his costs of the reconvened hearing, in accordance with s. 193(11) of *The Automobile Accident Insurance Act* and s. 96 of the Regulations. The costs claimed by the Appellant for the original hearing and the reconvened hearing are together subject to the cap of \$2,500.00 prescribed in the Regulations.

Dated at Regina, Saskatchewan, on May 30, 2007.

Peter Bergbusch, Chair

Marjory Gammel, Commission Member

Darleen Topp, Commission Member