

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *U.R. v. Saskatchewan Government Insurance,*
2007 SKAIA 081
Date: 20070712
File: 114 of 2006

BETWEEN

U.R., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
U.R., Applicant
Allan McLeod, for the Respondent

Before: **Peter Bergbusch, Chair**
Carol Olson, 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 Prince Albert, Saskatchewan
June 8, 2007

DECISION

[1] The Appellant, U.R., appeals the decision letters of Saskatchewan Government Insurance (“SGI”) dated October 16, 2006, denying him the replacement cost of a leather jacket, and January 7, 2007, denying reimbursement of the cost of repair for damage done to hardwood flooring and banisters and spindles in his home.

[2] The Appellant, now [age], was injured in a motorcycle accident on June 30, 2005. In particular, the Appellant injured his lower back and broke his left leg. The leg injury caused him to have instability while walking or climbing stairs. He testified that his knee goes out and when that happens he falls or struggles to break his fall so as not to damage his leg further. After the accident, he had been confined to a wheelchair and then crutches but, even at the date of the hearing, he indicated that his knee still experiences instability such that he requires use of a railing to go up and down stairs and also to brace himself if he starts to fall.

[3] The Appellant purchased a leather jacket from money earned in the family business in the fall of 2005. The Appellant was in a wheelchair at the time and he advised that the wheelchair mechanism caught the cuff of the jacket, damaging it. He was of the view that the jacket was faulty and so had returned within a few days of purchase for a new one. He testified that this was the only jacket he owned. During the time of his convalescence in a wheelchair and on crutches, the leather jacket exhibited signs of wear. The Appellant’s position was that this increased wear and tear of his jacket was a direct result of the motor vehicle accident and so SGI should compensate him with a new leather jacket.

[4] In addition, while the Appellant was using a wheelchair, he testified that his injuries required him to move from couch to wheelchair and about the upstairs of his home. He provided pictures showing the wear marks on the hardwood floor caused by the wheelchair. We accept his evidence that these wear marks were caused by him in operating the wheelchair.

[5] The Appellant testified that the instability of his leg required him to rely on the railings and banisters of his house (and his school) to prevent him from falling as his knee

would give way. He also testified that if he was falling, he would grab at the staircase to try to save himself from falling. As a result, the banisters became loose from the wall and some spindles on the staircase have been broken. The Appellant advised that SGI had paid for damage done to the downstairs banister but, although the occupational therapist had attended at the house, the Appellant had not advised nor shown the therapist of the damage to the upstairs banisters.

[6] The Appellant is 6 feet 3 inches tall and solidly built. The Commission accepts that the Appellant having to use his full weight on normal household banisters would cause the type of damage seen in the photographs.

[7] The Appellant's position is that SGI is responsible for repairing the damage to the banisters as it knew or should have known that this sort of damage was likely to have occurred.

[8] Counsel for SGI submits that SGI does not have responsibility under Part VIII of *The Automobile Accident Insurance Act*, R.S.S. 1978, c.A-35 (the "Act"), to compensate the Appellant for the damage to his jacket as there are no specific sections in the legislation or in the regulations requiring such reimbursement. SGI has the power pursuant to section 206 of the *Act* to make *ex gratia* payments, but this Commission does not have the authority to order such payments to be made¹. We agree with SGI that it has no legal responsibility under the *Act* to reimburse for damaged clothing except, pursuant to subsection 157(1), when that clothing has been damaged in the motor vehicle accident:

157(1) Subject to the regulations, an insured is entitled to reimbursement of the following items:

...

(c) cleaning, repairing or replacing clothing that the insured was wearing at the date of the accident and that was damaged.

[9] We also agree that SGI has no legal responsibility under the legislation to reimburse for damage done to the hardwood floors of the Appellant's home due to his use of the wheelchair. Put another way, this is not a benefit conferred by Part VIII of the *Act*.

[10] We do take a different view regarding repair to the banister. The Appellant's mother testified that they had recently learned that the hardware inserted in the Appellant's leg during his surgery was going to be removed, which will require an additional period of convalescence and limited mobility. In addition, a Functional Capacity Evaluation report by Kinetik outlined that the Appellant's left knee still gives way and that he manages the stairs in school with a handrail.

[11] SGI did not consider whether reinforcement of the upstairs handrail was required for therapeutic reasons. If so, it may be a "necessary or advisable" measure pursuant to subsection 112(1), which states in relevant part:

112(1) In this section, "**rehabilitation**" includes all or any of the following measures, programs and treatments that the insurer considers necessary or advisable to contribute to the rehabilitation of the insured, to lessen the insured's disability caused by the accident and to facilitate the insured's recovery from the accident:

...

(c) alterations to an insured's residence;

...

[12] It appears that SGI has failed to consider this matter. SGI should consider whether alterations to the stair rails and banisters running along the top of and down the stairs are necessary or advisable. If SGI finds that the Appellant requires some modification of the stair rails and banisters to contribute to his rehabilitation, lessen his disability or facilitate his recovery, SGI should cause this work to be carried out or reimburse the reasonable cost of doing so.

[13] The Appellant's mother was very critical of the services that SGI had provided. It is clear that when SGI was informed that supports such as railings for the toilet or accommodation for the shower were needed, it sent an occupational therapist to meet with the Appellant's mother. It is also clear from the evidence of both the Appellant's mother and the Appellant that SGI had never been informed of damage to the upstairs banister. The Appellant advised that, when the occupational therapist had attended, he did not show the

¹ see *Andrews v. SGI*, 2005 SKCA 135.

therapist this damage nor inform the therapist of his problems negotiating the staircase safely. He did advise the therapist of the problems related to the basement railing and repairs to that were approved and paid by SGI.

[14] The Appellant's mother characterized the therapeutic aids provided after the therapist attended in fall of 2005 as too little, too late. She was critical that SGI did not anticipate what requirements her son would need. Although she admitted that her son received SGI's claimant information booklet, she felt that her son was entitled to benefits that he had not received even though she acknowledged that neither had ever inquired if further benefits were available.

[15] Although we understand that the Appellant's mother was going through a very difficult time with both her son and husband injured in the same accident, her complaints of poor treatment are not borne out by the evidence before us.

CONCLUSION:

[16] SGI's decision letter denying the replacement cost of the Appellant's leather jacket is upheld. SGI's decision denying reimbursement for the cost of repair to the hardwood floor is also upheld. SGI is directed to consider, in accordance with section 112, whether alterations to the railings along the top of the staircase and leading downstairs in the claimant's home are necessary or advisable measures.

[17] As the claimant has been partly successful in his appeal, he is entitled to have his costs and expenses reimbursed in accordance with the provisions of the *Act* and the *Regulations*, to a maximum of \$2500.

Dated at Saskatoon, Saskatchewan, on July 12, 2007.

Peter Bergbusch, Chair

Carol Olson, Commission Member

Jane Lancaster Q.C., Commission Member