
“VICTIM” IS A CRITERIUM OF INCLUSION NOT EXCLUSION

Reported case: Krzysik v. Manitoba Public Insurance Corp.

Citation: 2008 MBCA 29

At Issue: Can a person not directly involved in a motor vehicle accident, but who suffers mental distress as a result of the loss of loved ones in an accident, be considered a “victim in an accident”?

The Court: Manitoba Court of Appeal

Judgment Rendered: March 5, 2008

Factual Summary: The plaintiff suffered from severe depression resulting in an inability to work following a motor vehicle accident that killed her husband, son, mother-in-law, and niece. The plaintiff was not involved in the accident. She applied for Income Replacement Indemnity (IRI) benefit, which was denied. The IRI applies to “any bodily injury suffered by a victim in an accident”.

Disposition by Lower Court: The plaintiff appealed to the Automobile Injury Compensation Appeal Commission and was again denied. The Commission determined that the IRI benefit could not be awarded where the claimant was not in an accident, and she was therefore not a victim as defined in the Act.

Appellate Decision: The plaintiff argued that the Commission misinterpreted the phrase “in an accident” by relying on the criterion of proximity to determine whether the applicant could be considered a victim under the Act. The proximity test was a tort concept and the Act was specifically designed to create a no-fault compensation scheme in place of a tort scheme. She argued that the applicable section merely required any event in which a person suffered a mental injury that is caused by an automobile. The Court of Appeal disagreed and decided that being a “victim” was a criterion of inclusion, not exclusion. Unless she was included in the classification of “victim”, the plaintiff did not qualify for the benefits. The use of the words “in an accident” as opposed to “by reason of an accident” was intentional and was meant to include only those people who were injured in the course of an accident.