

CASE NO.

VOLUME

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Cite as: Sutherland v. Nova Scotia (Victims' Services), 1998 NSCA 113

BARRY SUTHERLAND

DIRECTOR OF VICTIMS' SERVICES

- and -

(Appellant)

(Respondent)

C.A. No. 143809

Halifax, N.S.

CROMWELL, J.A.

APPEAL HEARD:

May 25, 1998

JUDGMENT DELIVERED:

July 7, 1998

SUBJECT:

Crime Victim's Compensation - Reduction of Award on Account of Victim's Conduct - Victims' Rights and Services Act, R.S.N.S. 1989, c. 14.

SUMMARY:

The appellant was injured while riding a motorcycle. He did not have a license to drive the motorcycle or wear a helmet while doing so. His injury was found to have been caused by the act of another person who was committing an offence listed in the Schedule to the **Victims' Rights and Services Act**, namely, mischief causing actual danger to life. The appellant applied for compensation under the **Act**. Certain items were refused entirely and the award that was made was reduced by 35% on account of the appellant's conduct.

ISSUES:

1. Did the Utilities & Review Board err in law or jurisdiction in reducing the award by 35%?
2. Is the limitation on periodic payments in Appendix A, paragraph 7 of the **Criminal Injuries Compensation Regulations** *ultra vires*?
3. Did the Utilities & Review Board err in law or jurisdiction in applying the limitation in this case?
4. Did the Utilities & Review Board err in law or jurisdiction in refusing to award compensation for certain future medical costs?

RESULT:

The appeal is allowed. The Utilities and Review Board did not err in law or jurisdiction in reducing the award on account of the appellant's behaviour. The statutory language referring to behaviour which contributes to the injury directly or indirectly does not limit consideration to behaviour that would constitute contributory negligence in a tort action. The appellant should not have driven the motor cycle given that he did

not have a license or a helmet. Had he not driven, the injury would not have occurred. His acts were imprudent, they were related to the operation of the motor cycle and had he not so acted he would not have been injured.

The limitation on periodic payments to \$12,000.00 under Appendix A, paragraph 7 of the **Criminal Injuries Compensation Regulations** is not inconsistent with the Statute and is, therefore, not *ultra vires*.

The Utilities & Review Board erred in law in applying Workers' Compensation benefits received by the appellant against the \$12,000.00 limitation. The Board ought to have approached the question in three steps, (i) what is the eligible loss? (ii) what deductions are to be made from that eligible loss? and (iii) what limits on compensation otherwise payable apply? The Workers' Compensation benefits received by the appellant related to the period July 1990 to October 1994. They were irrelevant to the recovery of loss of income incurred after those benefits ceased.

The Board did not err in law or jurisdiction in disallowing certain future medical costs. Although not stated clearly, the Board must have concluded from the material before it that these costs were recoverable from another source. This is a question of fact on which the Board's determination is protected by s. 26 of the **Utility & Review Board Act**. It is also open to the appellant to apply to the Director to vary the award pursuant to s. 11(j) of the **Act** if these amounts are, in fact, no longer recoverable.

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