Date:19991110
C.A. 155159

NOVA SCOTIA COURT OF APPEAL

Cite as: Banks v. Portage La Prairie Mutual Insurance Company, 1999 NSCA 137

Pugsley, Flinn and Cromwell, JJ.A.

BETWEEN:

RUBY BANKS Appellant	)	Randall P.H. Balcome for the appellant
- and -	)	
THE PORTAGE LA PRAIRIE MUTUAL INSURANCE COMPANY, a body corporate Respondent	)	Robert G. Belliveau, Q.C. for the respondent
	)	Appeal heard: November 10, 1999
	)	Judgment delivered: November 10, 1999

THE COURT: Appeal dismissed per oral reasons for judgment of Flinn, J.A.; Pugsley and Cromwell, JJ.A. concurring.

FLINN, J.A.: (Orally)

[1] The appellant was injured in an automobile accident in 1992. She claimed from the respondent, her insurer, continuing income replacement benefits pursuant to the provisions of Section B to Part IV of the **Insurance Act**, R.S.N.S. 1989, c. 231. (the **Act**)

[2] To obtain the benefits she sought, the appellant was required to establish, pursuant to the provisions of the **Act**:

> ..that such injury continuously prevents such person from engaging in any occupation or employment for which he is reasonably suited by education training or experience.

[3] As a result of the respondent's refusal to pay the benefits claimed, the appellant brought this action claiming a declaration of entitlement to such continuing weekly benefits.

[4] Following a trial in the Supreme Court, Justice Boudreau dismissed the appellant's claim. He concluded that the appellant had not discharged the burden upon her to prove, on a balance of probabilities, that she is prevented from engaging in any occupation or employment for which she is reasonably suited. The trial judge came to that conclusion on the basis of his findings that the preponderance of medical evidence, and the evidence of the appellant herself, did not satisfy him that the appellant was unable to do much of the work that she did before the accident.

[5] We have reviewed the record of the proceedings before the trial judge, and

we have considered the submissions of counsel, both written and oral. We are of the unanimous opinion that the trial judge made no reversible error in his conclusion, or in his evidentiary findings on which that conclusion is based. As a result, this court cannot interfere with the trial judge's decision.

[6] In light of this conclusion, it is not necessary to pronounce on the issues of causation and mitigation, and we refrain from doing so.

[7] The appeal is dismissed. The appellant will pay to the respondent its costs of this appeal which are fixed at $1000.00 inclusive of disbursements.

Flinn, J.A.

Concurred in:

Pugsley, J.A.

Cromwell, J.A.