

***IN THE MATTER OF THE INSURANCE ACT, R.S.O. 1990,  
c. I. 8, SECTION 268 and REGULATION 283/95***

***AND IN THE MATTER OF THE ARBITRATION ACT,  
S.O. 1991, c. 17, as amended;***

***AND IN THE MATTER OF AN ARBITRATION***

***BETWEEN:***

***THE PERSONAL INSURANCE COMPANY***

***Applicant***

***- and -***

***RBC GENERAL INSURANCE COMPANY***

***Respondent***

**DECISION**

**COUNSEL:**

Shelley Khan for the Applicant

Karla Gnanasegaram for the Respondent

**BACKGROUND:**

1. Raneen Rasheed was struck by a vehicle insured by The Personal Insurance Company (“The Personal”) as she was crossing the street on January 21, 2015. She was twenty-eight years old at the time, and had moved to Canada from Syria with her family two years earlier. She applied to The Personal for payment of accident benefits under the *Statutory Accident Benefits Schedule*, and they have paid benefits to her and on her behalf.

2. Ms. Rasheed lived with her mother, two brothers and her infant daughter at the time of the accident. Her mother owned a car, and was a named insured under a policy issued by RBC Insurance (now owned by Aviva Insurance) at the time of the accident. The Personal contends that Ms. Rasheed was principally dependent for financial support on her mother at the relevant time, and that RBC would therefore be in higher priority to pay her claim under section 268 of the *Insurance Act*.

3. RBC disputes that the Claimant was principally financially dependent upon her mother at the time. Counsel noted both that the Claimant had travelled to Turkey for two extended periods prior to the accident, and was dependent on her husband (who lived there) to pay for her expenses while she was there. RBC also emphasized that its insured did not work at any point since arriving in Canada, and that she relied on social assistance payments, while the Claimant had worked part-time for a few months while here, with the prospect of increasing her hours in the future.

**THE EVIDENCE:**

4. No oral evidence was called at the hearing. Both Ms. Rasheed and her mother, Samar Al-Asaadi, were examined under oath earlier in the process, and their transcripts were referred to by counsel in their submissions. Various other documents, including a signed statement provided by the Claimant and income tax documentation from family members, were also filed by the parties and referred to at the hearing.

5. The above set out the following facts:

6. Ms. Rasheed arrived in Canada in November 2012, along with her mother and two younger brothers, Farhad and Namer. The family lived together in Mississauga at all relevant times. As refugees arriving from Syria, the family received financial assistance from a United Nations agency in their first year in Canada. Prior to living in Syria, the family had lived in Iraq.

7. The Claimant travelled to Turkey in the spring of 2013, after having been in Canada for a few months. The evidence indicates that she got married while she was there, although the exact date is not clear. It appears that she spent approximately eight months in Turkey, from early April 2013 to some time in December 2013. Ms. Rasheed then returned to Canada, and gave birth to a daughter in February 2014.

8. The Claimant began part-time work through an employment agency, the month after giving birth to her daughter. She worked as a packager, at a place called Super Buffel. The records filed indicate that she worked from late March 2014 through July 2014, for a total of 119 hours. She earned \$1,243 in income over that period. She also began receiving \$460 per month in child benefits from the government, after the birth of her daughter in February 2014.

9. Ms. Rasheed went to Turkey again in August 2014. She explained that she returned there so that her husband, who was still living there, could meet their daughter. She remained in Turkey from August 2014 to mid-January 2015. Nine days after returning to Canada, she was involved in the accident in question. While Ms. Rasheed advised in a signed statement provided to The Personal in March 2015 that she had wanted to work so that she could sponsor her husband to come to Canada, she advised at her Examination Under Oath a few weeks later that she intended to separate from him.

10. As indicated above, Ms. Rasheed spent approximately nine months in Turkey in 2013, and another five and one-half months there in 2014. I note that in the twenty-six month period between arriving in Canada and the accident on January 21, 2015, she spent more than half of her time in Turkey. The evidence is clear that her husband looked after her living expenses while she was there, and paid for her travels to and from that country.

11. The Claimant's mother provided some useful information about the family's finances at the time of the accident at her examination. She stated that she and her two sons, as well as the Claimant and her young daughter, lived together in an apartment in Mississauga with two bedrooms and a den. The monthly rent was \$1400, which included utilities. Aside from food and clothing, the family's other expenses were modest and included approximately \$50 in monthly payments for internet and phone charges, and her car insurance premiums.

12. Ms. Al-Asaadi testified that she received welfare payments of less than \$1200 per month in the year prior to the accident, which were meant to assist with her support and that of her younger son, Namer. She also received a monthly child benefit of \$400. Her older son Fahad worked as a hairdresser, and earned approximately \$1,500 per month. Her uncontradicted evidence was that all of the family members pooled their earnings and benefit payments, and gave them to her. She then paid all of the joint expenses, and kept the rest of the money in a box at home. Anyone who needed money for other items would then be free to take it from the box. She explained that the family functioned in this manner since arriving in Canada, and that it was in keeping with their culture.

13. Ms. Rasheed's 2014 tax return was filed into evidence. It indicates reported net income of \$6,858. The basis for this figure was not explained, but counsel suggested that it likely consisted of 10.5 months of child benefit payments of \$460 per month (\$4,830), her T4 employment income of \$1,242, and GST/HST tax credits of \$46 per month (\$552) and \$70 per quarter (\$210). I note, however, that the return indicates "gross business income" of \$7,960, with net business income of \$5,740. No explanation was provided for these figures.

14. Ms. Al-Asaadi's Notice of Assessment for 2014 was filed. It provides a net income figure of \$18,791, the basis for which was also not explained.

15. The Notice of Assessment relating to the Claimant's brother Fahad for the year 2014 indicates a net income of \$7,059.

16. Ms. Rasheed was on her way to work on January 21, 2015 when she was struck by The Personal insured vehicle. The evidence indicated that she was returning to work that day at Super Buffel, after a six-month absence. She advised in her signed statement that she was about to start a seven-day training session, after which she would be working full-time hours from 7 am to 3 pm, from Monday to Friday. In contrast, she testified at her Examination Under Oath held a few weeks later that she had been told that she would be advised whether she would be assigned to work part-time or full-time hours once her training was completed.

**RELEVANT PROVISIONS:**

***Insurance Act:***

*268(2) The following rules apply for determining who is liable to pay statutory accident benefits:*

*2. In respect of non-occupants,*

*i. the non-occupant has recourse against the insurer of an automobile in respect of which the non-occupant is an insured,*

*ii. if recovery is unavailable under subparagraph i, the non-occupant has recourse against the insurer of the automobile that struck the non-occupant,*

***Statutory Accident Benefits Schedule:***

*3. (1) In this Regulation,*

*“insured person” means, in respect of a particular motor vehicle liability policy,*

*(a) the named insured, any person specified in the policy as a driver of the insured automobile and, if the named insured is an individual, the spouse of the named insured and a dependant of the named insured or of his or her spouse,*

*(i) if the named insured, specified driver, spouse or dependant is involved in an accident in or outside Ontario that involves the insured automobile or another automobile,*

3. (7) *For the purposes of this Regulation,*

*(b) a person is a dependant of an individual if the person is principally dependent for financial support or care on the individual or the individual's spouse;*

**PARTIES' SUBMISSIONS:**

*The Personal*

17. Counsel for The Personal submitted that the appropriate time frame must be selected before embarking on a dependency analysis. Ms. Khan referred to Arbitrator Samis' statement in *Federation Insurance v. Liberty Mutual* (May 7, 1999, aff'd by Ont. Ct. of Appeal at [2000] O.J. No. 1234) that the period chosen should fairly reflect the status of the parties at the time of the accident. She suggested that the one-year period leading up to the accident in January 2015 was appropriate in this case, as the Claimant began working during this period, and gave birth to her daughter, each of which were significant events that affected her life and finances. She contended, however, that the time that Ms. Rasheed spent in Turkey during that year should not be included in the analysis, as her travels there were not "normal or frequent occurrences", and that she had stated that she had no plans to return to Turkey.

18. Counsel submitted that I must then consider whether the Claimant had the ability to be self-sufficient during this twelve-month period. She acknowledged that the recent case law in the area has shifted the analysis away from a reliance on strict mathematical calculations, to a less technical "big picture analysis". She noted that courts and arbitrators have encouraged parties to adopt a more objective approach in determining a claimant's financial needs, by referring to market lines such as the Low Income Cut-off ("LICO") or the "MBM" (Market Basket Measure), which measures the cost of a specific basket of goods including food, clothing, shelter, transportation and household needs for a modest household.

19. Ms. Khan contended that in this case, both the mathematical calculations and the "big picture" approach lead to the conclusion that the Claimant was principally dependent on her mother for financial support in the twelve months prior to the accident. She noted that when Ms. Rasheed's reported income of \$6,858 is compared to the market line figures for either a one-person or a two-person household, it falls well below the 51% threshold required to conclude that

she was self-sufficient. Counsel contended that this remains true if the part-time income she earned over four months in 2014 is extrapolated over one year.

20. Ms. Khan filed a list comprised of various calculations, some of which compare Ms. Rasheed's monetary contributions to the household to those of her mother and her brother Farhad. These indicate that whether the household is assumed to be all five family members, or just the three older contributors (her, her brother Farhad and her mother), the Claimant's contributions are the lowest, and fall well below the 51% threshold for self-sufficiency.

21. Counsel noted that the \$18,800 that Ms. Rasheed's mother collected in social assistance payments during 2014 was significantly higher than the amount that the Claimant collected. She submitted that whether or not the monthly child benefits that they both received were factored into the calculation, her mother's social assistance payments comprised more than 51% of the total family's needs, and should lead to a finding that the Claimant was principally dependent upon her for financial support.

22. Finally, counsel proposed that at the time of the accident, the Claimant was an unskilled, relatively recent immigrant, with an infant daughter. She had held one part-time job since arriving in Canada more than two years earlier, with no certain prospects for full-time employment. She relied on her mother to provide care for her young daughter while she was at work. Ms. Khan contended that when the "big picture" is considered, and these factors are taken into account, it is also clear that she was principally dependent for financial support on her mother, the RBC insured, at the time of the accident.

#### *RBC's submissions*

23. Counsel for RBC submitted that I should consider the period of two years and two months between the Claimant's arrival in Canada and the accident in January 2015 in order to get a more accurate reflection of the family's true financial circumstances. Alternatively, she agreed that a focus on the twelve-month period prior to the accident would be appropriate, but that the time that Ms. Rasheed spent in Turkey should be included. Counsel noted that Ms. Rasheed spent much of the year before the accident in Turkey, while being financially supported

by her husband. She noted that there was only a period of two and one-half months (from January to March 2014) during that year when she was in Canada, and was not working.

24. Counsel suggested that the facts of this case are unique, given the family's arrival in Canada as refugees and the support they received from the UN agency. She contended that the time that the Claimant spent in Turkey after she had moved to Canada was also a significant factor, and that these circumstances diminished the relevance of the figures used in the "market lines" referred to by counsel for The Personal, as they approximate a family's living expenses in Ontario.

25. Ms. Gnanasegaram emphasized that the RBC insured never worked in Canada, whereas the Claimant had started working within a month or so of giving birth to her daughter. She contended that the evidence also suggested that her employer had held a job for her while she was away for several months, and that that was a positive indicator for full-time employment in the future. She noted that the accident occurred as Ms. Rasheed was on her way to work, and that the signed statement from the Claimant indicated if it had not happened, she would have been working many more hours than she had in the prior year.

26. Finally, Ms. Gnanasegaram argued that the evidence overall suggests that Ms. Rasheed was an independent young woman who left her family a few months after arriving in Canada, to travel to Turkey and get married. She returned and gave birth to a baby, and then returned to Turkey once her baby was old enough to take the trip. Despite being a new mother, she began working shortly after having the baby, suggesting that she had the ability to find a job and arrange to return to it after a long absence. Counsel contended that this showed both a desire and ability to earn more money as time passed, and on a "big picture" analysis, did not accord with the idea of Ms. Rasheed being principally dependent for financial support on her mother, who would likely always require social assistance in order to pay her living expenses.

## **ANALYSIS & REASONS:**

27. The facts in this case are somewhat unique. The Claimant and her family arrived together to Canada as refugees a couple of years before the accident, and were all financially dependent on funds provided by a UN agency. The Applicant contends that at the time of the accident, circumstances had shifted such that the Claimant was principally dependent for financial support on her mother, the RBC insured, despite the fact that her mother did not work and collected social assistance benefits. Nevertheless, the usual analysis must be undertaken, guided by the factors set out by the court in *Miller v Safeco Insurance* (1984) 48 O.R. (2d) 451. They are - the amount of the alleged dependency, the duration of dependency, the financial needs of the Claimant, and his or her ability to be self-supporting.

28. Arbitrator Samis refined the analysis by stating in his decision in *Federation Insurance v. Liberty Mutual, supra*, that a person should only be found to be principally dependent on someone else if the cost of meeting their needs is more than twice the amount of their own resources over the time period in question. I would add that a particular person must be providing the resources to meet the needs that the claimant is unable to, as opposed to a group of people who each make minor contributions.

29. I consider the above as I turn to the facts of this case. Counsel suggested three potential time frames to consider – the entire twenty-six month period since Ms. Rasheed arrived in Canada, the twelve months prior to the accident, and the time within that twelve-month period that the Claimant was in Canada (i.e. excluding the time she spent in Turkey). I find the second option to be the one that makes the most sense, as it most accurately reflects her circumstances at the time of the accident.

30. Counsel for the Personal urged me to exclude the time that Ms. Rasheed spent in Turkey in 2014, stating that she had only traveled there for the specific purpose of introducing her daughter to her husband, and that she did not intend to return. As noted above, the Claimant made inconsistent statements regarding whether she planned to separate from her husband. The fact remains, however, that she spent over five months of the twelve-month period prior to the accident in Turkey, and had only returned to Canada nine days before the accident. I find that

ignoring the fact that Ms. Rasheed had essentially lived her life for the period in question in two places, and got married to and had a child with someone who lived in Turkey, would be a distortion of her circumstances at the time. The analysis of financial dependency must take place with a retrospective lens, rather than be guided by assumptions about what might happen in the future (see comments by LaForme, J.A. in *Intact Insurance v. Allstate Insurance*, 2016 ONCA 609 CanLii, at para. 79).

31. Having selected the period to consider, I must then assess the Claimant's financial needs during those twelve months. I pause to note that the facts in this case differ from the scenario in many cases, in which a young person who has not reached the stage of consistent earnings lives with his or her parents, and the determination of dependency turns on whether or not they can demonstrate financial independence. Many cases also feature an older parent living with a child and their family, who typically does not contribute to the family's expenses. In contrast, Ms. Rasheed and her family arrived in Canada as refugees together. They all relied on various forms of government sponsored assistance, as they struggled to settle in a new country. While they were no longer receiving loans and subsidies from the UN agency in 2014, the bulk of the family's combined income came from social assistance and child benefits payments. All five family members shared a small apartment and lived modestly. They pooled all of their resources, likely as a matter of necessity but also in keeping with their culture.

32. In view of the above, it is difficult to isolate the Claimant's needs on an individual basis. In my view, the most realistic approach is to divide the total family "income" of \$32,708 in 2014 five ways, given that five family members lived together. That yields a figure of \$6,542 for each person. As the Claimant was out of the country for approximately half of the year, during which her living expenses were covered by her husband, her needs while she was in Canada would then amount to approximately half of that figure, or \$3,270.

33. The question then becomes whether the Claimant's means were sufficient to cover her needs for the period, or whether her mother provided for more than 51% of her needs. If Ms. Rasheed actually earned or received \$6,858 in 2014, as her tax return suggests, she would have been well able to cover her needs while in Canada. If this was not the case – and it is difficult to

reconcile the “gross business income” reference on the return with the evidence provided at the Examinations Under Oath – I am not persuaded that her mother provided sufficient resources to conclude that she was principally dependent on her. While Ms. Al-Asaadi received the largest amount of social assistance payments in 2014, these funds were provided for her care and that of her son, Namer. While the evidence suggests that this money was shared among all family members, there is no basis to conclude that the bulk of this went towards meeting the Claimant’s needs.

34. I also note that Ms. Al-Asaadi testified that her son Farhad earned \$1500 per month as a hair stylist during the period in question. While his CRA Notice of Assessment for 2014 only indicates a net income of \$7,059, it is clear that his contributions were essential to the family’s finances. When all of the evidence is considered, it is clear that the family’s financial circumstances are best described as “mutual co-dependence”, as opposed to a relationship of principal financial dependence solely between the Claimant and her mother. This does not lead to the conclusion that Ms. Rasheed was an “insured” under the RBC policy at the time.

34. As stated by Justice Myers in the case of *Allstate Insurance Company v. ING Insurance and Aviva Canada* [2015] O.J. No. 3282 – (at para. 18)

*The case law is clear that not only must a dependent be unable to provide for 50% of her own needs, but another person must provide more for the dependent than the dependent provides for herself. That is, if several people each provide a small amount to assist the claimant, it is unlikely that she will be found to be dependent on any of the providers.*

35. I find these comments to be applicable to the facts of this case. While Ms. Rasheed appeared to be able to meet her limited needs with her own means, even if she were not, it does not automatically follow that that she was principally dependent upon her mother. A significant amount of money was contributed to the household by her brother Farhad, and the funds that her mother received from social assistance were also meant to support her younger son.

36. My findings above are based on my analysis of the financial evidence tendered. I reach the same conclusion when I adopt the “big picture” approach, which is arguably more

appropriate in these circumstances. The Claimant's family pooled their resources, lived quite modestly, and relied heavily on government assistance. While Ms. Al-Asaadi was clearly the central figure in the household and managed the family's finances, Ms. Rasheed was in Turkey for almost half of the period in question, and was supported by her husband while there. She earned some income in 2014, albeit modest, but it was possible, if not probable, that her earnings would have increased if the accident had not occurred. A consideration of all of these factors leads me to conclude that she was not principally dependent for financial support on her mother, the RBC insured.

37. For all of the reasons set out above, I find that Ms. Rasheed was not principally dependent for financial support on her mother, the RBC insured, at the time of the accident and is therefore not an "insured person" under her policy. The Personal is therefore in priority to pay her claim, pursuant to section 268(2)2(ii) of the Act.

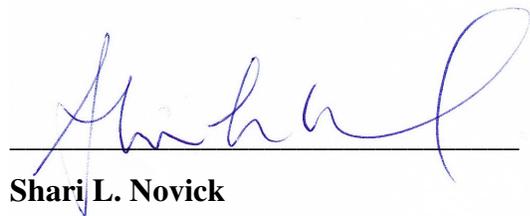
**ORDER:**

The application for Arbitration is hereby dismissed.

**COSTS:**

As RBC is the successful party, it is entitled to recover its legal costs on a partial indemnity basis. I leave it to counsel to determine the appropriate quantum payable, and if they are unable to do so, I invite them to contact me so that a process can be discussed in order to resolve that issue.

**DATED at TORONTO, ONTARIO this 16<sup>TH</sup>        DAY OF MARCH, 2018.**



**Shari L. Novick**  
**Arbitrator**