

**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;**

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

RBC GENERAL INSURANCE COMPANY

Applicant

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTER OF FINANCE**

Respondent

ARBITRATION DECISION

COUNSEL:

Tricia McAvoy for the Applicant

Stan Sokol for the Respondent

ISSUE:

1. Was the Claimant principally dependent upon his mother, Rajeswary Kandasamy, and/or her spouse Sinniah, for financial support at the time of the accident, and therefore an “insured person” under the RBC policy issued to his mother ?

RESULT:

1. No, the Claimant was not principally dependent for financial support upon his parents at the time of the accident, and is therefore not an “insured person” under the RBC policy. Pursuant to subsection 286(2) of the *Insurance Act*, the Fund is responsible to pay his accident benefits claim.

BACKGROUND:

1. Thuwaaharan (Haran) Kandasamy was injured when the vehicle in which he was an occupant was involved in an accident on October 28, 2007. That vehicle was uninsured. Mr. Kandasamy did not have a valid drivers licence at the time. He was twenty-one years old, and lived with his parents and siblings in a home in Brampton, Ontario. His mother was a named insured on an auto policy issued by RBC General Insurance Company (“RBC”) at the relevant time.

2. Haran applied to RBC for payment of accident benefits pursuant to the *SABS*. RBC accepted the application and has been paying benefits to him. It contends, however, that it is not the priority insurer as he was neither a listed driver on the policy, nor an “insured person” under the policy by virtue of being a “dependant” of his mother. RBC submits that the Claimant is not principally dependent upon his mother or father for financial support, and that the Motor Vehicle Accident Claims Fund (“the Fund”) is therefore responsible to pay his accident benefits claim.

3. This case raises the question of the appropriate time frame to apply when considering whether a young adult is principally dependent upon his parents for financial support. Like many other young adults, Mr. Kandasamy had not yet embarked on a steady career path, attending different schools and working at various jobs for a few years prior to the accident. He had left a full-time job six or seven weeks prior to the accident, and enrolled in night classes in order to obtain the credits he required to complete Grade 12. He was not working at the time of the accident in October 2007.

4. The Fund contends that the relevant time frame to consider is the six-week period during which the Claimant had returned to school. It asserts that as Mr. Kandasamy was not earning any money at the time, he was financially dependent upon his mother. RBC, the mother's insurer, submits that either the one-year period leading up to the accident, or the period from January to October 2007 should be considered, and that when his earnings over this period are considered, Mr. Kandasamy was not principally dependent upon his parents for financial support.

RELEVANT PROVISIONS:

The following provisions are relevant to my determination of this matter:

Insurance Act - Section 268

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

1. In respect of an ***occupant*** of an automobile,

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

ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,

iii. if recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose,

iv. if recovery is unavailable under subparagraph i, ii or iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.

Statutory Accident Benefits Schedule – Section 2

2. (1) In this Regulation,

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

(a) the named insured, any person specified in the policy as a driver of the insured automobile, the spouse of the named insured and any dependant of the named insured or spouse, if the named insured, specified driver, spouse or dependant,

(i) is involved in an accident in or outside Ontario that involves the insured automobile or another automobile, or

(ii) is not involved in an accident but suffers psychological or mental injury as a result of an accident in or outside Ontario that results in a physical injury to his or her spouse, child, grandchild, parent, grandparent, brother, sister, dependant or spouse's dependant,

2. (6) For the purpose of this Regulation, a person is a dependant of another person if the person is principally dependent for financial support or care on the other person or the other person's spouse.

THE EVIDENCE:

5. The Claimant and his father, mother and sister were called to testify at the hearing. Salina Chagpar, counsel representing the Claimant in his accident benefits claim, attended on the first day of hearing. She was present while her client provided his evidence, but did not seek standing at the hearing, and did not pose any questions during his testimony. The evidence of the family members took two full days of hearing, and covered many areas.

6. The Claimant was also examined under oath in the context of this proceeding, and the transcript of that evidence was filed at the hearing and referred to by counsel. The transcript of the Claimant's examination for discovery in the court action was also filed and relied on by counsel at the hearing.

I will not recite all of the evidence, but will summarise the relevant points raised below:

Haran Kandasamy:

7. The Claimant, Haran Kandasamy, testified that he lived with both of his parents, his grandmother and his two sisters at the time of the accident. He confirmed that he had

completed Grade 11 in June 2005, and had left school at that point in order to work and earn income. He worked full-time hours at various factory jobs over the next few years. In November 2006 he secured a full-time job at a company called Artcraft Electric, loading trailers and doing inventory control. He worked there until mid-September 2007, and was paid \$9.50 per hour. The T4 slip issued to him indicates that his earnings in 2007 amounted to \$12,729.

8. Mr. Kandasamy testified that he contributed between \$400-\$500 per month toward his room and board, and paid for other household expenses such as internet, cable and groceries while he was working at this job.

9. The Claimant explained that he left his employment at Artcraft Electric in September 2007, in order to return to school to complete Grade 12. He enrolled at the Mississauga Adult School and was taking an English course at the time of the accident in late October 2007. He attended class four evenings each week, between 6 and 9 p.m. Mr. Kandasamy explained that he was initially only permitted to take one course, and that after a few months he would have been evaluated and permitted to take other courses as well.

10. The Claimant attended this class for approximately seven weeks prior to being involved in the accident on October 28, 2007. He was not working during that period and did not contribute any money toward the household expenses. He testified that his mother paid for his tuition, which he estimated to be between \$40 and \$60, and provided him with spending money.

11. Mr. Kandasamy was asked whether he had been looking for work while attending night school. His evidence on this point varied at different points in time. In a statement provided to RBC in February 2008, a few months after the accident, he advised that he was looking for a part-time job at the time of the accident, so that he could resume paying rent to his parents. He also advised that he had made a verbal agreement to start a job at a shipping and receiving company the following Monday, on the Friday prior to the

accident. He explained that he was not able to begin that employment as a result of having been involved in the accident over the weekend.

12. The Claimant provided similar evidence when he was examined under oath as part of this proceeding on July 16, 2010. He stated that he had been looking for part-time work in September 2007 and had made a verbal agreement to start a job at a factory on the Monday following the accident. He could not recall the name of the company, the person to whom he had spoken, or the location of the plant.

13. Mr. Kandasamy was examined for discovery in the context of the court action he commenced one week later, on July 22, 2010. He testified again that he had been looking for part-time work while he was taking the night course in September 2007. He stated that he had inquired about employment at a manufacturing plant on a Friday afternoon, and was told to come back on the following Monday. He recalled that he was told that he would be taught how to operate a machine called a Raymond Reach. His hours of work would be between 7 am and 3 pm five days per week, and his rate of pay would be between \$10.50 and \$11 per hour. He stated that he intended to resume paying rent to his mother and contributing to the household expenses, once he started working.

14. When testifying at the arbitration hearing, Mr. Kandasamy retreated somewhat from his earlier comments that he had been actively looking for work, stating that he had intended to focus on his studies during that period. When reminded of the information he had provided in the statement given to RBC in 2008, and in his earlier testimony, he stated that he had wanted to go to school and work part-time so that he could have some “pocket money”.

15. Having heard him testify at the hearing, and having carefully reviewed the two transcripts of his earlier testimony, I find the Claimant’s evidence on various points to be inconsistent and on the whole, unreliable. Whether his poor memory is due to the closed head injury he suffered, or other factors, there were many inconsistencies and

inaccuracies in his statements. Accordingly, I place limited weight on the parts of his evidence that is not corroborated by that of the other witnesses.

Sinniah Kandasamy – Claimant’s father:

16. The Claimant’s father also testified at the hearing. He was not working at the time of the accident, due to health issues that he developed in January 2007. His T4 slip indicates that he earned approximately \$28,800 in 2006. After he stopped working in early 2007 he received EI sick benefits for a few months, followed by “regular” EI payments, and estimated that he received between \$700-\$800 biweekly in 2007. He has since been determined to be totally disabled under the CPP program, and receives CPP disability payments and ODSP.

17. When asked about whether the Claimant had been looking for part-time work while he attended night classes in the fall of 2007, Sinniah confirmed that his son was looking for work in order to pay for “traveling expenses”. He recalled accompanying his son to two or three places, and speaking to the plant managers there about job opportunities. He testified that he specifically recalled going into one place, and being told that a forklift driver position was available. He stated that the Claimant was told to return at 7 am the following Monday, if he was interested.

18. When cross-examined about the timing of this event in relation to the accident, Sinniah admitted that he was unsure of the timing. He insisted, however, that the supervisor had told his son to “come back on Monday”.

Dwaraka Kandasamy – Claimant’s sister:

19. Dwaraka is the Claimant’s older sister. She testified that she was living in the family home during the fall of 2007, and had just completed a six-month work contract prior to her brother’s accident. She subsequently applied to medical school in St. Kitts, and was accepted into that program and commenced her studies in January 2008.

20. Dwaraka explained that her mother was in charge of paying all of the bills, and managing the family's finances. She explained that each member of the family was expected to contribute financially to the household while working, and that her grandmother also provided the Old Age Security payments that she received to her mother to cover some of the family's expenses.

21. Dwaraka recalled that her brother had expressed an interest in finding part-time work at the time that he was attending the English class at Mississauga Adult School. She testified that she would occasionally driver her car to pick up her mother from work, and that her father and brother accompanied her on one such occasion. She recalled dropping them off at a building on an industrial strip near Queen Street and Highway 7 in Brampton, so that her brother could inquire into a possible job opportunity. She stated that she then proceeded to pick up her mother, so did not attend with them at the factory. Dwaraka did not recall any discussion in the car on the drive home about the Claimant having been offered a job, but stated that she heard from her mother later that evening that her brother had a job lined up for the following Monday.

22. While I found this witness' evidence to be credible and reliable, there were certain parts of her testimony that were at odds with that of her brother and her mother. The Claimant testified that his father had driven the family vehicle the day that he had accompanied him to the factory at which he inquired about the forklift position. I prefer Dwaraka's evidence in this regard, given that the Claimant's mother subsequently advised that Sinniah was no longer listed on the RBC policy covering the vehicle in question at that time in 2007.

23. As well, her evidence that there was no discussion about the job offer in the car among the family after the plant visit differed from that of her mother, as outlined below.

Rajeswary Kandasamy – Claimant’s mother:

24. The Claimant’s mother also testified at the hearing. She stated that she had worked “on and off” at different jobs that she obtained through a staffing agency between January and August 2007. She recalled that she began full-time work in August 2007, a few months before the Claimant was involved in the accident. Her tax return for that year, however, indicates total earnings of \$1,137, and she accepted that figure as an accurate reflection of her earnings. Mrs. Kandasamy also agreed with the suggestion put to her that she spent a fair bit of time driving her husband to and from his dialysis treatments and medical appointments during the course of that year.

25. Ms. Kandasamy’s 2007 tax return also indicated gross rental income of \$11,000, of which \$1,844 was claimed as net rental income. She explained that she did not own any rental property, but had declared the contributions that she received from family members toward the household expenses, including her children and her mother.

26. Ms. Kandasamy confirmed that she was responsible for managing all aspects of the family’s finances. She stated that when the Claimant was working, he would generally cash his paycheques, keep some cash for ‘pocket money’ and give her the rest of what he had earned. She explained that he would occasionally ask her for more money if he needed it, and that she would give it to him “if it was reasonable”.

27. Mrs. Kandasamy also testified that Haran had taken out a loan to buy living room furniture for the family, and was making payments at the rate of \$180 per month while he was working. She stated that she took over the loan when her son stopped working and returned to school, but that the insurance coverage purchased at the time of the loan covered the balance owing when the Claimant became injured.

28. Mrs. Kandasamy explained that she and her husband had supported their son’s decision to return to school full-time and focus on his studies. She confirmed that she paid for his tuition, books, and a bus pass while he was taking the English course during

the fall of 2007, explaining that she had “put some of his money away” prior to that for that purpose. She stated that she had also paid for a course he had taken to obtain a forklift licence, and for the licence itself. She also testified that when she found out after the accident that Haran had accumulated a \$500 balance on his credit card for expenditures made prior to the accident, and had defaulted on making the required payments, she paid off the amounts owing.

29. Mrs. Kandasamy testified that her son had wanted to find part-time work on the weekends while he was attending night school, so that he would have ‘pocket money’ to spend. She stated that she had supported this decision, and that he had found a job a few days before the accident occurred. She recalled that her daughter had come to pick her up from work, and had advised her that she had dropped off Haran and Sinniah at a factory a few minutes away. After picking them up on the way home, she recalled her son telling her in the car that he had found a job, and would be starting to work the following Monday.

30. She recalled discussing the hours of work with him, and him saying that he had hoped that after starting the job, he would be able to change his shifts to Saturdays and Sundays. She also recalled him showing her a piece of paper that he had received from the supervisor there, and telling her that he had been asked to provide his resume by fax that evening. She could not recall if he had sent his resume, as requested.

31. Finally, Mrs. Kandasamy provided an estimate of her son’s monthly expenses, as well as the family’s household expenses including mortgage payments, property taxes, car payments and insurance, amounts spent on groceries, utility charges and insurance. She stated that at the time of the accident in October 2007, there were six occupants of the home – she and her husband, her mother, her two daughters and the Claimant. She recalled that her oldest son Duchy had lived with his girlfriend in the basement of the family home for six months in 2007, but that he had moved out in the summer that year, and was not living with the family at the time of the accident. While living in the basement, he had contributed \$750 per month toward the household expenses. She also

testified that she received approximately \$400 per month from her mother, and \$500 per month from her daughter Dwaraka while she was working.

PARTIES' ARGUMENTS:

RBC's position:

32. RBC argues that the Claimant was not principally dependent for financial support upon his parents, and that the Fund is therefore responsible to pay his accident benefits claim. Counsel for RBC referred to the oft-cited case of *Miller v. Safeco Insurance* (1984) 48 O.R. 92d) 451 (Ont. H.C.J.), aff'd by Ont. C.A. at (1985) 50 O.R. (2d) 797, and set out the criteria for dependency mentioned by the court. She also noted Arbitrator Samis' finding in *Federation Insurance Company v. Liberty Mutual Insurance* (May 7, 1999, aff'd by Ont. C.A. [2000] O.J. 1234) that a claimant is only considered to be principally dependent upon someone else if the cost of meeting his or her needs is more than twice that person's resources. She submitted that these principles must be kept in mind when analysing the various earnings and expenses in this case.

33. Counsel referred specifically to Arbitrator Samis' comment in the *Federation v. Liberty Mutual* case, *supra*, that choosing the appropriate time frame for the dependency analysis is critical, and that it should be a "period of time which fairly reflects the status of the parties at the time of the accident" (at p. 3). She further noted the following comments in the Ontario Court of Appeal's decision in *Oxford Mutual v. Co-operators' General* (2006) 83 O.R. (3d) 591 -

True characterisation of a dependent relationship will usually require consideration of that relationship over a period of time, particular in the case of young adults whose lives are in transition.

(at para.26)

34. Counsel for RBC argued that the proper time frame to consider in this case is either the one-year period preceding the accident in October 2007, or the ten months from January to October 2007. She contended that it would not be appropriate, in light of the Court of Appeal's comments above, to restrict the analysis to the relatively short period

of six or seven weeks prior to the accident, when Mr. Kandasamy was taking a night class and not working.

35. Counsel noted that the evidence establishes that Mr. Kandasamy was employed full-time during the first two-thirds of 2007, and earned almost \$13,000 during that period. She emphasized that he contributed significantly to the family's household expenses until he left his job in September 2007, providing approximately \$500 per month toward room and board and contributing extra money for groceries. She submitted that when these facts are considered, it is clear that the Claimant was not financially dependent upon his parents during this period.

36. Ms. McAvoy noted that the tax information filed at the hearing indicates that the Claimant's mother earned \$1,137 in 2007, and that his father was receiving EI payments of between \$1,200 - \$1,400 per month, yielding annual combined earnings of between \$15-16,000. She contended that when this figure is considered alongside the Claimant's \$13,000 earnings, it is clear that his parents would not have been able to provide him with 51% of his needs during that period.

37. Counsel for RBC acknowledged that there were inconsistencies in the evidence provided by various family members regarding the details of the alleged job offer that the Claimant received a few days prior to the accident. She noted, however, that Mr. Kandasamy had indicated in a signed statement provided to RBC in February 2008, four months post-accident, that he had been looking for a part-time job while he was attending school at night, and that his subsequent testimony at the examination for discovery and examination under oath over two years after that was consistent with what he set out in his statement.

38. Finally, counsel noted that the Claimant was not pursuing a claim for income replacement benefits in the accident benefits proceeding based on this job offer. She submitted that whether or not the details provided about this event are accepted, Mr. Kandasamy had clearly expressed the desire to return to financial self-sufficiency before

the accident, noting that he had stated that he intended to get a job so that he could continue contributing toward household expenses.

Fund's position

39. Counsel for the Fund emphasized that Mr. Kandasamy was a student at the time of the accident, and noted his evidence that he had no savings or sources of income at the time. He stated that the Claimant had testified that his plan was to remove himself from the workforce for an indefinite period of time until his studies were completed, and noted that this could be a further two or two and one-half years.

40. Counsel submitted that the Claimant's parents had both testified that they supported his decision to go back to school, and undertook the responsibility to support him while he was studying. He contended that the appropriate time frame to consider for the dependency analysis is the six-week period between the date that Mr. Kandasamy left his job in mid-September 2007 and the accident in late October, and that it is clear that during this period he was principally dependent upon his parents for financial support.

41. Mr. Sokol urged me not to accept the evidence provided by the witnesses that Mr. Kandasamy was offered a job a few days prior to the accident, submitting that it was unreliable and self-serving. He noted that Mrs. Kandasamy could not recall the location of the plant, the name of the company or the type of work that was offered, and that the father was uncertain of the timing of the alleged visit. He noted that the Claimant's recollection that the plant was located near Tomken Boulevard in Mississauga was inconsistent with the evidence of the others.

42. He also pointed out the discrepancy between the mother's evidence that this was discussed during the car ride home, and that of her daughter, who said it was not. He acknowledged that the Claimant was not pursuing income replacement benefits in his accident benefits claim, but suggested that the evidence of the alleged job offer was likely motivated by a desire to bolster the income loss claim in his tort action.

43. Counsel for the Fund noted that the parties agreed that the Claimant's expenses – including his personal items and his share of the household expenses – amounted to roughly \$1300 per month at the relevant time.

44. Counsel suggested that the income earned by the Claimant's parents should be augmented by the contributions that the other siblings and the Claimant's grandmother made to the mother on behalf of the household, which he contended amounted to a further \$25,000 per year. He also noted Mrs. Kandasamy's evidence that she had purchased gold jewellery with the income she had earned in previous years, when she had been working more regularly, and that she kept it as an investment, or as an "insurance policy" in the event that unforeseen expenses arose. He referred to her evidence that she had sold the jewellery in 2008 in order to help finance her daughter Dawaraka's tuition for medical school, and contended that the value of the gold jewellery should also be added to both parents' earnings.

45. Mr. Sokol noted that when the above amounts are added together, it is evident that the Claimant's parents were well able to cover over 51% of his needs. He submitted that when the criteria laid out in *Miller v. Safeco, supra*, are considered, the conclusion that must be reached is that Mr. Kandasamy was principally dependent upon his parents for financial support at the relevant time, and that RBC is therefore in priority to pay his claim.

ANALYSIS & FINDINGS:

46. The first step in the analysis is to decide on the appropriate time frame within which to consider whether Mr. Kandasamy was principally dependent for financial support upon his parents, the RBC insureds. Arbitrators and the courts have commented in similar cases that while this will depend on the facts and circumstances underlying each case, the financial relationships between the parties should be looked at over a period of time that fairly reflects the reality of the parties' circumstances. Whereas certain provisions in the *Schedule* require that a "snapshot" view of a claimant's circumstances be taken, in my view, the dependency analysis, especially one involving

young adults whose lives are in transition and may change suddenly at different points in time, should be examined with a broader lens.

47. The evidence in this case indicates that Mr. Kandasamy finished grade 11 and left high school in June 2005. He worked at various jobs from September 2005 to November 2006, a period of fourteen months, through various agencies. He then secured full-time employment at Artcraft Electric, from November 2006 until he left in September 2007, a further period of ten months. This represents a two-year period, during which the Claimant was fully employed and by all accounts, contributing regularly to the family's expenses, and making monthly payments toward a loan obtained in order to purchase furniture for the family's home.

48. As outlined above, Mr. Kandasamy left his job at Artcraft in September 2007, in order to return to school and complete Grade 12. He attended an English course for four evenings each week, for six or seven weeks before the accident. There was some evidence that he was planning to pursue a post-secondary program after that, but his testimony on that point was vague and inconsistent.

49. Counsel for the Fund contends that the dependency analysis should be restricted to this six or seven week time frame, while the Claimant was in school. I do not agree with this contention. While it is clear that Mr. Kandasamy was not earning any income and was being fully supported by his mother during this time, I find that it would be inappropriate to focus solely on this relatively brief period. When these six weeks are considered against the backdrop of the Claimant's life over the twenty-nine months since he completed Grade 11, the mid-September to late October period stands out as being anomalous.

50. In light of the general direction provided by the courts on this issue, and specifically by the Court of Appeal's comments in the *Oxford Mutual v. Co-operators*, *supra*, case, that the parties' relationship should be considered over a period of time, I find that the six-week period preceding the accident, during which the Claimant was a

student and did not contribute to the expenses of the household, does not fairly reflect the reality of his relationship with his parents. As a young adult in transition, it would not be fair to only focus on a relatively brief period that represented a marked departure from his previous life as a wage earner and consistent contributor toward the family's expenses.

51. I find that it is more appropriate to consider the time frame from January 2007 to October 2007, a period of ten months, in determining whether the Claimant meets the test for financial dependency. In my view, this longer period is in line with the court's direction that the parties' relationship be considered over a reasonable period of time. I choose this period for a combination of principled and practical reasons. While it might be more logical to look back to November 2006 when Mr. Kandasamy began his full-time job at Artcraft Electric, most of the income and expense documentation provided is for the calendar year 2007, making that the easier time frame to apply.

52. While there were some inconsistencies in the evidence relating to the details surrounding the alleged job offer that the Claimant received a few days prior to the accident, I accept that Mr. Kandasamy had been looking for work at that time. Well before the Claimant was examined by counsel on this point, I note that he stated explicitly and repeatedly in the signed statement that he provided to RBC that he had been looking for part-time work. This statement is dated February 20, 2008, and was provided before this priority dispute was initiated.

53. In the 2008 statement, the Claimant states - "although I was back in school I still needed to get a part time job so I can resume to pay rent to my parents". He also states - "After I left work in September, I was dependant on my mom until I find employment. She would take over my expenses temporarily until I found myself another job which I was actively looking for". I put more weight on this evidence than I do on the Claimant's subsequent statements, made at least two years later, and in response to close questioning by counsel. And, while there were inconsistencies in the family's evidence on this point, as outlined above, I do not see any motivation for all of them to fabricate this event,

given that the Claimant did not pursue payment of income replacement benefits based on this alleged job offer in his accident benefits claim.

54. Counsel for the Fund contended that Mr. Kandasamy had made a decision to return to school and pursue his studies, and that his parents supported him in that choice. He characterised this decision as a significant and marked departure from the previous two or three years of his life, which created a financial dependency upon his parents that had not previously existed. While that may be true, it is clear from the totality of evidence before me that the Claimant had expressed the intention to seek part-time work while he was taking the night course at the Mississauga Adult School, and had taken steps toward securing employment.

55. In any event, the *Miller v. Safeco* criteria for determining dependency include the ability of the alleged dependent to be self-supporting. While the application of this criterion has been discussed and debated in subsequent cases, on the evidence before me, it is clear that given the Claimant's work history and qualifications, and his expressed desire to find part-time work while in school, he clearly had the capacity to become self-supporting.

56. When the remaining criteria set out by the court in the *Miller v. Safeco* case - such as the amount and duration of his dependency, and his financial needs - are considered, I find that Mr. Kandasamy was not dependent upon his mother, the RBC insured, and her spouse. As stated by Arbitrator Samis (and affirmed by the court) in *Liberty Mutual v. Federation Insurance, supra*, if a Claimant has sufficient resources to fund 51% of his financial needs, he cannot be considered to be principally dependent for financial support upon some one else.

57. When the January to October 2007 timeframe is considered, both the mathematical analysis and the "big picture" approach support this conclusion. Looking at the "big picture", Mr. Kandasamy regularly contributed approximately \$500 per month to the household during this period, and also made monthly payments on a loan incurred to

purchase furniture for the family's living room. His mother earned a total of \$1137 for the year, and his father collected EI benefits. In my view, this does not paint the picture of a person who is principally dependent for financial support upon his parents.

58. The mathematical analysis also supports the above conclusion. The Claimant's T4 income for the calendar year 2007 was \$12,730, earned over the course of just over eight months. Extrapolating that amount over a full year, his annual earnings would be close to \$17,000. When his monthly expenses (agreed to by the parties to be \$1300) are calculated on an annual basis, the amount arrived at is \$15,600. These figures make it clear that his financial resources were sufficient to meet his financial needs.

59. To complete the analysis, I find that the Claimant's parents' combined earnings in 2007 were approximately \$20,000. His mother's T4 slip indicates earnings of \$1,137, and accepting the highest estimate provided of the amount of his father's EI benefits at \$714 biweekly, his annual earnings were approximately \$18,600. I do not agree that the contributions made by the Claimant's siblings or grandmother to the aggregate household expenses should be added to the mother's "income", as suggested by counsel to the Fund. These were funds paid to the mother as the 'financial manager' of the household that she in turn disbursed to make the required mortgage and other house-related payments. Similarly, I do not accept that the value of the gold that she purchased and held as an "investment" should be part of the calculation, as it was a family asset, and had not been sold in order to pay expenses at the relevant time.

60. Finally, when the ten-month timeframe between January to October 2007 is considered, the Claimant earned approximately \$13,000, and his parents' combined income (extrapolated from figures above over a ten-month period) was approximately \$16,400. His living expenses, estimated to be \$1,300 per month, would total \$13,000 for that period. These figures lead to the conclusion that Mr. Kandasamy was not principally dependent upon his parents for financial support.

CONCLUSION & ORDER:

61. For the reasons expressed above, I find that the Claimant, Thurwaran Kandasamy, was not principally dependent upon his mother, the RBC insured, and her spouse (his father) for financial support at the time of the accident. In accordance with section 268(2)1(iv) of the *Insurance Act*, the Fund is therefore responsible to pay his accident benefits claim.

62. I hereby order the Fund to reimburse RBC for all reasonable payments made to date to or on behalf of the Claimant. The Fund will also be responsible to pay any benefits that may become owing in the future as a result of this claim. I remain seised of this matter in the event that any disputes arise with respect to the amounts payable by the Fund to RBC.

COSTS:

63. In accordance with the Arbitration Agreement signed by the parties, the Fund as the unsuccessful party will pay the legal costs incurred by RBC. If counsel are unable to agree on the quantum of costs payable, I invite counsel to contact me and I will review written submissions on the issue and assess the quantum owing in accordance with section 54 of the *Arbitration Act*.

The Fund is also responsible to pay the fees and disbursements related to the arbitration.

DATED at TORONTO, ONTARIO this ____ DAY OF JULY, 2013.

Shari L. Novick

Arbitrator