

1995 CarswellOnt 5015
Ontario Insurance Commission

Granchelli v. Royal Insurance Co. of Canada

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Jose Granchelli, Applicant and Royal Insurance Company of Canada, Insurer

Miller Arb.

Judgment: October 4, 1995

Docket: A-015225

Counsel: None given

Subject: Insurance

Headnote
Insurance

Miller Arb.:

Issues:

1 The Applicant, Jose Granchelli, was injured in a motor vehicle accident on January 19, 1993. He applied for and received statutory accident benefits from the Insurer, payable under Ontario Regulation 672.¹ Weekly income benefits were terminated by the Insurer on February 22, 1995. The parties were unable to resolve their disputes through mediation and on June 27, 1995 the Applicant applied for arbitration under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

2 By letter dated August 24, 1995, Royal Insurance Company of Canada ("Royal") informed Mr. Granchelli that an appointment for an independent medical examination (IME) with Dr. Geoffrey Lloyd was made for September 15, 1995. A second letter was sent on September 5, 1995 to remind Mr. Granchelli of the appointment. At the pre-hearing on September 11, 1995, Mr. Granchelli was again reminded about the IME appointment. On September 19, 1995, Mr. Kostyniuk faxed the OIC advising that Mr. Granchelli failed to attend at the IME and requested that a motion be held to stay the arbitration hearing.

3 The issue before me is:

1. Is Mr. Granchelli precluded from proceeding with this arbitration because he failed to attend a medical examination, as required by section 23(2) of the *Schedule*?

Result:

4

1. Mr. Granchelli is precluded from proceeding with this arbitration unless he makes himself reasonably available for a medical examination to be scheduled by Royal.

Hearing:

5 The hearing of the preliminary issue was held by teleconference on September 28, 1995, be me, Joyce Miller, Arbitrator.

Present at the Hearing:

6

Applicant's Representative:	David Longley Barrister and Solicitor
Insurer's Representative:	Nestor E. Kostyniuk Barrister and Solicitor

Exhibits:

7 Four exhibits were filed

Evidence and Findings:

8 Royal takes the position that Mr. Granchelli is precluded from proceeding with the arbitration because he failed to make himself reasonably available for an IME. Mr. Longley, counsel for Mr. Granchelli, did not have an explanation as to why Mr. Granchelli did not attend at the IME appointment. He stated that he had on numerous occasions left messages for Mr. Granchelli to get in touch with him and Mr. Granchelli has yet to respond.

9 The relevant provisions are found in sections 23(2) and 25 of the *Schedule*:

23(2) In respect of claims under Part IV, the insurer may, on reasonable notice, require an examination of the insured person by a qualified medical practitioner, psychological advisor or chiropractor as often as it reasonably requires, and require an autopsy of a deceased insured person in accordance with the law relating to autopsies.

25 No person may commence a mediation proceeding under section 280 of the Insurance Act in respect of benefits under this Regulation unless the requirements of section 22 have been satisfied and the insured person has made himself or herself reasonably available for any examination required under section 23.

10 These two sections were considered in the case of *Hanna*². In that case Arbitrator Draper stated that the purpose of section 23(2) was meant to give an insurer a reasonable opportunity to evaluate an ongoing claim for weekly benefits. He held that section 25 should be interpreted in light of this purpose. Since section 25 states that an applicant cannot access the dispute resolution process *at all* until he or she had made himself or herself reasonably available for a medical examination, Arbitrator Draper concluded that an applicant cannot proceed through the dispute resolution process unless the applicant makes himself or herself reasonably available for a medical examination. I agree with Arbitrator Draper's conclusions.

11 Since no reasonable explanation was given as to why Mr. Granchelli failed to attend the scheduled IME, I find that Mr. Granchelli is precluded from proceeding with this arbitration unless he makes himself reasonably available for a medical examination to be scheduled by Royal.

Expenses:

12 I decline to make an award of expenses at this time. I believe that the issue of expenses should be reserved for the arbitration hearing. However, if this matter does not proceed to arbitration than the parties may apply for assessment of the expenses.

Order:

13

1. Mr. Granchelli is precluded from proceeding with this arbitration unless he makes himself reasonably available for a medical examination to be scheduled by Royal.

Footnotes

- 1 Prior to January 1, 1994, Ontario Regulation 672 was called the *No-Fault Benefits Schedule*. After that date it became the *Statutory Accident Benefits Schedule — Accidents Before January 1, 1994*. In this decision, the term "*Schedule*" will be used to refer to Regulation 672.
- 2 *Kevin Hanna and Royal Insurance Company*, December 2, 1994, OIC File No. A-005409

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