

1993 CarswellOnt 4712
Ontario Insurance Commission

Crnkovic v. Simcoe & Erie General Insurance Co.

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**Adolf Crnkovic and Maria Crnkovic, parents of the late Dubravka (Debbie)
Crnkovic, Applicants and Simcoe & Erie General Insurance Company, Insurer**

Palmer Arb.

Heard: March 3, 1993
Judgment: April 8, 1993
Docket: A-002228

Counsel: Nestor Kostyniuk, for Applicants
Ralph D'Angelo, for Insurer

Subject: Insurance

Headnote
Insurance

Palmer Arb.:

1 Dubravka (Debbie) Crnkovic, daughter of the Applicants, was tragically killed in a motor vehicle accident on February 2, 1992. The Applicants applied to the Insurer for death benefits payable under Ontario Regulation 672 (R.R.O. 1990, the "*No-Fault Benefits Schedule*"), enacted under the *Insurance Act*, R.S.O. 1990, c. I.8.

2 The Insurer denied payment of the death benefit on the basis that at the time of the accident Debbie Crnkovic was not "principally dependent for financial support" on her parents. The Applicants applied for mediation of their dispute. Mediation was unsuccessful in achieving agreement between the parties and the Applicants applied for arbitration under the *Insurance Act*.

3 The issue in this hearing is:

Was Debbie Crnkovic "principally dependent for financial support" on her parents at the time of the accident?

4 The Applicants also claim interest on any outstanding amounts owing and their expenses incurred in the hearing.

Result:

5

At the time of the accident, Dubravka (Debbie) Crnkovic was not "principally dependent for financial support" on her parents. Accordingly, the Applicants are not entitled to death benefits under the No-Fault Benefits Schedule.

Hearing:

6 The hearing was held at North York on March 3, 1993, before me, K. Julaine Palmer, arbitrator.

Present at the Hearing:

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Applicants:	Adolf Crnkovic and Maria Crnkovic
Applicants'	Nestor Kostyniuk
Representative:	Barrister and Solicitor
Insurer's	Ralph D'Angelo
Representatives:	Barrister & Solicitor Tricia Doyle

Witnesses:

8 Adolf Crnkovic, Maria Crnkovic, Roseanne Misener

Cases cited:

9 *Barnard et al. v. Safeco Insurance Co. of America* [1986] I.L.R. ¶1-2146 (Ont.H.C.J.)

10 *Chevrier et al. v. Zurich Insurance Company* [1984] I.L.R. ¶1-1919 (Ont.Dist.Ct.)

11 *Martins v. Gibraltar General Insurance Co.* (1984) 6 C.C.L.I. 226 (Ont.Co.Ct.); I.L.R. ¶1-779

12 *Miller v. Safeco Insurance Co. of America* (1984) 48 O.R.(2d)451 (H.C.J.), (1985) 50 O.R.(2d)797 (Ont.C.A.)

13 *Pagliarella et al. v. Di Biase Brothers Inc. et al.* (1989) 71 O.R.(2d)193 (H.C.J.)

14 *Revega v. Western Union Insurance Company* [1974] I.L.R. ¶1-665 (Alta. S.C.)

Evidence and Findings:

15 Dubravka (Debbie) Crnkovic was born in the former Yugoslavia on September 27, 1967. She immigrated to Canada with her parents in 1969 and lived at home with them and her two younger brothers until November 1, 1991 when she moved into an apartment which she shared with another young woman.

16 Debbie was an accomplished photographer, who graduated in 1990 with a degree in photographic arts after completing a four-year program at Ryerson. Her first job after graduation was with the Hospital for Sick Children where she did medical photography and other audio-visual work. She next worked for Sylvano Color Laboratories Inc. [sic]. She was laid off from there and had a period of unemployment of about three months. At the time of her death, she was the Manager at Glamour Shots, a business which operated in Square One mall.

17 A letter from Debbie's boss, Laurel Nicholson, President of Laurel's Glamourshots Inc., was filed as an exhibit. The letter records Debbie's rapid rise in this company and the high regard in which she was held:

Debbie Crnkovic started working for Glamour Shots in early May of 1991 as a make up artist and photographer trainee. She quickly moved to the position of senior photographer and manager of the Glamour Shots Square One location. As manager Debbie worked 44 to 55 hours per week. Her standard base pay was \$500/week. She received a bonus of \$2000 in October of 1991. Debbie was in line for increased pay and additional bonuses had she continued working. My plan was that Debbie should be making at least \$35,000 per year by the end of 1992. There have been no layoffs or job actions that would have affected her employment since her death.

The death of Debbie had a devastating [sic] effect on this business and on me personally. We had developed a trusting relationship since January 1991. Debbie was an extraordinary person. I have yet to find someone to replace Debbie that comes close to her trustworthiness, intelligence and maturity.

18 According to the documents filed by the Applicants, which I accept, Debbie's earned income in 1990 amounted to \$9,855. In 1991, her gross earnings from employment plus her U.I.C. benefits totalled \$20,146.13. In 1992, she had earned \$3,683.87 from Glamour Shots by the date of her death on February 2, 1992.

19 Debbie Crnkovic had the good fortune to be born to generous parents. Her father is a manager with the provincial government, earning approximately \$60,000 per year. Her mother is an assembler with 20 years' service at C.G.E. in Oakville, earning approximately \$30,000 per year. In 1989, the Crnkovics sold their Toronto home and purchased their present home in Mississauga for \$373,000. It is a home of nearly 3,000 square feet, with four bedrooms and a finished basement. In 1990, Adolf Crnkovic built and outfitted a full darkroom and office for Debbie in the basement of the home. He estimated the cost at \$3,000.

20 After Debbie's graduation in 1990, her father repaid her student loan of \$5,000. Debbie continued to live with the family and never paid room and board. Early in 1991, Adolf Crnkovic gave his daughter \$2,000 to use as seed money toward the purchase price of a car. Debbie bought a new 1991 Honda Civic Sedan "SE" on June 25, 1991 for \$16,063. She financed all but \$2,000 of the purchase price, withdrawing the downpayment from her bank account.

21 Apart from her employment, Debbie had tried her hand at establishing a business as a freelance photographer. She registered her business with the province on July 21, 1990. She had business cards printed. She had her own telephone number and answering machine in the basement of her family's home where her darkroom was located. Unfortunately, she was not successful at making any money in the freelance photography business. She continued to try to build her portfolio when she was able to find time. Debbie owned three cameras, two of which her mother had paid for; she had bought her own underwater camera. Maria Crnkovic testified that she paid for all Debbie's photographic supplies.

22 Both Adolf and Maria Crnkovic testified that they regularly gave Debbie cash to help her with her expenses. Adolf Crnkovic looked after the regular maintenance of her car; he bought floor mats for it in the fall of 1991. Mrs. Crnkovic testified that she purchased food every week for the family and set aside some purchases for Debbie to take away with her. Mr. Crnkovic testified he regularly gave Debbie \$40 or \$50, as often as twice per week. Mrs. Crnkovic testified she would give Debbie money "all the time": she would give her money to pay off her Visa bill, \$45 to \$50 per week in grocery items; some weeks she would give her \$100 cash, the next \$75. In October 1991, Mrs. Crnkovic bought her daughter a leather coat which cost \$375. She thought it was important for Debbie to look good at her workplace and would go almost every weekend to shop for clothes with her. She would spend \$175 on a suit, or \$60 on pants, which Debbie never repaid. The parents testified they never kept track of how much money they gave their daughter.

23 When Debbie broached the subject of moving out on her own, her parents were not enthusiastic. Adolf Crnkovic sat down with his daughter and did calculations with her which suggested that she could not make it on her own, unless she had a roommate. When Debbie insisted, her parents regretfully gave in. Adolf, Tom and Ivan Crnkovic all played a large role in the painting of the two-bedroom apartment. Adolf Crnkovic moved the bedroom furniture he had purchased for his daughter from the family home to the apartment in his pickup truck. Maria Crnkovic purchased china for Debbie's kitchen, estimated at \$130; tea towels; curtains; glasses; \$60 in towels and \$50 in bedding; and a vacuum cleaner for \$320. The parents also bought a kitchen table and chairs for the apartment and a television set.

24 Debbie Crnkovic's roommate, Roseanne Misener, 27, testified. She became acquainted with Debbie through her part-time job at Glamour Shots; her full-time job is in accounting with Laidlaw. Roseanne Misener testified that Debbie worked long hours. They divided the expenses of the apartment and each had her own telephone. Roseanne Misener estimated they would spend only \$20 to \$30 per week on groceries, because neither was there very much. Sometimes they

would buy no groceries. Maria Crnkovic provided groceries and prepared foods regularly. Roseanne Misener visited her family on Sundays and she testified she believed Debbie did the same.

25 Adolf Crnkovic testified that Debbie never missed spending Sunday with her family. She stayed overnight at the family home at least one night on the weekend as well. She talked with her mother every day on the telephone and sometimes came to the family home during the work week. She worked every Saturday. Debbie did her laundry at the family home. Maria Crnkovic testified that she felt very much like Debbie had never left home.

26 When Debbie Crnkovic died, she had \$88 in one bank account and \$629 in her other account. She owed money on her charge card. Adolf Crnkovic testified that money was deducted directly from her bank account to pay the outstanding balance on the card after her death, but \$600 remained owing. He testified that the car was totally destroyed in the accident; he was able to settle the bank loan with the proceeds of insurance.

27 In this case I must decide if Debbie Crnkovic was "principally dependent for financial support" on her parents at the time of the accident. I have carefully reviewed the six cases to which counsel drew my attention. Particularly in questions of dependency, each case turns on its own facts; in none of the cases presented were the facts very similar to this case. In particular, no case considered the dependency of a young person *who was no longer residing in the family home*. Four of the cases considered the meaning of the phrase "principally dependent".

28 The predecessor legislation to the present *No-Fault Benefits Schedule*, Schedule "C" of the *Insurance Act*, R.S.O. 1980, c. 218, required certain elements to be established in order that a party be found to fall within the definition of "dependant" under subs. 2, Pt. 1 (Death Benefits), item B(3). As Judge McTurk in the *Martins v. Gibraltar* case, cited above, stated:

...the plaintiff must be found to be a relative of the head of the household, residing in the same dwelling premises and principally dependent upon the head of the household or the spouse of the head of the household for financial support.

29 That case involved a 34 year-old man who was living with his parents in a home owned equally by him and them at the time of an accident. Judge McTurk was satisfied on the facts of that case that the plaintiff met the definition of "dependant".

30 In the *Miller v. Safeco* case, cited above, Mr. Justice O'Brien considered whether the 23 year-old male plaintiff was a "dependent relative" of his father and therefore entitled to loss of income benefits under the accident benefits section of his father's automobile policy. In that case, as well, part of the definition which the plaintiff was required to satisfy was that he resided in the same dwelling premises as his father.

31 In the *Miller* case, Mr. Justice O'Brien made the following comments in considering who should be an "insured person". These criteria were later approved by the Court of Appeal:

...the legislative intent should be kept in mind and, in addition, matters such as the amount and duration of the financial or other dependency, the financial or other needs of the claimant, [and] the ability of the claimant to be self-supporting...

32 Under the *No-Fault Benefits Schedule* as it now exists, a person is deemed to be a dependant of another person "if the person is principally dependent for financial support on the other person or the other person's spouse (s.3(2))." There is no longer any residency requirement.

33 Mr. Justice O'Driscoll in the *Barnard v. Safeco* case, cited above, considered both the *Martins* and *Miller* cases as well as several dictionaries in his discussion of the meaning of "principally dependent". I agree that the words 'chiefly', 'mainly', and 'for the most part' are synonymous with the word 'principally'.

34 I find on the evidence before me that Debbie Crnkovic had a gross income of \$20,146.13 in 1991 and \$3,683.87 in 1992. I find that her proven fixed monthly expenses at the time of the accident were as follows:

Rent	\$382.07
Car payments	339.43
Car insurance	112.57
Basic telephone	17.42
Cable t.v.	10.65
Gym club	13.36
Food at home	65.00
TOTAL:	\$875.50

35 I find that Adolf and Maria Crnkovic were generous in giving cash to their daughter, as well as buying her clothing and food, and in helping her with the start-up costs associated with her apartment. It is difficult to determine a precise amount for this financial support, but I find it to be in the range of \$500 to \$800 per month at the time of the accident.

36 I find that the financial support from Adolf and Maria Crnkovic enhanced the lifestyle which their daughter would otherwise have been able to afford. I find that she was financially able to provide for herself the necessities of life and that she was, for the most part, at the time of the accident, self-supporting. Debbie Crnkovic had no savings and was paying for her automobile by monthly instalments. She had her own credit card and had accumulated a modest amount of indebtedness on the card. She worked hard at her job and was the manager of a shop in a shopping mall. She was earning \$500 per week from that employment and had received a \$2,000 bonus in October 1991. She was very highly regarded by her employer.

37 Debbie Crnkovic was blessed with generous parents. They did not like to see her go without. Her father had paid off her student loan on her graduation and had funded the downpayment for her car. Each parent regularly gave her money and provided other gifts in kind: from groceries to car mats. With her move to an apartment, the family continued its generosity in supplying furnishings and equipment and helped her paint and move her belongings.

38 However, in my view, it could not be said that Debbie Crnkovic was "principally dependent for financial support" upon her parents. At the time of the accident, she was able to financially provide for herself, but on a more modest scale than the lifestyle which her parents had previously provided for her. Because of their love and concern for her, they continued to supplement her financial resources after she moved to her own apartment.

Expenses:

39 The Applicants seek an award of the expenses they have incurred in this arbitration. An award for expenses may be made under section 282(11) of the *Insurance Act*, which provides as follows:

The arbitrator may award to the insured person such expenses incurred in respect of an arbitration proceeding as may be prescribed in the regulations to the maximum set out in the regulations.

40 The prescribed expenses and amounts are set out in Schedule 1 of the Dispute Resolution Practice Code and in Regulation 664 (R.R.O. 1990).

41 In the *Ralph McCormick v. Economical Mutual Insurance Company* case (O.I.C. File No. A-000139), Arbitrator Susan Naylor made the following comments about expenses, with which I agree:

The discretion to award expenses should be exercised, having regard to the intent and purpose of the legislative scheme. The arbitration process has been established under the Insurance Act, as amended, in order to facilitate applicants' access to relatively inexpensive, speedy and informal adjudication of disputes regarding no-fault benefits.

The discretion to award expenses should be exercised in accordance with this objective, having regard to the individual circumstances of each case.

Accordingly, it is appropriate to award an applicant his or her expenses, unless, in the circumstances of the particular case, it is determined that the application for appointment of an arbitrator was manifestly frivolous or vexatious, or that the applicant's conduct unreasonably prolonged the proceedings.

42 The Applicants are entitled to their expenses as set out in Schedule 1 of the Dispute Resolution Practice Code. In the event that the parties cannot agree as to the total amount of expenses, I remain seized of this matter and a party may apply for assessment of the expenses before me.

Order:

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1. At the time of the accident, Dubravka (Debbie) Crnkovic was not "principally dependent for financial support" on her parents. Accordingly, the Applicants are not entitled to death benefits under the *No-Fault Benefits Schedule*.
2. The Applicants are entitled to their expenses incurred in respect of the arbitration proceeding.