

IN THE MATTER OF AN ARBITRATION

BETWEEN:

AXA INSURANCE COMPANY

Applicant

- and -

ROYAL INSURANCE COMPANY

Respondent

On October 13, 1995, Aaron Chettle was riding his bicycle when he was struck by a motor vehicle operated by David McNaughton. At the time of the accident Mr. McNaughton was insured with the Axa Insurance Company. Mr. Chettle's mother, June Chettle was insured with Royal Insurance Company. The application for benefits was submitted to the Axa Insurance Company who have paid certain benefits pursuant to the provisions of the Statutory Accident Benefits Schedule. The parties to this proceeding wish a determination as to which of the insurers is required to pay benefits to Aaron Chettle pursuant to provisions of section 4 of Ontario Regulation 776/93.

ISSUES

The parties presented the following issues to the arbitrator for determination as follows:

- 1) Was Aaron Chettle a "dependent" of June Chettle as defined in section 4 of Ontario Regulation 776/93?
- 2) If the answer to question 1 is Yes, which of the following amounts is Axa Insurance Company entitled to recover from Royal Insurance Company
 - a) Weekly income replacement benefits \$14,503.03
 - b) Personal Items Damage \$987.49
 - c) Ambulance \$45.00
 - d) Medical Records and Certificates \$245.50
 - e) Independent Medical Examination \$1485.00
 - f) DAC \$900.00
 - g) Amount of interest on aforesaid amounts
- 3) Are either of the parties entitled to costs on this application and if so in what amount?

RESULT

- 1) Aaron Chettle was not "principally dependent for financial support or care" on June Chettle as defined by section 4 of Ontario Regulations 776/93.
- 2) As the answer to Issue 1 is No, Axa Insurance Company is not entitled to make any recovery from the Royal Insurance Company for the amount set forward in Issue 2.

At the completion of the arbitration, counsel for both parties requested that the issue of costs be adjourned to any date for submissions.

HEARING

The hearing was held in the City of Toronto, Ontario on April 29, 1997 before me, Bruce R-
Robinson.

PRESENT AT THE HEARING

Applicants representative, Krista L. Springstead
Respondents representative, Derek Greenside

WITNESSES

Aaron Chettle
June Chettle

REASONS

The parties filed an agreed statement of facts wherein it is agreed that Aaron Chettle was injured while riding his bicycle on October 13, 1995. Axa Insurance Company insured June Chettle, Aaron's mother, under policy number LAA2070023. Royal Insurance Company issued policy number 12723767 to Mr. David McNaughton who was the operator of the vehicle which struck Mr. Chettle.

It is agreed that Mr. Chettle applied to Axa Insurance Company for Statutory Accident Benefits pursuant to Ontario Regulation 776/93 and these benefits were paid in the total sum of \$19,708.32. During the arbitration, counsel for Royal Insurance Company agreed that the only matters in dispute revolved around Medical Record and Certificates, the Independent Medical Examination, the DAC and the amount of interest on the payments.

The parties in this matter are governed by Section 268(2) of the Insurance Act, and the definition of "dependent" in section 4 of Ontario Regulation 776/93

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

2. In respect of non-occupants

- (i) A 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 (1) the non occupant has recourse against the insurer of the automobile that struck the non occupant.

Ontario Regulation 776/93 - Statutory Accident Benefits Schedule - (Accidents on or after January 1, 1994).

Dependents - Section 4:

For the purposes of this Regulation, a person is a dependent of another person if the person is principally dependent for financial support or care the other person or the other persons spouse".

Mr. Chettle was called as a witness by Axa Insurance Company. He gave evidence that he is 23 years of age and is now residing with a friend in Etobicoke. He lived in his mothers home until approximately 1989 or 1990 when he moved to Ottawa. At that stage he was totally on his own and thoroughly independent of his mother. While in Ottawa, he worked full time as a carpenter. When he was laid off, he returned to Toronto and resided at 118 Symington Avenue from October 1992 through to approximately August 1995 when he moved into his mother's home at 3877 Ponderosa Lane in Mississauga.

While living at the Symington Avenue address, Mr. Chettle paid rent of \$675.00 with the assistance of a friend, James Rogers, who contributed \$175.00. The oral evidence of Chettle and his Income Tax Records indicate that from 1991 to 1994 Mr. Chettle had income both from his job as a carpenter and from Unemployment Insurance. His job as a carpenter ended some time in December of 1994. He continued to receive Unemployment Insurance Benefits up until approximately the middle of August 1995 and indicated that he had some savings of an undermined amount when he moved in with his mother towards the end of August 1995.

He attended Burnhamthorpe Collegiate in September of 1995 to upgrade his high school education. It was his evidence that if he had been unable to obtain work as a carpenter he would have done so. He did in fact work as a free-lance labourer with TNT to deliver goods. There was a relationship between Sears and TNT with regards to delivery of their products. Mr. Chettle had asked for work at this company and was hired as a driver to deliver furniture and appliances.

The employers confirmation of income form indicates that he commenced his job as a labourer on September 30, 1995 to deliver heavy goods for Sears and that he worked a period of approximately two weeks before the accident occurred on October 13, 1995. He was paid a total of \$300.00. Mr. Chettle indicates that he was given a minimum guarantee of one day a week at \$100.00 per day and it was possible to work six days a week. He was paid in cash and there were no deductions for income tax.

The issue in this matter is whether or not Mr. Chettle became a dependent of his mother June Chettle when he moved back into her premises towards the end of August 1995. Mr. Chettle indicated that he had an oral agreement with his mother that while he was not able to pay regular rent, he would do work around the house and help finish off the basement in lieu of some of the rent. At some later time, when he was working again, he would pay her the full value of the rent less the valuation of the amount of renovation he had made to her house. The evidence of Mr. Chettle and his mother are consistent on that point. They felt that a fair rental for the basement of his mothers home would be approximately \$400.00. Mr. Chettle thought it would have been somewhere between \$300.00 to \$500.00.

Both witnesses were consistent in their evidence that Aaron Chettle purchased all the materials and did all the work himself. He finished one room in the basement where he installed a bathroom. As a result of the accident, he was not able to complete further renovations which were to involve partitioning off the remaining area.

In addition to doing the home renovations, Mrs. Chettle indicated that her son was extremely helpful doing the heavy household chores. He would shovel the snow, take out the garbage and do all the normal handyman jobs which she could not do herself.

I found Mrs. Chettle to be quite candid in describing both her home situation and her poor financial situation in August of 1995. I accept her evidence in its entirety. She was extremely happy to have her son move back into her home. She stated that she did not provide him with any financial support whatsoever. Aaron bought and prepared his own food, purchased his own books, and looked after his own social activities. She indicated quite candidly that she was "not in a position to help him". She stated that she was barely able to make her own mortgage payments and in fact had gone to credit counselling to assist her in paying off her bills.

Having Aaron around the house to do renovations and to do the heavy work appeared to be extremely helpful to her in a financial sense. She stated that he did such "wonderful things" as working in the yard, shovelling the snow, cutting the lawn, taking out the garbage, fixing the ceiling fan, fixing the nails that have popped out of the wall and cleaning birds out of the stove. This was in addition to working in the unfinished basement which was to have improved the value of her property. She stated that Aaron did his own laundry and cleaning

and also ate separately. He gave her as much money as he could when he had money. Neither of the Witnesses kept any records of either the amounts of rent that were paid nor the amount that was spent on materials to fix the basement. Mrs. Chettle indicated that her earnings per month were approximately \$2000.00 from which she had to pay her mortgage of \$980.00 plus a very substantial debt to credit card companies along with the normal Hydro, Gas, Telephone, Cable and Insurance. She candidly admitted that she had very little if any money left over. There was no evidence offered to contradict that of Mrs. Chettle on these important matters.

In looking at the income and estimated living expenses of Mr. Chettle it is obvious that he was not able to give a very good approximation of these amounts. I find this approximation overly optimistic at best. His mother indicated that her son was conservative in his spending. While living with his mother he felt he spent between \$100.00 to \$200.00 per week on food, \$40.00 a week for bus transportation, a few long distance phone calls, \$40.00 for books, a minor amount for clothing, possibly \$100.00 an evening going out during the week. The report prepared on behalf of Axa Insurance Company by Mr. Jeffrey C. Smith calculated Mr. Chettle's living expenses in Schedule 1 as \$2405.00 during the period August 20 - October 13, 1995. This is in contrast to Schedule 3(b) of the report prepared for Royal Insurance Company prepared by Hrycko & Associates Inc. where the net weekly financial resources and weekly actual expenses between the period August 20 - September 20, 1995 are listed as \$71.54. In Schedule 3(c) the report goes on to indicate that the weekly actual expenses for the period December 18, 1994 to August 19, 1995 are \$362.31.

Taking these reports in conjunction with the actual evidence given by the witnesses at the hearing it is clear that Mr. Chettle kept his expenses to a minimum and that apart from having a roof over his head, was not relying on his mother for any other support. The Hrycko & Associates report states "however, it appears that in the period December 18th, 1994 to August 19th, 1995 and September 23rd to October 13th, 1995, immediately prior to the accident, Mr. Chettle's net weekly financial resources exceeded his weekly actual expenses.

Presumably this was also the case prior to January 1995 when Mr. Chettle had been gainfully employed.

In this matter it is necessary to look at the reasonable value of goods and services provided by Mr. Chettle to his mother in an attempt to deal with the concept of financial support and dependency.

Mr. Chettle indicated that the improvements he made to the basement would have a value from material range of \$1000.00 to \$1500.00 and that his labour expense would be worth a further \$1000.00 to \$1500.00. In order to complete the renovations to the basement it would have taken a further \$1000.00 and \$1000.00 for labour. As Axa led no evidence to

the contrary, and in fact called Mr. Chettle as their witness, I find as a fact that he did the work and that these amounts are a reasonable reflection of the costs. Again, no contrary evidence was presented on these issues.

Axa Insurance takes the position that Mr. Chettle is principally dependent on his mother for "financial support". I find as a fact that apart from the value of the rent there was no other financial support. Mr. Chettle looked after all his own cooking, house keeping, and personal matters. Furthermore, I find that Mrs. Chettle did not supply him with any other care, financial or otherwise. In fact, Mr. Chettle took over most of the care of the home which would normally be done by either Mrs. Chettle personally, or by someone else who would be paid for their labour.

The test to be applied is one which accurately reflects the entire circumstances of the relationship between the Mrs. Chettle and her son. It must take into account the "realistic assessment of an applicants actual financial circumstances to determine whether they are in fact relying on another for support" as indicated by Arbitrator Makepeace in *Palmer and Pilot Insurance Company*. (1)

Furthermore, I adopt the comments of Arbitrator McIntosh in *Najem and Axa Insurance Company* (2) where she states:

I find that the term "financial support" contained in s. 3(2) of the Schedule, is broad enough to extend beyond money to include the concept of "moneys worth". It is often been said in arbitration decisions that the Schedule must be given a broad, liberal, and remedial interpretation in keeping with the purpose of the legislative scheme.

(1) **Palmer v. Pilot Insurance Company, O.I.C. File No. A-009068, January 13, 1995**

(2) **Najem v. Axa Insurance, O.I.C. File No. A-003115, June 27, 1993**

I find as a fact that Aaron Chettle and his mother arrived at an oral agreement whereby he would help out both inside and outside the house doing domestic chores and also would complete renovations in the basement. This was a form of barter wherein goods and services were supplied in exchange for accommodation. The concept of "moneys worth" is most appropriate in this situation as both Aaron Chettle and his mother were in complete agreement as to what was to and did transpire. I find that Aaron was of no financial burden to her whatsoever and in fact was able to supply his valuable services of maintaining the house and also improving the value of the house. He had also been employed and earned

some money which he had contributed to his mother.

Axa further takes the position that the appropriate time period to be looked at is not a single snapshot of the date of the accident but must be a reasonable time period. It is suggested by Axa that this period would commence at the time he returned to live with his mother up until the time that the accident occurred. At this point his Unemployment Insurance Benefits are terminated, he is living at home with his mother, attending school, doing some renovations around the house and had worked only two days.

Royal Insurance Company takes the position that a longer period of time should be looked at and that the period in which Aaron Chettle was living with his mother was only a temporary situation.

The "snapshot approach" has been found to be inappropriate in these situations. Arbitrators have considered a few months to several years when considering the matter of dependency (3). This is a realistic approach and one that I adopt in this case. I find that Mr. Chettle had been on his own and financially independent since leaving his mother's home in 1989 or 1990. A return to his mother's home, on a temporary basis, in these circumstances did not place him in a financially dependent position.

(3) Palmer v. Pilot Insurance Company, O.I.C. File No. A-009068, January 13, 1995

MJ.T. v. Simcoe & Erie General Insurance Co. [199471 O.I.C. Decision No. 140

Raffoul v. State Farm Mutual Automobile Insurance Co. [19941 O.I.C. Decision No. 103

Raffoul v. State Farm Mutual Automobile Insurance Co. [19961 O.I. C. Decision No. 58, appeal decision

Donahue v. State Farm Mutual Automobile Insurance Co. [19941 O.I.C. Decision No. 92

CONCLUSION

I find from the evidence that the value of services contributed by Mr. Chettle to his mother, along with small amounts of money which he had paid, and the commitment to pay money in the future, that Mr. Aaron Chettle was not "principally dependent for financial support or care" on his mother June Chettle.

Having made this finding, it is not necessary to deal with the matters raised in Issue 2.

COSTS

The parties have asked that I adjourn the matter of costs for submissions at a later time. Counsel may contact me to set up an appointment to continue their submissions with regard to the matter of costs.

ORDER

Mr. Aaron Chettle is not "principally dependent" in either financial support or care upon his mother June Chettle within the meaning of section 4 of Ontario Regulations 776/93 and therefore Axa Insurance Company is responsible of paying Statutory Accident Benefits to Aaron Chettle under the provisions of section 268 (2) of the Insurance Act.

"Bruce R. Robinson"

Bruce R- Robinson, B.A, LL.B.,
Arbitrator

MAY 29.1997

Date

Schedule 'A'

- 1) Copy of Tax Return 1992
- 2) Copy of Tax Return 1993
- 3) Copy of Tax Return 1994
- 4) Itemized Statement of Benefits paid - Unemployment Insurance Commission
- 5) Employers Confirmation of Income
- 6) Revenue of Canada Statement of Unemployment Insurance Benefits Paid - 1995
- 7) Agreed statement of facts
- 8) Hayes Smith & Associates Inc. investigative accountants report February 6, 1997
Jeffery C. Smith C.A.
- 9) Notice to applicant of dispute between insurers, January 18, 1996
- 10) Some replacement benefits summary
- 11) Hrycko & Associates Inc. report dated July 4, 1996

Schedule 'B'

Cases Referred to

Catherwood et al v. Young et al., (1995) 27 O.R. (3d) 63

M.J.T. v. Simcoe & Erie General Insurance Co. [19947] O.I.C. Decision No. 140

Raffoul v. State Farm Mutual Automobile Insurance Co. [1994] O.I.C. Decision No. 103

Raffoul v. State Farm Mutual Automobile Insurance Co. [1996] O.I.C. Decision No. 58,
appeal decision

Miller v. Safeco Insurance Co. of America (1984) 48 O.R. (2d) 451, affirmed (1985) 50 O.R. (2d) 797 (C.A.)

Donahue v. State Farm Mutual Automobile Insurance Co. [1994] O.I. C. Decision No. 92

Cattrysse v. Westminster Mutual Fire Insurance Co. [1993] O.I.C. Decision No. 36

Jevco Insurance v. Dominion of Canada Insurance (1995) O.I.C. File: n/a

Simeonoff v. Pako Insurance Co. Ltd. [1993] I.L.R. 1-2920

Najem v. Axa Insurance, O. I. C. File No. A-003 115, June 27, 1993

Palmer v. Pilot Insurance Company, O.I.C. File No. A-009068, January 13, 1995

Weiler v. Personal Insurance Company of Canada, O.I.C. File No. A-95-000259, April 1, 1996

Priority of Payments Bulletin, O.I.C. No. A-5-95