



FSCO A12-005740

BETWEEN:

RAJESH SHARMA

Applicant

and

**ROYAL & SUNALLIANCE INSURANCE
COMPANY OF CANADA**

Insurer

REASONS FOR DECISION

Before: Eban Bayefsky

Heard: April 7, 2015, at the offices of the Financial Services Commission of Ontario in Toronto.

Appearances: Neither Mr. Sharma nor anyone on his behalf attended. Zeitoon Vaezzadeh for Royal & SunAlliance Insurance Company of Canada.

Issues:

The Applicant, Rajesh Sharma, claimed to have been injured in a motor vehicle accident on June 19, 2009. He applied for statutory accident benefits from Royal & SunAlliance Insurance Company of Canada ("Royal"), payable under the *Schedule*.¹ Royal denied certain of Mr. Sharma's claims, and he applied for mediation. The parties were unable to resolve their disputes through mediation, and Mr. Sharma applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

¹The Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996, Ontario Regulation 403/96, as amended.

The issues in this hearing, in accordance with pre-hearing letters dated November 8, 2013 and October 7, 2014, are as follows:

1. Is Mr. Sharma entitled to receive a medical benefit for treatment plans from Dr. Turk, dated December 11, 2009, in the amount of \$2,248.37, and May 11, 2010, in the amount of \$2,149.53?
2. Is Mr. Sharma entitled to payments for the cost of examinations from Vantage Assessments, as follows:
 - an OCF-22, dated April 29, 2010, for an MRI - \$4,443.72
 - an OCF-22, dated June 11, 2010, for a neurological assessment - \$2,135
 - an OCF-22, dated June 29, 2010, for a total body assessment - \$1,950
 - an OCF-22, dated August 13, 2010, for an in-home assessment - \$1,275.45
 - an OCF-22, dated August 30, 2010, for an SEMG - \$1,066.40
3. Is Mr. Sharma entitled to interest for the overdue payment of benefits?
4. Is either party entitled to their expenses of the arbitration?

Result:

1. Mr. Sharma is not entitled to medical benefits.
2. Mr. Sharma is not entitled to payments for the cost of examinations.
3. Mr. Sharma is not entitled to interest.
4. Mr. Sharma shall pay to Royal & SunAlliance Insurance Company of Canada arbitration expenses of \$293.63 in legal fees and disbursements of 50% of the balance of \$358.79 minus the amount claimed as conduct money.

EVIDENCE AND ANALYSIS:

This case has a long and tortured history, usefully summarized in a pre-hearing letter, dated October 7, 2014, by Arbitrator Mervin. Mr. Sharma sought a further adjournment of the hearing as recently as April 1, 2015, which request was denied by Arbitrator Pressman in a letter dated April 2, 2015. Arbitrator Pressman found, among other things, that “extraordinary circumstances” and “unavoidable delay” did not exist to warrant a further postponement of the hearing, which Arbitrator Mervin had ordered peremptory to Mr. Sharma.

Immediately prior to the commencement of the hearing, I was advised by the Case Administrator on this file, Ms. Thalia Gill, that Mr. Sharma (who was proceeding jointly to arbitration with his wife, Mrs. Richa Sharma), had just telephoned the Commission advising that neither he nor his wife would be attending the hearing, on the basis, first, that he was ill, had been in the hospital the previous day and may need to be in the hospital again that day, and, secondly, that his wife had a neurological illness, as alluded to in the April 1, 2015 request for an adjournment.

Mr. Sharma did not attend the hearing, and the Insurer sought a dismissal of the arbitration, with costs, essentially on the basis that Mr. Sharma had abandoned his arbitration and had abused the Commission’s process.

In light of the lengthy and difficult history of this matter, the peremptory nature of the hearing, the recent denial of Mr. Sharma’s adjournment request, and the merely verbal advice of Mr. Sharma that he was ill (which is at least potentially inconsistent with the basis on which Mr. Sharma had requested an adjournment of the hearing the previous week, namely, that he had a follow-up appointment for a procedure he was having at a hospital), I was not prepared to consider a further adjournment of the arbitration and proceeded in Mr. Sharma’s absence.

Mr. Sharma failed to attend the hearing and, therefore, failed to discharge the onus on him of establishing his entitlement to the benefits claimed. I find that Mr. Sharma’s arbitration should be dismissed.

Pursuant to Rule 75.2 of the *Dispute Resolution Practice Code*, an Arbitrator is to consider the following criteria in the awarding of arbitration expenses:

1. Each party's degree of success in the outcome of the proceeding.
2. Any written offers to settle made in accordance with Rule 76.
3. Whether novel issues are raised in the proceeding.
4. The conduct of a party or party's representative that tended to prolong, obstruct or hinder the proceeding, including a failure to comply with undertakings and orders.
5. Whether any aspect of the proceeding was improper, vexatious or unnecessary.

The Insurer was entirely successful in this matter. The Insurer made a written offer to settle to Mr. Sharma on September 9, 2014, which appeared to be reasonable in the circumstances, but to which the Insurer did not receive a response. The case did not raise any novel issues.

The arbitration has involved numerous proceedings (such as pre-hearings, resumptions, motions and adjournments), as well as the dismissal of certain of Mr. Sharma's claims prior to the hearing, a partial waiver of interest on the remaining issues, breaches of production undertakings by Mr. Sharma, and cost orders made against Mr. Sharma (which were to be satisfied prior to the commencement of the hearing, but which remain outstanding). I find that Mr. Sharma's conduct tended to prolong, obstruct and hinder the proceeding, that he failed to comply with undertakings and orders, and that he has abused the Commission's process. In all of the circumstances, I find that the Insurer is entitled to expenses of the arbitration.

The Insurer sought costs for Mr. Sharma and his wife jointly, as follows:

<u>Legal Fees</u>	\$ 6,019.66
- 41 hours of preparation and attendance at various proceedings, at \$129.93 per hour (which includes a 25% statutory increase), plus HST	
<u>Disbursements</u>	
- Courier fees, photocopying, faxing, conduct money	358.79
- Fees paid to two expert witnesses	1,157.12
- Court reporter at the hearing	359.34
- Insurer's arbitration filing fee	<u>3,000.00</u>
Total Disbursements	\$ 4,875.25
TOTAL ARBITRATION EXPENSES	\$10,894.91

The Insurer sought these expenses in addition to the cost orders already made by Arbitrator Mervin (on June 13, 2014, for \$300, and on October 7, 2014, for \$2,546.83, to be paid jointly by Mr. and Mrs. Sharma, in respect of previous delays and resumptions).

With respect to the Insurer's claim for legal fees, I note that Arbitrator Mervin has already ordered Mr. Sharma and his wife to pay a total amount of \$1,559.10 plus HST, for 15 hours of preparation time (as of October 2014). Given Mr. Sharma's non-attendance at the current hearing, the proceeding was, of course, very brief, lasting approximately an hour.

The Commission's general rule is a ratio of between 1:1 and 1:4 for hearing and preparation time. The Insurer claimed a significant amount of preparation and attendance time for the current hearing, 22.9 hours in total. In my view, this is excessive, particularly in light of Arbitrator Mervin's previous orders. However, given that the Insurer was fully successful, the case did not raise novel issues, a reasonable offer to settle had been made, and Mr. Sharma's conduct tended to prolong the proceeding and amounted to an abuse of process, I find that a ratio of 4:1 is warranted in this case. I, therefore, order Mr. Sharma to pay the Insurer legal fees of \$293.63, being 50% of 5 hours of preparation and attendance time, at \$103.94 per hour, plus HST. I find that this adequately addresses the additional steps required in this proceeding, and that a further increase in the hourly rate for legal fees is not warranted.

Regarding the Insurer's request for disbursements, pursuant to sections 4 and 5 of the Expense Regulation, the only amounts claimable are courier, photocopying and fax fees. Mr. Sharma shall, therefore, pay the Insurer disbursements of 50% of the balance of \$358.79 minus the amount claimed as conduct money.

Eban Bayefsky
Arbitrator

April 29, 2015
Date



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RAJESH SHARMA

Applicant

and

**ROYAL & SUNALLIANCE INSURANCE
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Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Mr. Sharma is not entitled to medical benefits.
2. Mr. Sharma is not entitled to payments for the cost of examinations.
3. Mr. Sharma is not entitled to interest.
4. Mr. Sharma shall pay to Royal & SunAlliance Insurance Company of Canada arbitration expenses of \$293.63 in legal fees and disbursements of 50% of the balance of \$358.79 minus the amount claimed as conduct money.

Eban Bayefsky
Arbitrator

April 29, 2015

Date