

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
August 20, 2001 Session

LYNETTE SANGSTER v. MTD PRODUCTS, INC.

**Direct Appeal from the Chancery Court for Haywood County
No. 12012 George R. Ellis, Chancellor**

No. W2000-03019-WC-R3-CV - Mailed October 25, 2001; Filed December 6, 2001

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer contends the evidence preponderates against the trial court's finding that the employee is permanently disabled. As discussed below, the panel has concluded the judgment should be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (2000) Appeal as of Right; Judgment of the Chancery Court
Affirmed**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and W. MICHAEL MALOAN, SP. J., joined.

Jeffrey P. Boyd, Jackson, Tennessee, for the appellant, MTD Products, Inc.

Sherry M. Percival, Jackson, Tennessee, for the appellee, Lynette Sangster

MEMORANDUM OPINION

The employee or claimant, Lynette Sangster, is 45 years old and a high school graduate who has worked for the employer, MTD, for almost 20 years. MTD assembles yard and garden tractors. On February 15, 1999, the claimant was sitting at her desk when a co-worker accidentally drove a tractor into the back of her chair, pinning her to her desk. She was immediately taken to an emergency room, where she received first aid for a hematoma and was released. When the hematoma did not resolve itself, she was referred to an orthopedic surgeon, Dr. David Johnson.

Dr. Johnson treated her conservatively at first but, when the hematoma, which Dr. Johnson

defined as a collection of blood, did not resolve, he treated it surgically. The claimant has returned to work but continues to have complaints of debilitating pain and stiffness. In his deposition, Dr. Johnson opined that the claimant would not be permanently impaired. Her attorney referred her to Dr. Joseph Boals for examination and evaluation.

Dr. Boals saw her on January 4, 2000, at which time she was still having symptoms. Dr. Boals, who also testified by deposition, opined that she would retain a permanent medical impairment of 5 percent to the whole body, using AMA guidelines.

The trial court awarded, inter alia, permanent partial disability benefits based on two and one-half times that medical impairment rating. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225 (e)(2). This tribunal is not bound by the trial court's findings but instead conducts an independent examination of the record to determine where the preponderance lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). The extent of an injured worker's vocational disability is a question of fact. Story v. Legion Ins. Co., 3 S.W.3d 450, 456 (Tenn. 1999).

The appellant argues there is no competent expert medical evidence of permanency, as required by Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 458 (Tenn. 1988), because the AMA guidelines do not provide a table for calculating Ms. Sangster's permanent impairment. The deposition of Dr. Boals is clear that, in his opinion, the claimant is permanently impaired, whether the guidelines provide a table or not. In such a case, a trial court may award permanent disability benefits if there is supporting lay proof, for a medical or anatomic impairment rating is not always indispensable to a trial court's finding of a permanent vocational impairment. Hill v. Royal Ins. Co., 937 S.W.2d 873, 876 (Tenn. 1996). It is equally clear from the lay testimony that the claimant is restricted in her ability to work and earn an income. Moreover, as the claimant argues, it is within the discretion of the trial judge to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains the more probable explanation. Johnson v. Midwesco, Inc., 801 S.W.2d 804, 806 (Tenn. 1990).

Upon further review, the decision of the trial court stands. Costs are taxed to the appellant.

JOE C. LOSER, JR.

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Appellant, MTD Products, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM