

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(June 25, 1996 Session)

FILED
October 10, 1996
Cecil W. Crowson
Appellate Court Clerk

JOSEPH H. JARREAU,)	WILSON CHANCERY
)	
Plaintiff-Appellant,)	Hon. Bobby Capers,
)	Judge.
v.)	
)	No. 01S01-9512-CH-00228
VANLINER INSURANCE COMPANY,)	
)	
Defendant-Appellee.)	

For Appellant:

David W. Piper
Nashville, Tennessee

For Appellee:

Peter S. Rosen
Levine, Mattson, Orr & Geraciotti

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court
Joe C. Loser, Jr., Special Judge
Hamilton V. Gayden, Jr., Special Judge

AFFIRMED

Loser, Judge

This workers' compensation appeal has been referred to the Special

Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. This appeal presents the questions whether and under what circumstances, if any, an injured worker may give up his right to future medical expenses. The panel concludes the trial court's judgment, approving a settlement in which the right to future medical expenses was voluntarily surrendered for consideration, should be affirmed.

The employee or claimant, Jarreau, commenced this civil action by filing a complaint for workers' compensation benefits, averring that he had suffered an injury by accident arising out of and in the course of his employment by Ozark Motor Lines, Inc. The complaint further averred, in relevant part, that his injury had been diagnosed as a tear of the left medial meniscus, that he had reached maximum medical recovery and would retain a permanent impairment but that there was a genuine dispute as to the extent of his permanent disability. He sought to recover medical and permanent partial disability benefits.

Vanliner Insurance Company served its answer admitting it was the insurer for Ozark, but denying that the claimant had suffered a compensable injury or that he was permanently disabled. On September 8, 1994, before the case could be tried, the claimant and his attorney and the attorney for Vanliner appeared before Judge Capers seeking approval of a negotiated settlement.

By the settlement terms, the claimant was to receive \$25,459.20, representing a permanent partial disability of forty percent to the left leg, and an additional \$9,540.80 in consideration of the claimant's relinquishment of any claim for future medical benefits, for a total of \$35,000.00. Additionally, the claimant had already received \$15,481.30 in medical benefits and \$12,481.30 in temporary total disability benefits.

We find in the record no transcript of the settlement hearing, but Judge Capers found that Dr. Robert V. Russell had opined the claimant had reached maximum medical improvement and would retain a permanent anatomical impairment of ten percent to the leg. The judge further found the settlement to be in the best interest of the claimant, "in light of the controversy and dispute between the parties." The agreement was approved as a full, final and complete settlement of Mr. Jarreau's claim against the employer and its insurer.

Almost eight months later, on April 28, 1995, the claimant applied to the court, per Tenn. R. Civ. P. 60.02, for an order setting aside the settlement

order on the ground that the order was "based upon a mistake of fact induced by erroneous medical information relating to his condition as it existed at the time said settlement was entered into." The motion was supported by Dr. Russell's affidavit and a complete set of his relevant medical records and correspondence between him and the claimant's former attorney. The doctor opined in his affidavit that (1) "... a workers' compensation settlement based upon a 10% anatomical impairment rating is inadequate" and (2) "... it would be fundamentally unfair to terminate Joseph Jarreau's future medical benefits in exchange for \$9,540.80. As I informed (the claimant's former attorney) total knee athroplasty bills usually exceed twenty thousand (\$20,000.00) dollars."

After hearing the motion on affidavits, the trial judge disallowed the motion. A motion for relief based on Rule 60.02 addresses itself to the sound discretion of the trial judge. Appellate review is to determine if the discretion was abused. Banks v. Dement Const. Co., Inc., 817 S.W.2d 16, 18 (Tenn. 1991); Toney v. Mueller Co., 810 S.W.2d 145, 146 (Tenn. 1991).

The adequacy or inadequacy of an award of permanent disability benefits is not a medical issue but one to be addressed by the courts from a consideration of numerous factors, often including, but rarely limited to, the degree of a claimant's medical or anatomical impairment. Doctors often disagree as to the degree of a claimant's permanent impairment, even when interpreting scientific guidelines. In this case, Dr. Russell's records reflect that before the settlement was presented to the court for approval he notified the claimant's attorney that the claimant could return to work without limitation, but with a permanent impairment rating of ten percent according to AMA Guidelines.

It further appears from the record that the doctor notified the claimant's attorney that the claimant was "headed straight for some type of corrective surgery which in my opinion is a total knee athroplasty," that "at the present time we are seeing bills from Baptist Hospital in the range of 20 to 25 thousand dollars for such a procedure," and that such surgery "with good results carries a 60 to 70 percent permanent partial impairment of the lower extremity...." The doctor's affidavit further declares that "...Joseph Jarreau elected not to have corrective knee surgery in June of 1994...." The doctor's affidavit does not declare that he made any mistake in assessing the degree of the claimant's permanent impairment.

Although claims under the workers' compensation law may be settled between or among the interested parties, such settlements are not binding on either party unless reduced to writing and approved by the judge of a circuit, chancery or criminal court of the county where the claim for compensation is

entitled to be made. Tenn. Code Ann. section 50-6-206 (1991 Repl.) The judge to whom the proposed settlement is presented must examine the facts of the case and determine (1) that the employee is receiving, according to the terms of the settlement, substantially the benefits provided by the workers' compensation law or (2) that the settlement is otherwise in the best interest of the employee. See Thompson v. Firemen's Fund Insurance Co., 798 S.W.2d 235 (Tenn. 1990).

By entering into lump sum settlements, both parties run a risk of injury. The employee runs the risk that his disability may increase in the future and the employer runs the risk that the disability of the employee may decrease in the future, but both parties are bound and foreclosed by the entry of a valid judgment approving a lump sum settlement. Corby v. Matthews, 541 S.W.2d 789, 793 (Tenn. 1976).

Our review of the record in this case fails to reveal any abuse of discretion by the trial judge. Moreover, it clearly appears from the record that the trial judge examined the facts and determined that the settlement of a disputed claim was in the best interest of the employee before approving it.

The judgment of the trial court is accordingly affirmed. Costs on appeal are taxed to the plaintiff-appellant.

Joe C. Loser, Jr., Judge

CONCUR:

Frank F. Drowota, III, Associate Justice

Hamilton V. Gayden, Jr., Judge