IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

(July 20, 1998 Session)

KENNETH M. WARD,	)	NO. 01S01-9710-CH-00235
	)	
Plaintiff/Appellee	)	RUTHERFORD CHANCERY
	)	
v.	)	
	)	HON. DON R. ASH
TANGENT INDUSTRIES,	)	CHANCELLOR
	)	
Defendant/Appellant	)	

For the Appellant:
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For the Appellee:
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M E M O R A N D U M O P I N I O N:

Members of Panel:

Judge Ben H. Cantrell
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

MODIFIED **INMAN, Senior 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. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The issues are whether the leg injury suffered by the plaintiff was properly apportioned to the body as a whole and whether the Court correctly ordered the award to be paid in a lump sum. A non-issue is whether the trial judge properly awarded interest on the judgment.[1]

The plaintiff is a 41-year-old single man whose testimony that he finished eighth grade was so suspect as to move the Chancellor to observe "I don't mean to disrespect you Mr. Ward, [but] you probably don't have an eighth grade education," and who is by virtue of that fact and other limitations capable only of basic manual and menial labor.

On December 8, 1993 during the course of his job, a heavy bundle of steel fell from a forklift and crushed his left leg and foot. He was initially treated by Dr. Charles Emerson of Murfreesboro, and later by Dr. Joe Luna of Maryville, which was made necessary because he moved to the home of his sister in Blount County. Dr. Luna referred the plaintiff to Dr. Turner, under whose care he remains. To comply with an order to prosecute, the plaintiff was evaluated by an independent medical examiner, Dr. Steven C. Weissfield, on July 28, 1997, who graphically described the crushing injury. Reduced to the necessary, the leg bones were multi-fractured, refused to heal, pieces of them were removed subsequently, screws and pins were inserted; the lower portion of his leg filled with fluid which the experts could not alleviate. Four or more

[1] Much of the oral argument was given over to the propriety of the Court's action in awarding statutory interest on the "full amount," which the Court did not do. The issue of interest was neither raised nor addressed by the trial Court. The subject appeared, for the first time, in the brief of the appellee.

years afterwards, the plaintiff can do no prolonged walking and then only with a cane or walker. In the interim his weight ballooned to 300 pounds, thus compounding his problem. Circulatory problems developed, with muscle spasms in his left hip radiating across his low back, accompanied by pain. He was in a cast for eight months.

Dr. Weissfield further described the plaintiff's leg as covered with skin grafts, grossly swollen, and a "badly abnormal leg,"with the foot also swollen. Examination revealed tenderness in the sacroiliac joints and lumbosacral junction, with mild osteoarthritis of the left hip. He evaluated the plaintiff pursuant to the *AMA Guidelines,* and opined that he had an 81% leg impairment which extrapolated to 32% whole body.

A vocational rehabilitator testified that the plaintiff had an IQ of 84, that he was able to read at the sixth grade level, do arithmetic at the fifth grade level, and spell at the fourth grade level. Because of his injured leg and physical debilitation, the plaintiff was completely disabled and his future was dreary.

The Chancellor found that the plaintiff was 90% disabled to his body as a whole and awarded benefits for 360 weeks, to be paid in a lump sum, apparently in response to testimony by the plaintiff that he had been living in a motel and wanted to acquire a trailer or small house. The employer appeals and presents the issues heretofore mentioned.

For the loss of a leg an employee is entitled to be compensated during 200 weeks. T.C.A. § 50-6-207(3)(A)(ii)(o), and if the *employee's only injury* is to a scheduled member, he is limited to the schedule. *Genesco Ins. v. Creamer,* 584 S.W.2d 191 (Tenn. 1979). The appellant argues that because the plaintiff's

injury is solely confined to his left leg, his benefits are limited to 200 weeks, contrary to the finding of the Chancellor.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2); *Stone v. City of McMinnville,* 896 S.W.2d 548, 550 (Tenn. 1995).

The finding of the Chancellor that the injury affected the plaintiff's body as a whole is not contrary to the preponderance of the evidence, which tended to prove a permanent, adverse condition of the plaintiff's foot, hip, right knee and lower back, superimposed upon an unusual gait and pronounced limp, all of which clearly indicate a whole body disability. *See, e.g., Riley v. Aetna Casualty & Surety Co.,* 729 S.W.2d 81 (Tenn. 1987). We think the award of 90% to the plaintiff's whole body was justified by the proof.

As heretofore stated, the Chancellor gave no reasons for directing that the award should be paid in a lump sum.

The plaintiff testified that he lived in a motel, had no debts, no checking or savings account, no banking relationship whatever, and always paid his bills by cash, as did his father and grandfather. If he received the proceeds in a lump sum he would "look for me a spot of land to put me a small house or house trailer or something for a permanent home on it."

The controlling statute, T.C.A. § 50-6-229(a), provides that the award may be commuted to a lump sum if found to be in the best interest of the employee upon a consideration of his ability to manage and control the funds. Lump sum awards should not be made merely upon request because they are not consonant with the general purpose of the workers' compensation laws, and

inquiry should always be made to determine if the commutation is in the best interest of the employee. *North Amer. Royalties v. Thrasher*, 817 S.W.2d 308 (Tenn. 1991). There is no evidence that the payment of this substantial award to the plaintiff would be in his interest; to the contrary, the thrust of the evidence tends to persuade that a commutation would not be in the plaintiff's best interest, and the order directing a lump sum payment is vacated.

The appellee seeks interest on the entire judgment by way of assessing a penalty for a frivolous appeal. We hold that the appeal is not frivolous, and in any event interest cannot be awarded on unaccrued amounts. *See Staggs v. National Health Corp.*, 924 S.W.2d 79 (Tenn. 1996).

The judgment of the trial court is affirmed, as modified, with costs assessed to the appellant.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Ben H. Cantrell, Judge

_____
Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

KENNETH M. WARD,	}	*RUTHERFORD CHANCERY*
	}	*No. 94WC-1168 Below*
Plaintiff/Appellee	}	
	}	*Hon. Don R. Ash*
vs.	}	*Chancellor*
	}	
TANGENT INDUSTRIES	}	*No. 01S01-9710-CH-00235*
	}	
Defendant/Appellant	}	*MODIFIED*

JUDGMENT ORDER

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 will be paid by Defendant/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on October 12, 1998.

PER CURIAM