

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
March 17, 2014 Session

**DARLENE POINDEXTER v. ROADWAY EXPRESS  
d/b/a YRC, INC., ET AL.**

**Appeal from the Chancery Court for Tipton County  
No. 28,232 William C. Cole, Chancellor**

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**No. W2013-01968-SC-WCM-WC - Mailed June 25, 2014; Filed September 29, 2014**

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An employee asserted that she sustained a compensable injury while working as a truck driver for her employer. The employer denied the claim, contending that the employee did not sustain a compensable injury but only aggravated a pre-existing condition. The trial court entered a judgment in the employer's favor, and the employee appealed. After a thorough review of the record, we affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;  
Judgment of the Chancery Court Affirmed**

DONALD P. HARRIS, SP. J., delivered the opinion of the Court, in which JANICE M. HOLDER, J., and J. S. "STEVE" DANIEL, SP. J., joined.

Jeffrey A. Garrety and Charles L. Holliday, Jackson, Tennessee, for the appellant, Darlene Poindexter.

Stephen K. Heard and Adam O. Knight, Nashville, Tennessee, for the appellees, Roadway Express and Old Republic Insurance Company.

**OPINION**

**Factual and Procedural Background**

From March 2000 until February 2009, Darlene Poindexter was employed as an over-the-road truck driver by Roadway Express ("Roadway"). Ms. Poindexter claims that on January 7, 2009, she suffered an injury as a result of a fall that occurred when her co-driver stopped the truck as Ms. Poindexter was dressing in the sleeper portion of the cab. Her

symptoms included pain in her shoulders, knees, and back. Ms. Poindexter reported the injury to her supervisor and continued working for approximately five more weeks. On February 14, 2009, she reported to Roadway that she could no longer perform her duties and took a leave of absence. Prior to the accident, Ms. Poindexter had severe arthritis in her knees and shoulders. The arthritis in her knees stemmed from a lack of cartilage in her knee that resulted in “bone-on-bone” contact. Despite these issues, Ms. Poindexter contends that prior to January 7, 2009, she was able to perform her job effectively but that she needed the assistance of a cane after the January 7 incident and was unable to perform her duties.

Roadway referred Ms. Poindexter to Concentra Care for evaluation and treatment. A doctor at Concentra Care prescribed a cane, medication, and physical therapy. When Ms. Poindexter failed to improve, she was referred to Dr. James Varner, an orthopaedic surgeon, for evaluation and treatment. Dr. Varner released Ms. Poindexter from his care on April 7, 2009.

Ms. Poindexter sought workers’ compensation benefits for a permanent partial disability and requested a benefit review conference, which was held on October 20, 2010. When the conference ended in an impasse, Ms. Poindexter immediately filed a complaint in the Chancery Court of Tipton County, Tennessee.

Ms. Poindexter testified at trial that on January 7, 2009, she and her co-driver were traveling from Memphis, Tennessee, to Sacramento, California. She had driven the first leg of the trip to Oklahoma City, Oklahoma, and switched positions with her co-driver. Ms. Poindexter was in the bunk of the sleeper portion of the cab when her co-driver stopped the truck, causing Ms. Poindexter to fall from the bunk onto her back between the driver and passenger seats. She was able to complete the trip and reported the incident to a dispatcher at Roadway when she returned. Ms. Poindexter did not request medical treatment from Roadway and consulted her personal physician for a refill of pain medication previously prescribed to her.

Ms. Poindexter testified that when she returned from a cross-country drive on February 14, 2009, she called a dispatcher at Roadway and explained that she had “such a hard time” on the recent trip and “was going to have to go on . . . workman’s comp.” Roadway then referred her to Concentra Care. She did not attempt to return to work for Roadway or apply for work elsewhere after February 14, 2009. She stated that her pain prevented her from driving and that the use of a cane prevented her from carrying her luggage and climbing into the truck. Her physical limitations also prevented her from hooking and unhooking the trailers or performing maintenance on her truck. Ms. Poindexter testified that prior to the incident on January 17, 2009, she had consistently passed the United

States Department of Transportation physical examinations and had ably performed the duties of her job.

On cross-examination, Ms. Poindexter testified that she had been treated for arthritis in her knees and shoulders before January 17, 2009, and in 2005 and 2006, doctors had informed her that the condition of her knees required bilateral knee replacement. Ms. Poindexter testified that she was also involved in automobile accident in 2005 that injured her right leg and shoulder.

Orthopaedic surgeons Dr. James Varner and Dr. Mark Harriman both testified by deposition after evaluating Ms. Poindexter. They similarly concluded that the pain from her knees, shoulders, and back was due primarily to pre-existing arthritis. Both doctors acknowledged a complete loss of joint space in her knees and believed that knee replacement was necessary. Although both doctors admitted that the work accident could have temporarily exacerbated Ms. Poindexter's symptoms, they agreed that no permanent, demonstrable, anatomical change took place. Despite their opinions that she did not sustain a permanent work-related injury, they agreed that Ms. Poindexter would have difficulty returning to work due to the condition of her knees and her morbid obesity.

Dr. Apurva Dalal, an orthopaedic surgeon, also examined Ms. Poindexter and testified by deposition that Ms. Poindexter had pre-existing degenerative arthritis in her shoulders, knees, and spine but that the January 17, 2009 incident advanced the severity of the arthritis in her knees. He reasoned that because she was able to perform her job prior to the accident but is now unable to do so, the work accident caused a decrease in her "functionality." Dr. Dalal assigned a permanent impairment of 21 percent to the body as a whole based upon gait derangement and Ms. Poindexter's use of a cane during ambulation. Dr. Dalal testified that he derived his impairment rating from Chapter 13 of the American Medical Association Guides to the Evaluation of Permanent Impairment, Sixth Edition ("AMA Guides"), and that this chapter relates to injuries to the central and peripheral nervous systems. Dr. Dalal also acknowledged that she would need knee replacement surgery and that the procedure would have been required without regard to the accident.

Dr. Mark Harriman and Dr. David Gaw testified by deposition regarding the validity of Dr. Dalal's impairment rating. The doctors similarly testified that an impairment must be rated in accordance with the chapter of the AMA Guides that corresponds to the primary location of the injury. Because Ms. Poindexter's primary injury was arthritis of the knees, the proper chapter for determining impairment rating was the chapter dealing with lower extremities. Both doctors emphasized that since Ms. Poindexter did not have a diagnosis of injury to the central or peripheral nervous systems, Dr. Dalal's use of that chapter was inappropriate.

The trial court issued its decision from the bench on January 25, 2013. Relying on Trosper v. Armstrong Wood Products, Inc., 273 S.W.3d 598, 607 (Tenn. 2008), and Barnett v. Milan Seating Sys., 215 S.W.3d 828, 835 (Tenn. 2007), the court found that Ms. Poindexter had not sustained a compensable aggravation of her pre-existing arthritis. The trial court dismissed her complaint, and Ms. Poindexter filed a motion to alter or amend the judgment. The trial court denied the motion to set aside its dismissal of the claim. It did, however, enter an alternative finding that if Ms. Poindexter's injury was found to be compensable, she had sustained a 60% permanent partial disability to the body as a whole.

Ms. Poindexter has appealed, contending that the trial court erred by finding that she did not sustain a compensable injury. She also alleges the trial court erred by failing to adopt Dr. Dalal's impairment rating. This case was referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51.

### **Analysis**

Appellate review of decisions in workers' compensation cases is governed by Tennessee Code Annotated section 50-6-225(e)(2) (2008), which provides that appellate courts must review the trial court's findings of fact "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." As the Supreme Court has observed many times, reviewing courts must conduct an in-depth examination of the trial court's factual findings and conclusions. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). When the trial court has seen and heard the witnesses, considerable deference must be afforded the trial court's factual findings. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008). Such deference need not be afforded the trial court's findings based upon documentary evidence such as depositions. Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006).

The compensability of an aggravation of pre-existing arthritic conditions is a frequent subject of consideration. In Trosper, the Supreme Court examined the subject in depth and clarified the analysis to be applied in such cases:

We believe that our holding in [Smith v. Smith's Transfer Corp., 735 S.W.2d 221, 225–26 (Tenn.1987)], which we have cited with approval on numerous occasions, see, e.g., Townsend [v. State], 826 S.W.2d [434,] 436 (Tenn. 1992], provides the proper framework where an employee seeks compensation on the grounds that a work injury has aggravated a pre-existing injury or condition. We reiterate that the employee does not suffer a compensable injury where the

work activity aggravates the pre-existing condition merely by increasing the pain. However, if the work injury advances the severity of the pre-existing condition, or if, as a result of the pre-existing condition, the employee suffers a new, distinct injury other than increased pain, then the work injury is compensable.

273 S.W.3d at 607.

The trial court in this case explained its reasoning as follows:

Here—and believe me, I read these depositions carefully. I don't know how many times Dr. Dalal said she had bone on bone; it couldn't get any worse. Bone on bone; it couldn't get any worse. I mean, I think I got up to eight, and I quit counting the times that he said that. So she obviously had this condition, and even Dalal said it couldn't get any worse. And he said that I wouldn't even do a knee surgery on her because I don't think it would do any good, and that would have been before the work-related injury.

We are unable to conclude that the evidence preponderates against this assessment. The record clearly reflects that Ms. Poindexter had end-stage arthritis of both knees. Knee replacement surgery had been recommended to her as early as 2005, nearly four years before the event at issue in this case. The condition was not asymptomatic, as she had received medical treatment for it. Further, she testified that, prior to January 2009, the job task of “dropping and hooking” caused her to have painful episodes that lasted several days. Dr. Varner and Dr. Harriman both expressed the opinion that the work accident caused only a temporary exacerbation of the pre-existing arthritic condition. Even Dr. Dalal testified that Ms. Poindexter's impairment was the same before and after the incident according to the lower extremity chapter of the AMA Guides.

To the extent that there is conflict between the expert opinions of Dr. Dalal and the other physicians about causation, a trial court generally has the discretion to choose which expert to accredit. Kellerman v. Food Lion, Inc., 929 S.W.2d 333, 335 (Tenn. Workers' Comp. Panel 1996); Johnson v. Midwesco, Inc., 801 S.W.2d 804, 806 (Tenn. 1990). Given the wealth of evidence supporting the opinions of Dr. Varner and Dr. Harriman, we find no error in the trial court's choice to base its decision on those opinions.

In light of our conclusion on the issue of causation, we find it unnecessary to address the other issues raised by Ms. Poindexter in this appeal.

### **Conclusion**

The judgment of the trial court is affirmed. Costs are taxed to Darlene Poindexter and her surety, for which execution may issue if necessary.

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DONALD P. HARRIS, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE  
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**DARLENE POINDEXTER v. ROADWAY EXPRESS**  
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**Chancery Court for Tipton County**  
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**JUDGMENT ORDER**

This case is before the Court upon the motion for review filed by Darlene Poindexter, pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Darlene Poindexter and her surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM