

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

January 25, 2001 Session

SHIRLEY ALEXANDER v. BRIDGESTONE/FIRESTONE, INC.

**Direct Appeal from the Chancery Court for Rutherford County
No. 98WC-1614 and 98WC-1615 Robert E. Corlew, III, Chancellor**

**No. M2000-00632-WC-R3-CV - Mailed - March 14, 2001
Filed - April 16, 2001**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The plaintiff filed two suits against the plaintiff. One of the suits was for an alleged injury to or aggravation of a pre-existing injury to her right leg. The case was assigned the trial court number of 98-WC-1614. The other suit, filed on the same day was for an alleged injury to the plaintiff's left knee or leg and was assigned number 98-WC-1615. The cases were consolidated for trial and are consolidated for the appeal. The trial judge found the plaintiff did not show any injury to her right knee or leg or any compensable aggravation thereof. The trial judge found the plaintiff had sustained a compensable injury to her left knee and awarded her seventy percent permanent partial disability for the injury. We affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court
is Affirmed**

John K. Byers, Sr. J., delivered the opinion of the court, in which Frank F. Drowota, III, J. and Joseph C. Loser, Jr. Sp. J., joined.

Kitty Boyte, Nashville, Tennessee, for the appellant, Bridgestone/Firestone, Inc.

William Joseph Butler and E. Guy Holliman, Lafayette, Tennessee, for the appellee, Shirley Alexander.

OPINION

The plaintiff filed two suits against the defendant. One of the suits was for an alleged injury to or aggravation of a pre-existing injury to her right leg. The case was assigned the trial court number of 98-WC-1614. The other suit, filed on the same day, was for an alleged injury to the plaintiff's left knee or leg and was assigned number 98-WC-1615. The cases were consolidated for trial and are consolidated for the appeal.

The trial judge found the plaintiff did not show any injury to her right knee or leg or any compensable aggravation thereof. The trial judge found the plaintiff had sustained a compensable injury to her left knee and awarded her seventy percent permanent partial disability for the injury.

The plaintiff says the evidence preponderates against the finding of the trial judge concerning the right leg. The defendant says the award of seventy percent to the left knee is excessive.

We affirm the judgment of the trial court.

Plaintiff's Biography

At the time of trial, the plaintiff, who was sixty-three years of age, had lived all her life in Rutherford County. The plaintiff completed the seventh grade in school and began work.

Her work history is that of housecleaning and factory work. She worked at Park Sherman for thirteen years, worked at Shoney's as a waitress for ten years and worked twenty-three and one-half years for the defendant before retiring in 1999. The plaintiff has raised four children.

Facts - Right Leg

The plaintiff injured her right knee in February of 1989. She was treated by a Dr. Gavin, and was subsequently treated by Dr. David S. Jones, an orthopaedic surgeon. While under the care of Dr. Gavin, an MRI showed the plaintiff had sustained a torn lateral meniscus.

An orthoscopy was performed on June 27, 1989, to correct the ligament problem. The plaintiff was released to return to work on August 17, 1989.¹ The plaintiff continued to complain of pain and was placed on physical therapy and given job restrictions.

Dr. Jones first saw the plaintiff on January 19, 1990, for the treatment of the injury to the plaintiff's right knee. Dr. Jones conducted an examination of her right knee and found she had a

¹ We assume from Dr. Jones' deposition that the date is correct. There is confusion concerning some of the dates. For instance, Dr. Jones testified he did not see her until January 19, 1990. The last date mentioned by Dr. Jones was August 12, which was apparently after the surgery of June 27, 1989. Dr. Jones was then asked if he examined her at that time. He said yes. Dr. Jones was then asked and testified he released her to work on August 1, 1989.

range of motion of zero to one hundred degrees. She had pain along the posterior lateral meniscus with no catching or mechanical signs. All ligament systems were intact. The Patella Grind test was negative.

The plaintiff complained that her knee became stiff when she did much activity. X-rays showed no bone abnormalities. Dr. Jones diagnosed the plaintiff with inflammation around the knee. He did not believe further surgery was needed at that time.

After the examination, the plaintiff developed more swelling in her knee. An MRI was done in July of 1990, which showed arthritic changes or degenerative changes in the knee. Based on the MRI, Dr. Jones again did an arthroscope on the plaintiff's right knee on August 13, 1990. Degenerative or arthritic changes were present in the knee. Dr. Jones then did a procedure known as achondroplastic shaving—smoothing out the bone in the joint.

Dr. Jones testified that this procedure would not stop the arthritic progression regardless of the plaintiff's level of activity.

On October 15, 1990, Dr. Jones saw the plaintiff. She reported she was able to do her work. He released the plaintiff at that time and assigned a fifteen percent permanent partial medical impairment rating to her right knee. The plaintiff received compensation for the injury, and the order provided she would receive future medical benefits for the injury.

Dr. Jones again saw the plaintiff on March 1, 1991, and later ordered x-rays of the right knee. The x-rays showed spurs had developed in her right knee. Dr. Jones continued to see the plaintiff for the right knee condition until September of 1994. He found continued deterioration of the right knee that was, in his opinion, caused by the original injury.

Dr. Jones next saw the plaintiff on May 14, 1998, when she complained of pain in her right knee. She had not suffered a new injury to her knee. Her complaints were the same as those over the past times he treated her. Dr. Jones found nothing that he had not found before in the plaintiff's right knee.

On August 18, 1998, x-rays showed the plaintiff had prominent spurring and some joint space narrowing in the right knee. Dr. Jones was of the opinion that this condition was probably a bit worse, but that it would be a natural progression from the original injury. On September 17, 1998, Dr. Jones placed restrictions on squatting, kneeling or climbing on the plaintiff in an attempt to alleviate her pain.

On November 6, 1998, arthroscopic surgery was done; it revealed a degenerative type tear in the outside meniscus and arthritic changes which were consistent with the natural progression of the condition she had in 1990. Dr. Jones testified these conditions would be expected absent any particular trauma or activity. He was of the opinion she had two percent additional impairment as a result of the latest minuscule removal.

Dr. Jones was of the opinion that the plaintiff might subsequently require a total knee replacement because of the continued deterioration of the plaintiff's knee because of arthritis.

Dr. Robert P. Lansburg, an orthopedic surgeon, saw the plaintiff for an evaluation on June 8, 1999. Dr. Lansburg's testimony concerning the plaintiff's right knee was, for the most part, a recitation of the notes of Dr. Gavin, Dr. Jones and other medical records.

Dr. Lansburg's finding on the single examination was not dramatically different from the previous medical testimony. He found the plaintiff now had a twenty-two percent permanent partial medical impairment to the right knee.

The most dramatic difference in the testimony of Dr. Lansburg and the testimony of Dr. Jones is that Dr. Lansburg testified the plaintiff had no arthritis in her right knee until a time from 1995 until 1997. Dr. Jones had diagnosed arthritis in the knee on June 10, 1991, and continued to find such condition in subsequent treatment.

Dr. Lansburg testified the progression of the plaintiff's right knee problem was because of the repetitive stress of climbing up and down from the tow motor and the manipulation of the clutch and brake.

Facts - The Left Knee

The evidence shows that the plaintiff injured her left knee in August 1998 as she was descending from a tow motor. The defendant does not contest the issue of an injury to the plaintiff's left knee. The only complaint by the defendant is that the award of seventy percent is excessive under the proof in this case.

Dr. David S. Jones, who had treated the plaintiff for her right knee injury, treated the plaintiff for this injury.

Dr. Jones treated the plaintiff for five months and diagnosed her condition as patellar tendinitis. Dr. Jones did not think surgery was required for the injury. The plaintiff was never taken off work for the injury. Dr. Jones found the plaintiff suffered a two percent permanent impairment to her left leg as a result of the injury. Dr. Jones did not place any restrictions on the plaintiff beyond what he had placed on her for the previous right knee injury. Dr. Jones testified he would place the same restrictions on the plaintiff if she had not had the right knee injury, i.e., restricted from kneeling, squatting, climbing and stooping.

Dr. Lansburg, who evaluated the plaintiff's left knee, found she had a post-traumatic type syndrome caused by the twisting of her knee and that because of the "crunching and grinding" she experienced in the knee; he opined she had a five percent permanent partial medical impairment to the left leg.

Discussion - Right Knee

The nature of the plaintiff's injuries required the testimony of an expert witness to establish causation in each of these cases. *Thomas v. Aetna Life & Casualty Co.*, 812 S.W.2d 278 (Tenn. 1991). Dr. Jones testified that the condition of the plaintiff's right knee, which was injured in 1989, was not made more severe by reason of any injury or activity in which she engaged. Dr. Lansburg was of the opinion that the condition of the plaintiff's right knee was made more severe and aggravated by the work for the defendant.

The trial judge has the discretion to accept the medical opinion of one expert over that of another. *Kellerman v. Food Lion Inc.*, 929 S.W.2d 333 (Tenn. 1996).

The trial judge accepted the testimony of Dr. Jones and found the plaintiff had failed to show she was entitled to further compensation for the right knee. The record does not preponderate against the finding.²

Discussion - Left Knee

The contention concerning the left knee is whether the record supports an award of seventy percent to the plaintiff for the injury to her left leg. The defendant asserts that the trial judge inflated the left knee injury because of its effect on the plaintiff's condition in the worsened right knee.

We do not find the record supports this claim. The trial judge found the plaintiff's age and lack of education closed most jobs to the plaintiff. Further, the court noted that the plaintiff's only work experience would require her to use her leg. Based on this, the trial judge found the vocational impairment was great. We do not find the evidence preponderates against this finding.

Further, we note that loss of earning capacity or vocational disability need not be shown by a worker to recover for an injury to a scheduled member. *Duncan v. Boeing Tenn. Inc.*, 825 S.W.2d (Tenn. 1992).

We affirm the judgment of the trial court in regard to the right and left knees.

The cost of this appeal is taxed equally between the plaintiff and defendant.

² The trial judge observed that the previous award for the right knee injury provided for medical treatment for any condition related to the previous injury.

JOHN K. BYERS, SENIOR JUDGE

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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 will be paid equally the plaintiff and defendant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM