

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

January 25, 2001 Session

ANNETTE L. HANNA, ET AL. v. FEDERATED INSURANCE COMPANY

**Direct Appeal from the Circuit Court for Robertson County
No. 9158 James E. Walton, Judge**

**No. M2000-01967-WC-R3-CV - Mailed - March 14, 2001
Filed - June 13, 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 trial court found the plaintiff's husband was killed in the course and scope of his employment and ordered the amount to which his dependants were entitled should be paid in a lump sum. The court further ordered the money to be paid into the court and that the Clerk and Master invest the funds and pay the interest earned thereon to the widow for the benefit of the deceased's minor children. The defendant says the death benefits cannot be paid in a lump sum and further says, even if lump sum payments is permissible, the plaintiff has failed to show she can manage the money. Further, the defendant says the trial court erroneously failed to commute the award to its present value. We affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit 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.

D. Brett Burrow and Delicia R. Bryant, Nashville, Tennessee, attorneys for the appellant, Federated Insurance Company.

Mark A. Rassas and Julia P. North, Clarksville, Tennessee, for the appellees, Annette L. Hanna, widow of the decedent, Darren D. Hanna, and as Guardian for the minor children, Brett Hanna and Marian Hanna, and as Administratrix of the Estate of Darren D. Hanna.

OPINION

On September 20, 1999, Darren H. Hanna died as a result of a vehicle accident. There was no dispute that the accident occurred within the scope and course of the decedent's occupation with

the defendant.

Mr. Hanna was survived by his widow, Annette L. Hanna, who was born November 25, 1972, and two minor children, Marian Ruth Hanna, born September 17, 1994, and Brett Darren Hanna, born March 3, 1997.

On November 5, 1999, the widow filed this case against the defendant. On June 15, 2000, the widow was appointed guardian of the estate of the two minor children to receive any workers' compensation benefits, and also in that order the Clerk of the Chancery Court was authorized to receive the proceeds of any compensation benefits, invest them and pay the interest to Annette K. Hanna for the care and maintenance of the two minor children.

On June 27, 2000, the widow filed a sworn statement renouncing any benefits from the proceeds of any workers' compensation award conditional on the money being paid into the court and invested and distributed as subsequently ordered by the trial court.

On June 30, 2000, the trial judge ordered the defendant to pay a lump sum of \$174,416.00 into the court less any credits for sums previously paid, and that the Clerk and Master have control of the funds for the purpose of investment and for payments of the interest earned thereon to the widow for the benefit of the minor children.

Discussion

Did the trial court have authority to order a lump sum payment—yes.

In *Jones v. General Accident Ins. Co.*, 856 S.W.2d 133 (Tenn. 1993), the court held “(i)n any event, we hold today that death benefits awarded under Tennessee Code Annotated. § 50-6-210 can be commuted to a lump sum.”

In *Clayton v. Cookeville Energy Inc.*, 824 S.W.2d 167 (Tenn. 1992), the court approved a lump sum settlement to the widow, and in *Ponder v. Manchester Housing Authority*, 870 S.W.2d 282 (Tenn. 1994) the court approved a lump sum payment to the widow and an arrangement for the minor children's share to be paid to the clerk, invested and the interest therefrom paid to the children.

The arrangement in this case is similar to the arrangement in *Ponder* except in this case the widow will not receive a share of the proceeds.¹

Perhaps a more substantial argument is made by the defendant on the premise that the evidence does not support a lump sum award because the widow has demonstrated an inability to wisely manage a lump sum award.

¹ The defendant's argument that the widow might remarry is not important because the defendant would still be liable for two-thirds of the benefit because of the two remaining children.

The record shows the widow made some purchases out of the proceeds of a \$100,000.00 life insurance policy on her husband's life that seems unwise, which include a vehicle at a cost of \$40,000.00 and \$15,000.00 for a hot tub and furniture plus various other expenditures that might appear immodest to most people. She did however, purchase a \$15,000.00 CD in the names of the two children.

The widow receives for herself and the children \$1,700.00 per month from social security and will receive under the settlement in this case approximately \$700.00 to \$800.00 dollars per month for the use of the two children. The record reflects no other income. However, the plaintiff is now involved in a landscaping business which may or may not produce income.

If the benefits under the workers compensation award were paid periodically, the monthly benefits would be approximately \$1,700.00 until the maximum amount is paid. Under the plan established in this case, the interest will be paid until the children reach their majority and they will then receive their respective share of the \$174,416.00.

When lump sum payments are made in any workers compensation case, the court must determine if such payments are in the best interest of the dependants vis-a-vis periodic payments which substitute for wages which are paid periodically.

In *Ponder* the Court held that payment plan set up as is the one in this case was in the best interest of the children because they would benefit beyond a 400-week period and then receive the corpus of the trust. We find this to be applicable to this case and find the payment as set out by the court in this case is in the best interest of the children.

We note, also, that the funds in this case will be in the hands of the court and the protection of the corpus of the trust shall be with the court and not the widow.

The argument that the widow has demonstrated an inability to handle a lump sum payment seems to make more reasonable the action of the trial court.

The widow, as natural guardian of the children, would be receiving into her hands \$1,700.00 per month of the award were it not to be paid in a lump sum. Under the arrangement in this case, the sum will be \$700.00 to \$800.00 per month. It follows that one who cannot wisely manage funds, if that be the case, would be less extravagant by half under the scheme in this case.

We do not find the trial judge abused his discretion in this case.

The defendant's argument that the amount of the award should be commuted to its present value has no statutory or case support.

Tennessee Code Annotated § 50-6-229(A) provides in part "(i)n making such commutation, [lump sum payment] the lump sum payment shall, in the aggregate, amount to a sum of all future

installments.” *See also Jones supra.*

The plaintiff’s claim that the appeal is frivolous is not supported by the record and sanctions are disallowed.

We affirm the judgment of the trial court in all things.

The cost of this appeal is taxed to the defendant.

JOHN K. BYERS, SENIOR JUDGE

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JUDGMENT

This case is before the Court upon defendants' motion for review 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, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; 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 taxed to the defendant, Federated Insurance Company, for which execution may issue if necessary.

PER CURIAM

Drowota, J., not participating.