

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
December 2001 Session

JUDY LYNN POPA v. MCKINNON LUMBER CO., INC.

**Direct Appeal from the Circuit Court for Houston County
No. 1271 Allen W. Wallace, Judge**

**No. M2001-01743-WC-R3-CV - Mailed - January 28, 2002
Filed - March 4, 2002**

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 appellant (mother of the three minor children of the deceased employee) contends that the trial court erred in not commuting the surviving children's benefits to a lump sum. The trial court ordered: 1) that the accrued death benefits be paid into the Circuit Court Clerk's office and held in trust for the three minor children until their eighteenth birthdays; and 2) the remaining benefits be paid to the clerk's office in bi-weekly installments to be invested and held in trust for the children's benefit.

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

JAMES L. WEATHERFORD, SR. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, J., and JOE C. LOSER, SP. J., joined.

Markley Runyon Gill, Erin, Tennessee, for the appellant, Judy Lynn Popa, mother and next friend of Miles Popa, Eric Popa, and Taylor Popa (the minor children of Thomas Popa, deceased and Judy Lynn Popa), and Judy Lynn Popa, as Administrator for the estate of the late Thomas Popa.

Lee Anne Murray and Shannon E. McLennan, Nashville, Tennessee, for the appellee, McKinnon Lumber Company, Inc.

MEMORANDUM OPINION

Ms. Judy Lynn Popa filed a complaint on behalf of her three minor children against McKinnon Lumber Co. seeking workers' compensation death benefits for the death of their father, Thomas Popa. Ms. Popa also sought to have these benefits commuted to a lump sum as opposed to periodic payments.

The parties stipulated to the following facts:

- 1) Mr. Thomas Charles Popa was killed in the course and scope of his employment with McKinnon Lumber Co., Inc., on September 6, 1999.
- 2) Mr. Popa did not leave a surviving spouse who is entitled to workers' compensation benefits.¹
- 3) Mr. Popa left three dependents: Miles Popa, Eric Popa, and Taylor Popa.
- 4) Mr. Popa's weekly compensation rate was \$279.68 and the maximum death benefits payable in this case equal \$111,872.000.

Ms. Popa was 37 years old at the time of trial. She has a bachelor's degree in computer science and a bachelor's degree in education. She teaches 6th grade at Dover Elementary School where she makes \$25,000 a year. She has \$70,000 in a savings account. Ms. Popa also has a mutual fund, a life insurance policy, a teacher's retirement account and two IRA's. The three children receive approximately \$719.00 per month each in Social Security benefits.

Ms. Popa has never filed bankruptcy. She does not owe any money on the family home or the family mini-van. She does not carry balances on her credit cards. She owes \$1,000 on a low interest student loan, which she has not paid off because she is earning more on the money she has in savings.

Ms. Popa testified that she is able to run the household on her teacher's salary and not use her savings. She testified that she could manage her own money and wanted the court to award lump sum death benefits so that she could invest the money for her children to finance their college education. Her oldest child is 12 years old and will be ready for college in less than six years.

Mr. John Law, insurance agent, testified that Ms. Pope was a financially responsible person who he considered above average in her community with regard to financial planning. Ms. Marilyn Hall, a friend of four years, testified that Ms. Popa was a responsible person.

The defendant did not offer any proof at trial.

The trial court ordered that the accrued death benefits be paid into the Circuit Court Clerk's office and held in trust for the three minor children until their eighteenth birthdays. The trial court ordered the remainder of benefits owed to be paid to the Clerk's office in bi-weekly installments to be invested and held in trust for the children's benefit.

¹ Although they had divorced, the appellant and the late Mr. Popa were residing together, along with their three minor children, at the time of Mr. Popa's death.

ANALYSIS

Review of findings of fact by the trial court shall be *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 application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The sole issue presented for review in this case is whether the trial court erred in ordering the defendant to pay the death benefits into the clerk's office on a periodic basis instead of commuting benefits to a lump sum.

Tennessee Code Annotated § 50-6-229(a) provides:

In determining whether to commute an award, the trial court shall consider whether the commutation will be in the best interest of the employee, and such court shall also consider the ability of the employee to wisely manage and control the commuted award irrespective of whether there exist special needs...

Tenn. Code Ann. § 50-6-229(a).

In general, the courts view lump-sum awards as an exception to the overall purposes of the workers' compensation law; and have ruled that commutation should occur only in exceptional circumstances, and not as a matter of course. *Perdue v. Green Branch Mining Co.* 837 S.W.2d 56, 58 (Tenn.1992). Furthermore, "commutation of an award should not be ordered perfunctorily without careful inquiry by the trial judge as to all the facts and circumstances." *Id.* at 58-59.

The Workers' Compensation Statute "vests discretion in the trial court to permit or to refuse commutation of an award into a lump sum." *Clayton v. Cookeville Energy, Inc.*, 824 S.W.2d 167, 168 (Tenn. 1992)(quoting *Fowler v. Consolidated Aluminum Corp.*, 665 S.W.2d 713, 714 (Tenn. 1984)). That discretion is not absolute but is "reviewable in the appellate courts and may be reversed if the appellate court finds that the decision of the trial court was an abuse of judicial discretion." *Id.*

In reversing the trial court's decision ordering a lump sum commutation of the children's share of death benefits, the Tennessee Supreme Court in *Perdue* stated as follows:

While we applaud the trial court's well-intentioned purpose in commuting the children's award to be placed in trust 'in an account primarily for their college education, or a special need they might sometime have,' we cannot approve a lump-sum commutation for investment for a potential future need, however laudatory.

Perdue at 60.

We have reviewed the record in light of the above case law and find that the trial court did not abuse its discretion in refusing to commute the award to a lump sum.

While we do not find this case to be an appropriate one for commutation, we find that the record shows Ms. Popa to be an able money manager. We modify the judgment of the trial court to allow Ms. Popa to receive and manage the periodic payments and accrued death benefits. The trial court shall set such bond and accounting schedule as it deems appropriate pursuant to statute.

We affirm the judgment of the trial court as modified and remand this case for further proceedings consistent with this opinion. Costs of this appeal are taxed to the appellant.

JAMES L. WEATHERFORD, SR. J.

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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 by the appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM