

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
February 2003 Session

JANICE DARNELL v. ROYAL AND SUNALLIANCE, ET AL.

Direct Appeal from the Chancery Court for Rutherford County
No. Robert E. Corlew, Chancellor

No. M2002-00617-WC-R3-CV - Mailed - June 2, 2003
August 26, 2003

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. In this case of first impression, the employee contends the trial court erred in setting aside a court approved settlement as being contrary to law and grounded on mistake of fact. As discussed below, the panel has concluded there was no mistake as to an existing fact and that Tenn. Code Ann. § 50-6-241(a)(2) does not authorize an employer or its insurer to obtain reconsideration of a lump sum award of permanent partial disability benefits.

Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the Chancery Court Reversed

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, C. J., and JAMES L. WEATHERFORD, SR. J., joined.

Gayden Drew, Drew & Martindale, Jackson, Tennessee, for the appellant, Janice Darnell

Larry G. Trail and Diana Benson Burns, Murfreesboro, Tennessee, for the appellees, Royal and SunAlliance and Nissan Motor Manufacturing Company

MEMORANDUM OPINION

The employee or claimant, Ms. Darnell, initiated this civil action by the filing of a complaint for workers' compensation benefits for a work related injury to her neck and shoulders. The employer, Nissan, and its insurer, Royal & SunAlliance, denied liability and filed a counterclaim seeking a declaration of its rights and liabilities. Before the case could be tried, the parties agreed upon a settlement by which the claimant would receive, in addition to future medical benefits, a lump sum of \$75,000.00. Approximately six months later, the employer moved to have the settlement set

aside because the employee had returned to work. The trial court, finding the settlement to be contrary to law and grounded on mutual mistake of fact, vacated the settlement and awarded the employer and its insurer a judgment against the employee in the sum of \$18,350.00. The employee has appealed.

Ordinarily, the standard of review in a workers' compensation case is de novo upon the record of the trial court, accompanied by a presumption of correctness of findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). However, conclusions of law are subject to de novo review on appeal without any presumption of correctness. Nutt v. Champion Intern. Corp., 980 S.W.2d 365, 367 (Tenn. 1998). Issues of statutory construction are solely questions of law. Bryant v. Genco Stamping & Mfg. Co., 33 S.W.3d 761, 765 (Tenn. 2000). Where the material facts are not disputed, the conclusion to be drawn therefrom is a question of law.

On November 2, 1998, the claimant reported to the employer that she had strained her neck. She was referred to a doctor who provided conservative care and returned her to work without any permanent impairment or restrictions. On August 12, 1999, she reported that she had strained her right shoulder. For the shoulder injury she was treated by another doctor, who estimated her permanent medical impairment to be 9 percent to the whole body and permanently restricted her from lifting or carrying thirty or more pounds, frequently lifting and carrying more than fifteen pounds, pushing or pulling with the right arm and reaching in an outstretched position with the right arm. A physician to whom the claimant was referred for examination and evaluation estimated her permanent medical impairment from both injuries to be 11 percent to the body as a whole and recommended that she permanently avoid repetitive use of the right arm, including pushing, pulling, rotating maneuvers and working overhead or away from the body. The doctor also prescribed a weight limit of fifteen pounds.

The claimant filed her lawsuit on January 4, 2000. The settlement was not reached until the December 20, 2000. At that time the claimant had not returned to work for the employer because the restrictions imposed by the treating physician prevented her from performing her assigned duties. At the time she was not expected to ever return to work for the employer, but she did receive some benefits under an employer sponsored disability plan for an unknown period of time. The lump sum settlement of \$75,000.00 equates to one based on 36.4 percent permanent partial disability to the body as a whole.

Subsequently, the claimant returned to her treating physician, who revised her permanent restrictions in a way that allowed her to return to work for the employer at a wage equal to or greater than her pre-injury wage. After she returned to work, the employer and its insurer filed a motion to set aside the court approved settlement because the award exceeded two and one-half times the claimant's medical impairment rating. In a responsive affidavit, the claimant asserted the following:

4. At the time of the settlement, one of my treating physicians, Dr. Thomas Limbird, had placed permanent restrictions on me.

5. I had not returned to work at the time of the settlement.
6. At the time of my settlement, I did not know if I would ever be able to return to work for Nissan and I had no idea that my medical restrictions would ever be lifted or modified.
7. I saw Dr. Limbird on May 7, 2001, at which time he revised my restrictions.
8. I returned to work for Nissan on June 12, 2001.
9. I was not guilty of fraud or dishonesty in any way relating to my workers' compensation case.

That affidavit is the only evidence in the record before this tribunal and the facts contained therein are undisputed. The trial court, reasoning in its order that the award exceeded the two and one half times multiplier contained in Tenn. Code Ann. § 50-6-241(a)(1), vacated the order, reduced the award to two and one-half times the highest medical impairment rating, or 27.5 percent to the body as a whole and awarded the employer and its insurer a judgment against the employee in the sum of \$18,350.00.

The appellees contend the earlier settlement exceeded the maximum allowable benefit and was based on a mutual mistake of fact that the claimant would never return to work for the employer. The appellant's contention is that the Workers' Compensation Act, Tenn. Code Ann. § 50-6-101 *et seq.*, does not authorize an employer to obtain relief from a lump sum award contained in a final judgment.

Under the Tennessee Workers' Compensation Act, the right of an employee who suffers a work-related injury to recover compensation benefits from his employer is governed by the statutes in effect at the time of the injury. Nutt at 368. Such statutes are part of the contract of employment and the rights and responsibilities of such injured employee and his employer can only be ascertained from a consideration of those statutes as construed by the courts. Hudnall v. S. & W. Constr. Co. of Tenn., Inc., 451 S.W.2d 858, 865 (1969); Mitchell v. United States Fidelity and Guar. Co., 206 F. Supp. 489, 490 (Tenn. 1962). The entire workers' compensation system of law is statutory. Vinson v. Firestone Tire and Rubber Co., Inc., 655 S.W.2d 931, 933 (Tenn. 1983). The Act is in the nature of an insurance policy, Hughes v. Elliott, 162 Tenn. 188, 35 S.W.2d 387 (1931).

Compensable disabilities are divided into four separate classifications: (1) temporary total disability, (2) temporary partial disability, (3) permanent partial disability and (4) permanent total disability. Tenn. Code Ann. § 50-6-207. Each class of disability is separate and distinct and separately compensated for by different methods. Compensation benefits are allowable for an injured employee, separately, for each class of disability which results from a single compensable injury. Redmond v. McMinn County, 209 Tenn. 463, 467; 354 S.W.2d 435, 437 (1962). Upon

application by a party and approval by a proper court, benefits which are payable periodically may be commuted

to one or more lump sum payments, if the court finds such commutation to be in the best interest of the employee and the employee has the ability to wisely manage and control the commuted award. Tenn. Code Ann. § 50-6-229(a). When an injured employee's partial disability is adjudged to be permanent, the employee is entitled to benefits based on a percentage of disability. Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 457 (Tenn. 1988).

Where an injured worker is entitled to permanent partial disability benefits to the body as a whole and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability award that the employee may receive is two and one-half times the medical impairment rating pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment or the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment. Tenn. Code Ann. § 50-6-241(a)(1). If the injured worker thereafter loses his or her pre-injury employment, the court may, upon proper application made within one year of the employee's loss of employment, and if such loss of employment is within 400 weeks of the day the employee returned to work, enlarge the award to a maximum of six times such impairment rating, allowing the employer credit for permanent partial disability benefits already paid for the injury. Tenn. Code Ann. § 50-6-241(a)(2). We are cited to no provision in the Act by which an employer is authorized to apply for diminution of a final award based on the employee's return to work after an award has been paid in a lump sum.

Where an award of benefits is payable periodically for more than six months, either side may apply to the court for modification based on an increase or decrease, as the case may be, of an employee's disability due solely to the injury. Tenn. Code Ann. § 50-6-231. An award of disability benefits for six or fewer than six months is final and not subject to readjustment. Tenn. Code Ann. § 50-6-230. An exception is contained in § 241(a)(2). We hold that the exception, by its unambiguous language, favors the employee, not the employer. The statute applicable to these undisputed facts is § 230, which prohibits readjustment of a lump settlement. The issue is therefore resolved in favor of the appellant.

The appellees further rely on Tenn. R. Civ. P. 60.02(1) and (5), providing in pertinent part as follows:

Rule 60.02: Mistakes, Inadvertence, Excusable Neglect, Fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; ... or (5) any other reason justifying relief from the operation of the judgment.

The employer and its insurer contend the parties mistakenly believed that Ms. Darnell would not return to work at some time in the future. As stated in Toney v. Mueller Co., 810 S.W.2d 145

(Tenn. 1991):

Rule 60 is not meant to be used in every case in which the circumstances of a party change after entry of a judgment or order. Nor is the rule a mechanism for use by a party who is merely dissatisfied with the result of a particular case. Rule 60.02 is meant to be used only in those few cases that meet one or more of the criteria stated. As recently stated by this court, “Rule 60.02 acts as an escape valve from possible inequity that might otherwise arise from the unrelenting imposition of the principle of finality imbedded in our procedural rules.” (Citation omitted). Because of the importance of this “principle of finality,” the “escape valve” should not be easily opened. When a party seeks the extraordinary relief permitted by Rule 60.02(1), “the burden is on the movant to set forth in a motion or petition, or in affidavits in support thereof, facts explaining why movant was justified in failing to avoid mistake, inadvertence, surprise or neglect.” (Citations omitted). 810 S.W.2d at 146.

A consent decree may be set aside if based on an erroneous report of a treating physician, but the mistake must be with respect to the facts existing at the time the consent decree was entered. Corby v. Matthews, 541 S.W.2d 789, 794 (Tenn. 1976). There is no evidence in the record before this tribunal that the court approved settlement was based on such an erroneous report. The relevant fact, undisputed in the record, is that Ms. Darnell was not working at the time the court approved the settlement between the parties. Hence, there was no mistake justifying relief under Rule 60.02(1).

The employer and its insurer further contend they are entitled to relief from the operation of the judgment because the award of benefits based on 36.4 percent permanent partial disability to the body as a whole exceeded the maximum benefit allowable under § 241(a)(1). The section is inapplicable because of the undisputed fact that the claimant had not returned to work for the same employer at the same or greater wage at the time of the court approved settlement. Where an injured worker is entitled to receive permanent partial disability benefits to the body as a whole, and the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability award that the employee may receive is six times the medical impairment rating determined pursuant to the above guidelines. Tenn. Code Ann. § 50-6-241(b). Because the award contained in the court approved settlement is less than six times the claimant’s highest impairment rating and less than 400 times the maximum weekly benefit in effect at the time of the injuries, it is not contrary to law and the argument fails.

For the above reasons, the judgment of the trial court is reversed and the motion for relief from a final judgment denied. Costs are taxed to the appellees.

JOE C. LOSER, JR.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

JANICE DARNELL v. ROYAL AND SUNALLIANCE, ET AL.

**Chancery Court for Rutherford County
No. 00-WC-12**

No. M2002-00617-SC-WCM-CV - August 26, 2003

ORDER

This case is before the Court upon the motion for review filed by Royal and Sunalliance and Nissan North America, Inc., 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 Royal and Sunalliance and Nissan North America, Inc., for which execution may issue if necessary.

PER CURIAM