

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

WILLIAM VALDEZ, Plaintiff/Appellant	}	DAVIDSON CHANCERY
	}	No. 95-1305-III Below
and	}	December 19, 1996
	}	
MIGUEL PINEDA, Plaintiff/Appellant	}	Hon. Robert S. Brandt,
	}	Chancellor
vs.	}	
	}	
LANG ENVIRONMENTAL SERVICES } COMPANY and AETNA CASUALTY } SURETY COMPANY, } Defendants/Appellees }		No. 01S01-9605-CH-00085 } AFFIRMED.

FILED
Cecil W. Crowson
Appellate Court Clerk

JUDGMENT ORDER

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 one-half by William Valdez and Surety; and one-half to be paid by Miguel Pineda for which execution may issue if necessary.

IT IS SO ORDERED on December 19, 1996.

PER CURIAM

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the claimants, Valdez and Lang, insist the trial court erred in awarding a summary judgment to the employer and its insurer. As discussed below, the panel concludes the judgment should be affirmed.

The relevant facts are not disputed. The work performed by these employee was at various job sites in Tennessee and other states. As compensation, the employees received an hourly wage and a per diem allowance for living and traveling expenses. They were injured in a one car automobile accident after work on their way home, when the driver, Valdez, lost control of his car, causing it to leave the road and overturn.

The chancellor found there was no genuine issue of material fact ant that the employer was entitled to a judgment of dismissal as a matter of law. Appeals from summary judgment in workers' compensation cases are controlled by Tenn. R. Civ. P. 56. Downen v. Allstate Ins. Co., 811 S.W.2d 523 (Tenn. 1991). Since the material facts are not disputed, the only issue for review is whether the employer is entitled to judgment as a matter of law.

For an injury to be compensable, it must arise out of and in the course of employment. As a general rule, an injury which occurs while an employee is en route to or from work is not compensable because it does not occur in the course of employment. Smith v. Camel Mfg. Co., 192 Tenn. 670, 241 S.W.2d 771 (1951). An exception may exist if the injury occurs on the employer's premises or if the employee is injured while using transportation provided by the employer.

In the present case, the undisputed facts are that the injuries occurred away from the work site or other premises of the employer and that transportation was being furnished by Mr. Valdez, not the employer. The contention of the employees that they should be treated as traveling employees or that the payment of a per diem allowance as compensation amounted to the furnishing of transportation is respectfully rejected. This case clearly falls within the above general rule.

The judgment of the trial court is accordingly affirmed. Costs on appeal are taxed to the plaintiffs-appellants, one-half each.

Joe C. Loser, Jr., Judge

CONCUR:

Frank F. Drowota, III, Justice

Ben H. Cantrell, Judge