

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

FILED
April 25, 1997
Cecil W. Crowson
Appellate Court Clerk

BRUNSWICK MARINE,) RUTHERFORD CIRCUIT
)
) Petitioner/Appellant)
)
) HON. DON R. ASH, JUDGE
v.)
)
) KENNETH W. MILLER,) NO. 01S01-9605-CV-00099
) (NO. 32319 below)
) Respondent/Appellee)
_____)

FOR THE APPELLANT:

DANIEL C. TODD
219 Second Avenue North
Suite Three Hundred
Nashville, Tennessee 37201

FOR THE APPELLEE:

LARRY D. CRAIG
THOMAS J. DRAKE, JR.
305 Fourteenth Avenue, North
Nashville, Tennessee 37203

MEMORANDUM OPINION

MEMBERS OF PANEL:

ADOLPHO A. BIRCH, JR., CHIEF JUSTICE, SUPREME COURT
JOHN K. BYERS, SENIOR JUDGE

AFFIRMED

RUSSELL, SP. J.

This appeal from the judgment of the trial court in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

THE CASE

Brunswick Marine, the employer of Kenneth w. Miller, filed a petition seeking to have the court judge that Mr. Miller's work related injury did not occur in the course and scope of his employment.

Following a trial the court ruled that Mr. Miller was hurt in the course and scope of his employment and retained a 70% permanent partial disability to his left leg.

THE ISSUES

The appellant/employer contends that the employee's injury resulted from a personal condition not arising out of his employment, and that the judgment of 70% left lower extremity disability is excessive.

The appellee contends that this appeal is frivolous.

THE EVIDENCE

The employee worked as an over-the-road truck driver. On June 18, 1993, he fell from the cab of his vehicle after making a rest stop. Mr. Miller testified:

When I got to about the 317 mile marker, right where I had the accident, I got to hurting real bad down in my groin. I stopped at the Huddle House. Usually, I stop within a hundred mile radius right around Knoxville. I stopped there, pulled in there, locked my brakes down on my truck, opened my door and left my truck running and started to get out.

I turned to the left and went to get out. When I got out of my truck, I always swing to the left and then put my head up between the cab of the door and stood up and walked face first down. And as I was standing up, I had a real bad cramp in my groin, and I bent double and lost my balance.

* * * * *

I was going to stop to use the bathroom, get something to eat.

* * * * *

The last thing I remember was right before I hit the ground, the way I was falling, I was falling head first like a flip is how it was going to hurt the way I was falling. There was a gravel parking lot with about two inch gravel, big gravel in it. And I fell with my left leg turned up under on my back.

Q. How high off of the ground would your head have been at that point when you started to fall?

A. About eight feet.

* * * * *

I fell in between my truck and another truck. They were both running. I don't know how long I had laid there. I hadn't - - - I was hollering for some help when I come to because I couldn't move. I was burning in my

legs. I couldn't move my legs. I could move my arms. I kind of drug myself over a little away from the truck to the left of me because, after I had fallen, I was - - - I was almost under his tire.

* * * * *

The pain I had was like I had to go real bad to the bathroom.

Miller suffered back and left leg injuries. His treating physician opined that he retained a 20% anatomical permanent impairment to his left leg. He was unable to return to his work as a truck driver, but returned to work as a mechanic and general hand.

APPLICABLE LAW

We review the findings of fact of the trial court de novo upon the record, accompanied by a presumption of the correctness of the findings; and we affirm the findings of the trial court, unless the preponderance of the evidence is otherwise. Tennessee Code Annotated Section 50-6-225 (e)(2).

The appellant relies upon the rule of law that an on-the-job idiopathic fall to a bare floor or to level ground is not a fall in the course and scope of employment. Sudduth v. Williams, 517 S.W. 2d 520 (Tenn. 1974); Dickerson v. Trousdale Mfg. Co., 569 S.W. 2d 803 (Tenn. 1978).

The appellee relies upon the case of Tapp v. Tapp, 236 S.W. 2d 977 (Tenn. 1951) which holds that when there is a sudden physical disturbance which contributes to cause an injury to an employee, and there is another hazard present which is the

immediate cause of the accident, the resultant injury is compensable.

CONCLUSION AND JUDGMENT

This was not an idiopathic fall to level ground. An idiopathic fall is one from an unknown or obscure cause. The employee testified that he suffered a bowel cramp that caused him to lose his balance and fall the five feet from the floor of his truck cab to the ground below. He was then and there engaged in activities that were a regular part of his employment as a truck driver.

We concur in the judgment of the trial court that this fall resulted in compensable injuries.

The evidence well supports the assessment of a 70% permanent vocational disability to Mr. Miller's left leg, and that judgment is affirmed.

This is not a frivolous appeal. Costs on appeal are assessed to the appellant. The cause is remanded for enforcement of the judgment.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

ADOLPHO A. BIRCH, JR.,
CHIEF JUSTICE

JOHN K. BYERS, SENIOR JUDGE

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This case is before the Court upon a motion for review granted by Term Code
Case 03-0-036 (03/03), the entire record, including the order of removal to the Special
Term's Cooperation Appeal Panel, and the Panel's December 4 opinion setting forth
its findings of fact and conclusions of law, which are incorporated herein by reference;

Thereafter, it appears to the Court that the motion for review is not well-taken
and shall be denied;

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 a part of the judgment of the Court.

Costs on appeal are assessed to the appellant.

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Filed, U.S. District Court.