

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

AT JACKSON  
(February 6, 1997 Session)

WILLIAM JERRY FLIPPIN, JR.,	)	GIBSON CHANCERY
	)	
Plaintiff-Appellee,	)	Hon. Joe C. Morris,
	)	Chancellor.
V.	)	
	)	No. 02S01-9601-CH-00089
A. O. SMITH AUTOMOTIVE	)	
PRODUCTS COMPANY,	)	
	)	
Defendant-Appellant.	)	

For Appellant:

Kathryn S. Kibbe  
Rainey, Kizer, Butler, Reviere & Bell  
Jackson, Tennessee

For Appellee:

James T. Ryal  
Adams, Ryal & Flippin  
Humboldt, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court  
Joe C. Loser, Jr., Special Judge  
Leonard Watson Martin, Special Judge

AFFIRMED AS MODIFIED

Loser, Judge

## MEMORANDUM OPINION

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 employer questions the award of permanent partial disability benefits as being excessive and contends the award should be to the first phalange of the thumb rather than to the thumb. As discussed below, the panel has concluded the judgment should be modified.

The claimant, Flippin, is forty years old and has a high school education plus two years of college. He has worked for the employer since 1980. He was injured on February 27, 1995 when his right hand became caught in a press while he was attempting to install a body mount ring on an engine frame. His thumb was caught in a metal clamp, which amputated a small portion of the tip of his right thumb.

The claimant was treated at the emergency room and released. He returned to work a day later. The treating physician opined that he had lost about twenty-five percent of the distal phalange of the thumb, that the slight loss of motion and any weakness or sensitivity were not necessarily permanent and that the claimant would retain a twenty-two percent permanent impairment of the thumb. The claimant returned to full duty within two weeks following the accident.

The trial court awarded permanent partial disability benefits based on eighty percent to the thumb. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of the trial court, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). Conclusions of law are subject to review on appeal without any presumption of correctness. Presley v. Bennett, 860 S.W.2d 857 (Tenn. 1993).

Where a worker's only injury is to a scheduled member, he may receive only the amount of compensation provided by the statutory schedule for his permanent disability. Genesco, Inc. v. Creamer, 584 S.W.2d 191 (Tenn. 1979). If the injury causes a permanent loss of part but not all of the use of a scheduled member, and if such loss is not specifically provided for in the schedule, benefits are computed by applying the percentage of loss to the total loss benefit contained in the schedule, but the injury is compensable whether or not there has been any loss of earning capacity. Hedges Mfg. Co. v. Worley, 223 Tenn. 102, 442 S.W.2d 624 (1969).

The thumb is a scheduled member, but so is the first phalange of the thumb, having half the value of the thumb. Tenn. Code Ann. section 50-6-207(3)(a)(II). The claimant has been able to perform his job, but experiences some loss of grip strength and manual dexterity. From our examination of the evidence we find it preponderates against an award based on eighty percent to the thumb and in favor of one based on eighty percent to the first phalange of the thumb. The judgment is modified accordingly.

As modified, the judgment of the trial court is affirmed. Costs on appeal are taxed to the parties, one-half each.

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Joe C. Loser, Jr., Judge

CONCUR:

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Lyle Reid, Associate Justice

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Leonard Watson Martin, Judge

IN THE SUPREME COURT OF TENNESSEE  
AT JACKSON

WILLIAM JERRY FLIPPIN, JR.,	)	Gibson Chancery
	)	No. 12369
Plaintiff/Appellee,	)	
	)	
VS.	)	Hon. Joe C. Morris,
	)	Chancellor
	)	
A. O. SMITH AUTOMOTIVE	)	02-S-01-9610-CH-00089
PRODUCTS COMPANY,	)	
	)	
Defendant/Appellant.	)	Affirmed As Modified.

**JUDGMENT ORDER**

This case is before the Court upon a 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 paid one-half by the plaintiff/appellee, William Jerry Flippin, Jr., and one-half by the defendant/appellant, A. O. Smith Automotive Products Company, and its surety, for which execution may issue if necessary.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 1997.

PER CURIAM

Reid, J., Not Participating