

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

FILED

May 16, 1997

Cecil W. Crowson
Appellate Court Clerk

FRANKLIN HARTSELL,)

Plaintiff/Appellee)

v.)

DALLAS & MAVIS FORWARDING)
COMPANY, JUPITER CORPORATION)
TRANSPORTATION SYSTEMS and)
CIGNA PROPERTY & CASUALTY)
INSURANCE COMPANY,)

Defendants/Appellants)

DAVIDSON CHANCERY

NO. 01S01-9608-CH-00164

HON. ELLEN HOBBS LYLE,
CHANCELLOR

For the Appellants:

Patrick A. Ruth
Julia J. Tate
150 Second Ave. N., Ste. 201
Nashville, TN 37201

For the Appellee:

Charles R. Niewold
214 Third Ave. N.
Nashville, TN 37201

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Justice
William H. Inman, Senior Judge
William S. Russell, Special Judge

AFFIRMED

INMAN, Senior Judge

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.

The plaintiff, age 54, suffered a job-related myocardial infarction on March 1, 1994. A coronary arteriogram revealed an 80% blockage of his left anterior descending artery which was alleviated by an angioplasty procedure which reduced the blockage to less than 15%. Conservative treatment followed, and he was released to return to full employment on January 1, 1994. From that day forward, the plaintiff has worked steadily and without incident.

In July 1991, the plaintiff was hospitalized with chest pains. A cardiac catheterization was performed, which revealed a serious lesion in his left circumflex coronary artery at the left ventricular ridge, with another lesion in his left anterior descending coronary artery. After the 1994 infarction, the lesion in the left anterior artery was substantially worsened.

The employer insists that the award is excessive because it was improperly operated with liability for impairment resulting from pre-existing coronary artery disease. Liability for benefits resulting from impairment as a consequence of the myocardial infarction is conceded.

The dispositive issue at trial was the extent of the plaintiff's partial permanent disability. The Chancellor found that the plaintiff had a 50% permanent partial disability and awarded benefits accordingly.

Our review is *de novo* on the record, accompanied by the presumption that the trial court's judgment is correct unless the evidence preponderates otherwise. T.C.A. § 50-6-225(e)(2).

The treating physician, Dr. K.P. Channabasappa, testified that the plaintiff's impairment was 29%, which may be extrapolated to Category II of the AMA Guidelines. He stated in a pre-deposition letter that "it is 29%" and on direct examination testified that the impairment was 29%.

There was no countervailing testimony offered.

The trial court had the reviewable discretion to award up to 2.5 times the anatomical disability of 29% pursuant to T.C.A. § 50-6-241. The plaintiff returned to work; his work ethic and history are commendable; his work status, according to the appellant, is secure; his job skills are excellent. These factors, *prima facie*, admittedly tend to generate doubt about a finding of 50% permanent partial disability, considering the apparent anomaly thereby created. But the Workers' Compensation Law must be given an equitable construction, *Ware v. U.S. Steel Corp.*, 541 S.W.2d 107, 110 (Tenn. 1976), and a determinative issue is whether the plaintiff's earning capacity in the open labor market has been diminished by the residual impairment caused by the work-related injury. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 458 (Tenn. 1988). We cannot find that the evidence preponderates against the judgment which is affirmed at the costs of the appellant. The case is remanded for all appropriate purposes.

William H. Inman, Senior Judge

CONCUR:

Frank F. Drowota, III, Justice

William S. Russell, Special Judge

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FRANKLIN HARTSELL,	}	DAVIDSON CHANCERY
	}	No. 95-1062-11 Below
Plaintiff/Appellee	}	
	}	Hon. Ellen Hobbs Lyle,
vs.	}	Chancellor
	}	
DALLAS & MAVIS FORWARDING	}	
COMPANY, JUPITER CORP.	}	
TRANSPORTATION SYSTEMS and	}	No. 01S01-9608-CH-00164
CIGNA PROPERTY & CASUALTY	}	
INSURANCE COMPANY,	}	
	}	
Defendants/Appellants	}	AFFIRMED.

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 by Defendants/Appellants and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on May 16, 1997.

PER CURIAM