

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

JIMMY ELLIOTT,)	
)	
Plaintiff/Appellant)	BRADLEY CIRCUIT
)	
v.)	NO. 03S01-9709-CV-00108
)	
JACKIE EVANS TRUCKING, INC.,)	HON. CARROLL L. ROSS,
)	JUDGE
Defendant/Appellant)	

For the Appellant Jimmy Elliott:

Thomas E. LeQuire
Robert J. Uhorchuk
SPICER, FLYNN & RUDSTROM
Suite 407 James Building
735 Broad Street
Chattanooga, TN 37402

For the Appellant Jackie Evans

Trucking, Inc.:
Robert H. Crawford, Jr.
CRAWFORD & CRAWFORD
410 McCallie Avenue
Chattanooga, TN 37402

MEMORANDUM OPINION

Members of Panel:

Justice Adolpho A. Birch, Jr.
Senior Judge William H. Inman
Special Judge Roger E. Thayer

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 alleged and testified that on April 7, 1995 he jumped from a truck bed approximately four feet to the ground, twisting his left leg in the process. Sharp pain and swelling immediately occurred and he received emergency room treatment. Seven days later Dr. Robert Beasley, an orthopedic surgeon, performed a meniscectomy for a torn medial meniscus, followed by a left patellectomy and valgus osteomy with metal plate emplacement.

The defendant responded that the plaintiff's knee problem pre-existed the alleged injury, and that the torn meniscus was of many years duration.

The trial court found that the injury occurred as alleged, and awarded benefits based on "40 percent impairment to the lower body; 16 percent to the body as a whole," later amended to a finding of 100 percent leg impairment with benefits calculated on that basis. Both parties appealed; the plaintiff complains of the refusal of the trial judge to find whole body disability with resultant benefits, and the defendant complains that the finding of the trial court is contrary to the preponderance of the evidence.

The judgment is affirmed.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995).

Although there is evidence that the plaintiff's knee problem pre-existed his alleged injury, and that it was not job-related, there is evidence accredited

by the trial judge that the injury by accident occurred as described by the plaintiff. We cannot substitute our judgment for that of the trial judge, and cannot find that the evidence preponderates against the finding of compensability.

The treating surgeon, Dr. Beasley, testified that the plaintiff had a “40 percent disability to the lower limb, 16 percent to the body as a whole.” He opined that 50 percent of the plaintiff’s knee problem was attributable to pre-existing conditions, which the trial court did not accept. *See, Fink v. Caudle*, 856 S.W.2d 952 (Tenn. 1993).

The plaintiff was an excellent employee, according to the proof, who made no complaints and lost no time from his work until the injury on April 7, 1995. According to the vocational testimony, he is now virtually unemployable, has a metal plate in his knee which will require surgical removal, and suffers constant pain. He cannot walk without assistance, and is severely restricted in all physical activities. We are unable to find that the trial court’s finding of 100% disability to the left leg is not supported by the evidence.

The plaintiff *pro forma* argues that the award of benefits based on 100 percent leg impairment should be should be modified to 90 - 100 percent whole body disability, because the trial court is without discretion to “reduce the plaintiff’s injury to the scheduled member . . . rather than to the body as a whole pursuant to T.C.A. § 50-6-207(3)(F) once the Court finds as a matter of fact that a T.C.A. § 50-6-207(3)(F) injury has occurred . . .”

We are uncertain of the thrust of this argument, since the trial judge was free to modify his findings at any time before judgment was entered, and even subsequently in accordance with the Rules. The attribution of disability

resulting from an injury to a scheduled member to the body as a whole has, on occasion, been affirmed by the appellate court where the trial court so found and the proof supported the finding, as in *U. S. F. & G. v. Townsend*, 335 S.W.2d 830 (Tenn. 1960), but we are not able to find from the evidence in the case at hand that the trial judge should have extrapolated the knee injury to whole body disability.

The judgment is affirmed, with the costs assessed to the Jackie Evans Trucking Company.

William H. Inman, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Justice

Roger E. Thayer, Special Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

JIMMY ELLIOTT,)	BRADLEY CIRCUIT
)	
Plaintiff/Appellant)	No. V-96-610
)	
vs.)	
)	Hon Carroll L. Ross.
JACKIE EVANS TRUCKING, INC.,)	Judge
)	No. 03S01-9709-CV-00108
Defendant/Appellant.)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation 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 on appeal are taxed to Jackie Evans Trucking, Inc. and Robert J. Uhorchuk, surety, for which execution may issue if necessary.

06/02/98

This case is before the Court upon 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 by the plaintiff-appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED this ____ day of June, 1997.

PER CURIAM

Anderson, J. - Not Participating

al to the Special Worker' Compensation 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 act and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the plaintiff-appellant, Vernon Harris and Gilbert and Faulkner. surety, for which execution may issue if necessary.

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