

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(August 13, 1999 Session)

FILED

November 29, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

TRAVIS MILTON WATT,

Plaintiff/Appellee,

v.

LUMBERMANS MUTUAL CASUALTY
INSURANCE COMPANY,

Defendant/Appellee,

and LARRY BRINTON, DIRECTOR OF)
THE DIVISION OF WORKERS')
COMPENSATION, TENNESSEE)
DEPARTMENT OF LABOR, SECOND)
INJURY FUND,)

Defendant/Appellant.)

MADISON CHANCERY

NO. 02S01-9809-CH-00087

HON. JOE C. MORRIS

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MEMORANDUM OPINION

Members of Panel:

Justice Janice M. Holder
Senior Judge F. Lloyd Tatum
Senior Judge L. T. Lafferty

REMANDED WITH INSTRUCTIONS

F. LLOYD TATUM, SENIOR JUDGE

OPINION

The plaintiff, Travis Milton Watt, brought suit against Lumberman's Mutual Casualty Insurance Company, the insurance carrier for the plaintiff's employer, Hamilton Hill Shopping Center, and the Second Injury Fund for workers' compensation benefits, alleging total and permanent disability to the body as a whole. The plaintiff alleged that on August

24, 1996, while employed by Hamilton Hills as a carpenter, he fell from a ladder severely injuring his right foot and the lower part of his right leg. In 1971, the plaintiff injured his right hand; his small finger and ring finger were amputated. He had limited use of the other two fingers on his right hand.

After hearing the evidence, the court took the case under advisement and by letter informed the interested parties thereto, that as a result of both injuries, the plaintiff suffered total and permanent disability to the body as a whole. The trial judge made no other findings and ordered that a decree be prepared in accordance with Bomely v. Mid-America Corp., 970 S.W.2d 929 (Tenn. 1998).

The attorney for the plaintiff prepared a decree which was not approved by the defendants, stating that the plaintiff was entitled to recover permanent total disability benefits and ordered that each defendant pay fifty (50) percent of the total award. The trial judge signed this decree. The Second Injury Fund filed another proposed decree which it asked the trial judge to sign, but this matter was never heard by the court.

The trial judge did not make sufficient findings to enable counsel to draft a decree in accordance with Bomely, Id. There was no finding, and no statement in the decree, as to whether judgment was being rendered pursuant to Tennessee Code Annotated § 50-6-208(a) or § 50-6-208(b). In subsection (a) cases, "it is important for trial courts to make an explicit finding of fact regarding the extent of vocational disability attributable to the subsequent or last injury, without consideration of any prior injuries." Bomely, at page 934. Also See Hill v. CNA Insurance Co., 985 S.W.2d 959 (Tenn. 1999).

In the event the award is made pursuant to section (b), the trial judge will so state, specifying the percentage of permanent disability to the whole body with respect to the hand injury and also to the foot and leg injury. See Burris v. Cross Mt. Coal Co., 798 S.W.2d 746 (Tenn. 1990) and Sims v. Bituminous Cas. Corp., 798 S.W.2d 751 (Tenn. 1990).

After making these findings, the Chancellor may make appropriate changes in the final judgment. It is hoped that these instructions can be complied with promptly.

It results that we must remand with instructions herein specified.

The two defendants will equally share the costs.

F. LLOYD TATUM, SENIOR JUDGE

CONCUR:

JANICE M. HOLDER, JUSTICE

L. T. LAFFERTY, SENIOR JUDGE

