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**ROBERT JACKSON JONES, Plaintiff-Appellee, v. THE CINCINNATI
COMPANIES INSURANCE COMPANY, Defendant-Appellant.**

No. 01S01-9309-CV-00140

SUPREME COURT OF TENNESSEE, AT NASHVILLE

1994 Tenn. LEXIS 253

August 22, 1994, Filed

PRIOR HISTORY: [*1] CIRCUIT COURT.
MAURY COUNTY. Hon. Jim T. Hamilton, Judge.

DISPOSITION: REVERSED.

COUNSEL: For Plaintiff-Appellee: Tracy W. Moore,
Columbia, Tennessee.

For Defendant-Appellant: Diane M. Segroves,
Shelbyville, Tennessee.

JUDGES: DROWOTA, III, Reid, O'Brien, Anderson

OPINION BY: FRANK F. DROWOTA

OPINION

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DROWOTA, J.

This cause 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. The Plaintiff and Defendant have each filed timely motions pursuant to *T.C.A. § 50-6-225(e)(5)(B)*, requesting review of the Panel's decision by the entire Court.

The Defendant-Appellant asks this Court to reverse the trial court and the Special Workers' Compensation Appeals Panel's determination as to the compensation rate. The plaintiff employee asks this Court to reverse the

trial court and the Special Workers' Compensation Appeals Panel's determination that plaintiff's injury and permanent disability was to his right leg only and not to the body as a whole. For the reasons stated below, we deny Defendant's motion and grant plaintiff's motion. This Court does not desire further briefing [*2] or oral argument, therefore, our review will be limited to the record and the briefs on file before the Special Workers' Compensation Appeals Panel.

On June 20, 1991, the plaintiff, while in the course and scope of his employment, was injured when some steel "gates" fell on his right foot. Eventually, his right great toe was amputated because of the injury. The Special Workers' Compensation Panel concluded that "the evidence fails to preponderate against the trial court's finding with respect to the claimant's compensation rate." We agree with the trial court and the Workers' Compensation Panel that the maximum weekly benefit in effect on June 20, 1991, was \$ 273.00. We, therefore, have denied Defendant's motion for review by the entire court.

The trial judge found that the plaintiff was entitled to permanent partial disability benefits based on 75 percent to the right leg. The Special Workers' Compensation Panel affirmed, finding that the evidence failed to preponderate against the trial judge's finding that the Plaintiff's permanent disability is to his right leg, not to the body as a whole. With this finding we disagree. We are of the opinion that the evidence preponderates against [*3] confining benefits to the employee's right leg. The employee's internist and nephrologist, Dr. Suellen Lee, testified repeatedly that the employee's acute kidney failure was the result of the gangrenous toe infection spreading into his blood stream. Dr. Lee's diagnosis as to

plaintiff's condition based upon her examinations and tests was "that he had renal failure related to sepsis-infection in the blood." In response to the question of what caused the infection in the blood, Dr. Lee responded: "The infection in the foot." Dr. Lee testified that plaintiff had a decrease in kidney function which was permanent and that it was her opinion that this was caused by the accident. Dr. Lee assessed 60 percent permanent anatomical disability to the whole body as a result of the kidney failure.

It is clear from our reading of the record that Dr. Lee was of the opinion that the work related injury causing the infection and subsequent amputation to the employee's big toe was responsible for the destruction of his renal function. The Defendant-employer, was unable to demonstrate otherwise on cross-examination and presented no medical proof of its own.

Dr. C. Douglas Wilburn, the employee's orthopedic [*4] surgeon, is the only other physician who testified. Dr. Wilburn testified that on June 26, 1991, an open amputation of the right big toe was performed. The wound was not closed because of the infection that was encountered. Plaintiff was taken back to surgery approximately five days later for a closure of the amputation at the MPT joint of the big toe. Dr. Wilburn testified that the gangrenous changes as well as the infection were all precipitated by the blunt trauma that occurred to his big toe when he dropped the iron rod on it. He further testified that the whole process was aggravated by the fact that plaintiff was a diabetic, which would tend to make him a little more prone to infection as well as poor wound healing. Dr. Wilburn's final diagnosis was an amputation of the right big toe for a gangrenous infected toe. It was his opinion that the loss

of his entire toe equalled an 18 percent impairment to the foot, which is the same as a 13 percent impairment to the lower extremity or a five percent impairment to the body as a whole.

Dr. Wilburn's testimony was related primarily to the toe amputation. He was not asked about and did not offer any testimony regarding Plaintiff's acute [*5] kidney failure. Dr. Wilburn was asked, however, to combine his permanent anatomical disability rating for the toe, which was five percent to the body as a whole, to Dr. Lee's rating of 60 percent to the body as a whole due to renal failure and he testified that according to the combined value chart, it would equal a 62 percent impairment to the body as a whole.

We are of the opinion that the Panel erred in confining benefits to the employee's scheduled member when the uncontroverted medical proof is that the infection to the toe that led to its amputation also essentially destroyed the plaintiff's kidneys. Upon consideration of the entire record, we are of the opinion that Plaintiff is entitled to 70 percent disability to the body as a whole, for which judgment is entered. All costs in this Court are assessed to the Defendant-employer.

FRANK F. DROWOTA, III, Justice

Concur:

Reid, C.J.

O'Brien and Anderson, JJ.

Birch, J., not participating.