

IN THE COURT OF APPEALS 09/19/95

OF THE

STATE OF MISSISSIPPI

NO. 93-CC-01121 COA

PACKARD ELECTRIC DIVISION GENERAL MOTORS CORPORATION

APPELLANT

v.

MITCHELL D. LANEY, DECEASED

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. WILLIAM F. COLEMAN

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

ANDREW D. SWEAT

CLEVELAND B. LANGSTON

ATTORNEY FOR APPELLEE:

CAROLYN B. MILLS

NATURE OF THE CASE: WORKER'S COMPENSATION

TRIAL COURT DISPOSITION: JUDGMENT IN FAVOR OF THE APPELLEE

BEFORE THOMAS, P.J., COLEMAN, AND DIAZ, JJ.

DIAZ, J., FOR THE COURT:

Rebecca Laney (Mrs. Laney), wife of the deceased Mitchell D. Laney (Laney), filed a petition to controvert with the Mississippi Workers' Compensation Commission claiming a compensable injury for her husband's death while employed by Packard Electric Division of the General Motors Corporation (Packard). Administrative Judge Deneise Turner Lott concluded that Laney suffered a work related injury which resulted in his death and ordered that Packard pay compensation benefits to Mrs. Laney. This order was subsequently affirmed by the full commission. Packard appealed to the Hinds County Circuit Court which affirmed the decision of the full commission. Feeling aggrieved, Packard appeals to this Court and argues that Packard is entitled to an apportionment of benefits payable to Mrs. Laney to the extent that Laney suffered from a pre-existing physical handicap, disease, or lesion which contributed to his death. Finding that Packard is not entitled to such an apportionment, this Court affirms.

THE FACTS

Mitchell D. Laney went to work as a service person for Packard in May 1990. He worked there from May 1990 to June 17, 1991, except that he was laid off due to lack of work for the period of December 1990 to April 1991. On June 17, 1991, Laney reported to work at 11:00 a.m. His duties that day included performing soldering work, and at approximately 1:00 p.m. began taking inventory by marking off items on a computer printout, and helping move "cells" which weighed up to 70 pounds. Laney assisted Johnny McQueen, a Packard employee and one of Laney's supervisors, in taking inventory. According to the testimony of McQueen, Laney helped him move ten to twelve cells, and they inventoried 42 cells in 45 minutes. McQueen also testified that their work pace was steady but not hurried, and that Laney was required to bend, stoop, and lift in order to move the cells, but in his opinion this was not a physically or mentally stressful job.

After Laney and McQueen were taking inventory for approximately 45 minutes, McQueen received a telephone call. According to McQueen's testimony, Laney was not expected to continue taking inventory in McQueen's absence. It was while McQueen was on the telephone, that he was informed that Laney had collapsed. One of Laney's co-workers, Fletter Holloman, testified that Laney walked past her going in the direction of the Packard medical department, and stated:

He was headed towards past me, but he stopped and got a hold to some tubs, and he was shaking. I turned around and looked and saw him, and I asked him if was he okay. He mumbled something. I couldn't understand what he was saying. He started holding his head, staggering, and I went and caught his arm. It was some lockers right beside us, and we kind of staggered back to the lockers and then he fell. . . . And after then he just got real still.

Laney slipped into a coma and never regained consciousness. He died on June 19, 1991. Mrs. Laney filed a petition to controvert with the Mississippi Workers' Compensation Commission as Laney's representative. The Laney's had one child as a result of their marriage, Trent Laney who was a dependent of Laney at the time of his death.

Four doctors provided testimony for the administrative judge. Dr. Michael Vise (Vise) treated Laney in the emergency room when he was admitted on June 17, 1991. Vise characterized Laney's hemorrhage as spontaneous and did not think that the hemorrhage was causally related to Laney's work related activities. The second physician, Dr. Robert R. Smith, testified that Laney's death was

attributable to an arteriovenous malformation (AVM) and that an increase in his venous pressure rather than arterial pressure while lifting the cells caused the AVM to rupture. Dr. Richard Kuebler, a radiologist, opined that Laney suffered from an aneurysm or AVM and that its rupture was causally connected to his work activities on June 17, 1991. Last, Dr. Yuri Zubkov, a visiting professor from St. Petersburg, Russia, at the University of Mississippi Medical Center, testified that it was more likely than not that Laney's work activities in lifting the cells contributed to his cerebral hemorrhage.

The administrative judge found that Laney suffered a compensable injury, and based on the medical testimony offered, that his work related activities on June 17, 1991, substantially contributed to his death. The administrative judge also concluded that Laney did not suffer from a pre-existing condition which would have contributed to the following injury. In the Order, she writes: "The evidence is uncontradicted that decedent did not experience the absence of normal wage earning capacity because of a pre-existing condition before June 17, 1991. Thus the apportionment provision is not applicable." The administrative judge ordered Packard to pay the following compensation benefits to Mrs. Laney:

1. A lump sum payment of \$250.00 as required by section 71-3-25(a) of the Mississippi Code;
2. Reasonable funeral expenses not to exceed \$2,000.00 as required by section 71-3-25(b);
3. Death benefits pursuant to section 71-3-25; and
4. To the decedent's estate representative, all medical services and supplies required by the nature of Laney's last illness as provided by section 71-3-15 of the Mississippi Code.

DISCUSSION OF ISSUES ON APPEAL

On appeal, Packard concedes that Laney's injury was work related and that Mrs. Laney should receive compensation benefits. However, Packard argues that it is entitled to a substantial reduction in the benefits awarded to Mrs. Laney based on Laney's alleged pre-existing physical handicap, disease, or lesion. The administrative judge and full commission did not apportion the lump sum benefit, funeral expenses, death benefits, and medical expenses awarded to Mrs. Laney.

The following language dictates the standard of review employed by this Court in the instant case:

The findings and order of the Workers' Compensation Commission are binding on this Court so long as they are supported by substantial evidence.

'This is so, even though the evidence would convince this Court otherwise, were we the fact finder.' This Court will reverse an order of the Workers' Compensation Commission only where such order is clearly erroneous and

contrary to the overwhelming weight of the evidence.

Mitchell Buick, Pontiac & Equip. Co. v. Cash, 592 So. 2d 978, 980 (Miss. 1991) (citations omitted). Applying this review to the record in the instant case, this Court affirms the commission's and circuit court's findings that Mrs. Laney is entitled to receive compensation benefits and that Packard is not entitled to an apportionment of the benefits based on Laney's alleged pre-existing handicap, disease, or lesion.

The apportionment part of our Workers' Compensation Act reads as follows:

Where a preexisting physical handicap, disease, or lesion is shown by medical findings to be a material contributing factor in the results following injury, the compensation which, but for this paragraph, would be payable shall be reduced by that proportion which such preexisting physical handicap, disease, or lesion contributes to the results following injury.

Miss. Code Ann. § 71-3-5 (1972). Packard argues that the medical testimony showed that Laney was possibly born with an arteriovenous malformation or an aneurysm which caused his death on June 19, 1991. Packard contends that this condition was personal to Laney and necessarily caused Laney to suffer from a pre-injury occupational disability thereby warranting apportionment. The case upon which Packard relies for this proposition is *Stuart's, Inc. v. Brown*.

In *Stuart's, Inc. v. Brown*, the Mississippi Supreme Court addressed the issue of apportionment of compensation benefits where the injured worker suffered from a pre-existing condition or injury. *Stuart's, Inc. v. Brown*, 543 So. 2d 649, 655-56 (Miss. 1989). The court held that only when a claimant experiences a "pre-existing occupational disability" is there a duty to apportion the benefits payable. *Id.* at 656. Put otherwise, only if the claimant's wage-earning capacity is reduced because of the pre-existing physical handicap, disease, or lesion is the employer entitled to a reduction in benefits. *Id.* at 655. In a footnote to the opinion, the Mississippi Supreme Court wrote that its holding would not be applicable to "occupational disease" or "heart attack cases," which are "*sui generis*." *Id.* at 655 n.13. Packard argues that aneurysms and/or AVMs should be entitled to the same reduction of benefits as in heart attack cases. However, the Mississippi Supreme Court did not include them in the footnote as an exception to the apportionment rule announced in *Brown*.

In her order and findings, the administrative judge relied on the fact that the court's opinion in *Brown* did not classify aneurysms and AVMs as an exception to the apportionment rule. Administrative Judge Lott refused to infer that these conditions were to be an exception to *Brown* absent an indication of such by the state supreme court. In fact, the *Brown* opinion expressly provides support for the findings of fact in the instant case. In *Brown*, the court rejected an argument that would allow for apportionment in "cases of asymptomatic pre-employment conditions of which the worker may not be aware," and commented that a worker who satisfactorily performed her work duties before her injury was "sufficient predicate for a finding of fact that [the worker] experienced no preexisting occupational disability." *Id.* at 656. Such was the case *sub judice*. Laney did not know that he

suffered from an aneurysm or AVM, and in addition, he satisfactorily performed the various duties of his employment at Packard.

CONCLUSION

Because the record reflects substantial evidence to support the administrative judge's and full commission's findings of fact, and because the law of Workers' Compensation gives no indication that aneurysms or AVMs should be treated as an exception to the holding in *Stuart's, Inc. v. Brown*, this Court affirms the decision of the Hinds County Circuit Court that Packard is not entitled to an apportionment of the compensation benefits owed to Mrs. Laney.

THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT IN FAVOR OF THE APPELLEE IS AFFIRMED. ALL COSTS ARE TAXED TO THE APPELLANT.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING, MCMILLIN, PAYNE AND SOUTHWICK, JJ., CONCUR.