

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED
CLAIMS COMMISSION
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ELVIRA LEYVA,)
) Claim No. T20120823
 Claimant.)
v.)
)
STATE OF TENNESSEE)
) Regular Docket
 Defendant;)

AMENDMENT TO JUDGMENT FOR THE CLAIMANT

This matter came before the Commission in a telephone hearing on April 16, 2014, upon motion of the State of Tennessee, Defendant, that judgment in this claim be altered or amended pursuant to Tenn. R. Civ. P. Rule 59.

Elvira Leyva, Claimant, was involved in a car accident with a Tennessee Department of Transportation vehicle on December 17, 2010. This Tribunal determined Ms. Leyva's damages to be \$67,114.00: \$37,500 in lost earning capacity; \$24,614 in medical expenses; and \$5,000 in pain and suffering. However, the Tribunal also determined Ms. Leyva to be 10% at fault for her resulting injuries. She was awarded \$60,402.60, \$22,152.60 of which was attributed to her medical expenses.

The State seeks alteration of this award solely as to Ms. Leyva's medical expenses. Upon hearing argument from counsel, and upon review of the record as a whole, the Tribunal finds the State's motion well taken. **With the exception of the amendment that follows, the Tribunal's Judgment of March 10, 2014, stands and is incorporated as if fully stated herein.**

The State has argued that since 75% of the Claimant's injuries has been apportioned to reduce her future lost earnings award, then 75% of the medical expenses she incurred after the accident with TDOT should also be apportioned to her prior accidents and injuries. Although neither Dr. West nor Dr. McNamara could apportion her current condition between the accident in question and prior accidents, the Tribunal did apportion it for the purposes of reducing her future lost earnings award. The logic of apportioning her medical treatment after the accident is compelling. Although Dr. McNamara could not apportion specific percentages of Ms. Leyva's current condition to the specific incidents of trauma in her past, he opined that it was almost impossible to apportion any of Ms. Leyva's injury to the TDOT accident because her symptoms

have been very similar during the course of her developing arthropathy and degenerative disc disease. He testified:

A: I don't think her current condition is caused entirely by the December accident, in fact it is almost impossible to give any type of apportionment of that accident. I think the symptoms are very similar to what we have seen all along . . . we [the physicians] all have diagnosed her as having a lumbar strain, so none of us have apportioned any of this to anything else.

Q: It sounds like you are saying her current condition could have been a natural progression of the injuries she suffered before the December 2010 accident?

A: Yes.

In light of the foregoing, it is clear that the Claimant's facet arthropathy and degenerative disc disease was occurring before the TDOT accident.

Therefore, the medical treatment she has received addressing those conditions after the TDOT accident must be apportioned between her earlier injuries and accidents and the instant one.

Amended Conclusions of Law

This matter is before the Commission upon the State's motion to alter or amend the judgment under Tenn. R. Civ. P. 59. A Rule 59 motion

to alter or amend a judgment allows a trial court to review, reconsider and correct its findings before a judgment becomes final.

“The purpose of Tenn. R. Civ. P. 59 motions is to prevent unnecessary appeals by providing trial courts with an opportunity to correct errors before a judgment becomes final.” *Bradley v. McLeod*, 984 S.W.2d 929 at 933 (Tenn. Ct. App. 1998) (citing *Rupe v. Durbin Durco, Inc.*, 557 S.W.2d 742, 748 (Tenn.Ct.App.1976), *overruled on other grounds by Crosslin v. Alsup*, 594 S.W.2d 379, 380 (Tenn.1980)).

Whalum v. Marshall, 224 S.W.3d 169, 175 (Tenn. Ct. App. 2006)

It is clear to the Tribunal, after reviewing the evidence and the law, not only should the future lost earnings be apportioned but also the medical expenses. In Tennessee, plaintiffs are confined to those damages actually caused or arising from their tortfeasors' negligence. *Haws v. Bullock*, 592 S.W.2d 588, 591 (Tenn. Ct. App. 1979) (citing *Polls v. Howser*, 161 S.E.2d 737 (N.C. 1968)). Where a plaintiff suffers from a pre-existing injury, his recovery is limited "to the additional injury over and above the consequences which normally would have followed from the preexisting condition absent defendant's negligence. *Id.* at 592 (quoting *Schore v. Mueller*, 186 N.W.2d 699 (Minn. 1971)). In other words, although tortfeasors must take their plaintiffs as they find them, damages cannot be assessed without determining the

plaintiff s pre-existing condition and its probable effect upon him. *Id.* at 591-592.

In this case, it is apparent that Ms. Leyva suffered a series of significant injuries to her neck and back prior to underlying events. Not only did she suffer those injuries between 2001 and October 2010, but she also endured ongoing chiropractic care for the injuries for four years prior to the accident with TDOT.

In light of her prior injuries and ongoing treatment, as well as the natural progression of her pre-existing arthropathy, 75% of Ms. Leyva's current condition has been attributed to her pre-existing injuries. Therefore, she is entitled to only 25% of the medical expenses for her ongoing treatment of her back condition which totals \$5,395.25(one-fourth of her expenses for ongoing visits with Dr. Clendenin, Results Physiotherapy, and the injection and ablation treatment at St. Thomas).

However, Ms. Leyva is entitled to those expenses that arose directly out of the underlying accident in question, i.e. her ambulance service, emergency room fee, emergency room physicians' expense and a MRI

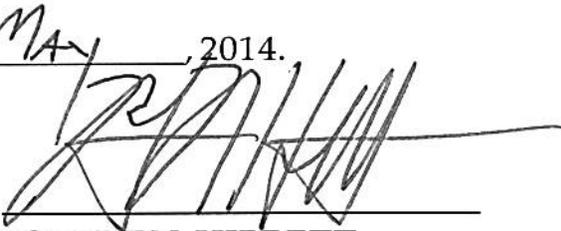
with Premier Radiology to determine the extent of her injuries, which totals \$3,033.00.

Therefore, the Tribunal determines that arising out of underlying events; Ms. Leyva has suffered \$37,500 in damages for lost earning capacity, \$5,000 in damages for pain and suffering, and \$8,428.25 in damages for medical expenses, totaling \$50,928.25. However, Ms. Leyva was 10% at fault for her resulting damages, and the Tribunal reduces her judgment to \$45,835.43.

IT IS, THEREFORE, ORDERED:

1. The State's motion to alter or amend judgment in this cause is granted.
2. Judgment for Claimant, entered March 10, 2014, is amended such that Ms. Leyva is awarded \$45,835.43; and
3. This is a final judgment.

ENTERED this 12 day of MAY, 2014.



ROBERT N. HIBBETT
Claims Commissioner
Sitting as Trial Judge of Record

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 13th of May, 2014.



PAULA SWANSON
Administrative Clerk
Tennessee Claims Commission