

FINAL AWARD ALLOWING COMPENSATION  
(After Remand from the Missouri Court of Appeals for the Eastern District)

Injury Nos.: 88-177550 & 90-152835

Employee: Seri Negri, deceased  
Claimant: Dorothy Negri, widow  
Employer: Continental Sales and Service  
Insurer: Travelers Indemnity Company of America  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Dates of Accident: September 12, 1988 and October 8, 1990  
Place and County of Accident: St. Louis County, Missouri

#### Preliminaries

On July 16, 2002, the administrative law judge issued an award of compensation including an award of future medical care. One element of care awarded read:

I find the Employer/Insurer liable for providing Claimant with all mechanical devices that he can use safely to move himself. This includes, but is not limited to, motorized wheelchairs, scooters, modified vans and any other devices...

On April 18, 2003, the Labor and Industrial Relations Commission (Commission) affirmed the award.

Employer/insurer appealed the April 18, 2003, award. On April 13, 2004, the Missouri Court of Appeals for the Eastern District issued its decision in this matter reversing, in part, the Commission decision. Employee died on April 17, 2004. While the case was pending before the Supreme Court of Missouri, the court substituted employee's widow Dorothy Negri (Claimant) as the claimant in this matter because she was the employee's sole dependent entitled to compensation pursuant to § 287.230 RSMo.

By mandate dated August 31, 2004, the Court remanded the matter to Commission with directions to make a "determination of the difference in the cost between an average, mid-price automobile of the same year as the purchased van and the cost of the converted van." By Order dated September 9, 2004, we remanded this matter to the Division of Workers' Compensation (Division) for an evidentiary hearing. For convenience, we refer to the difference in the cost between an average, mid-priced automobile of the same year as a van converted for accessibility as the "cost of accessibility."

The administrative law judge conducted the evidentiary hearing on June 26, 2006. The Division has forwarded the transcript of the hearing to the Commission. Employer/insurer filed a legal brief.

#### Findings of Fact

Claimant offered as Exhibit A a price quote dated March 20, 2004, from Behlman Pontiac GMC Truck & Van for a 2004 GMC Savana (R/R Explorer X). The net sale price of the vehicle is listed as \$55,199.50. Employer/insurer objected to Exhibit A as conclusory. We overrule the objection.

Claimant offered as Exhibit B an estimate dated April 4, 2004, from United Access, LLC indicating that the estimated cost to modify a 2004 GMC Savana raised-roof conversion van to make it accessible for employee was \$16,965.00. Exhibit B is admitted without objection.

Claimant testified that she called a car dealership – she believes it was Don Darr – and inquired about the price of a car falling in its product line between a Focus and a Crown Victoria. Claimant testified a gentleman called her back and informed her that in 2001 the price would have been between eleven and thirteen thousand. Employer/insurer objected that claimant’s testimony lacked foundation. The objection is sustained.

## Conclusions of Law

### *Has the issue of the cost of accessibility been rendered moot?*

Employer/insurer argues that the “modified van” issue has been made moot by the death of employee. We disagree.

Section 287.230 RSMo reads as follows:

1. The death of the injured employee shall not affect the liability of the employer to furnish compensation as in this chapter provided, so far as the liability has accrued and become payable at the time of the death, and any accrued and unpaid compensation due the employee shall be paid to his dependents without administration, or if there are no dependents, to his personal representative or other persons entitled thereto, but the death shall be deemed to be the termination of the disability.
2. Where an employee is entitled to compensation under this chapter for an injury received and death ensues for any cause not resulting from the injury for which he was entitled to compensation, payments of the unpaid accrued compensation shall be paid, but payments of the unpaid unaccrued balance for the injury shall cease and all liability therefor shall terminate unless there are surviving dependents at the time of death.

“Accrue” means, “[t]o come into existence as an enforceable claim or right; to arise.” Black’s Law Dictionary 21 (7<sup>th</sup> ed. 1999).

Employer appealed the Commission’s award to the extent that it required employer to pay for employee’s base transportation cost; that is, the cost that employee would have paid for a vehicle in the absence of his work injury. Employer did not appeal the Commission’s award of the cost of accessibility. Because it was not appealed, employer’s liability to provide compensation for the cost of accessibility arose before his death. We conclude that the cost of accessibility was accrued and unpaid as of the time of employee’s death. As such, it shall be paid to Claimant.

### *How much is the cost of accessibility?*

Claimant has the burden of proving all of the material elements of the claim. *Pavia v. Smitty’s Supermarket*, 118 S.W.3d 228, 241 (Mo. App. 2003). We cannot determine the full cost of accessibility as defined by the Court because claimant did not produce competent and substantial evidence of the cost of an average, mid-priced automobile of the same year as the Savana van for which a purchase price was established. We can, however, determine the cost of modifying such a van. Through Exhibit B, claimant produced competent and substantial evidence that the cost of converting a suitable van in 2004 was \$16,965.00.

### Award

We award to claimant \$16,965.00, the conversion cost reflected on Exhibit B.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 22<sup>nd</sup> day of November 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary