

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 582 of 2010**

Horilal Yadu S/o Goverdhan Yadu, R/o Village Sasaholi, PO-Nevra,
Tahsil-Tilda, Distt.-Raipur (CG)

---- Appellant**Versus**

1. M/s. Agrawal Parboiling Rice Mill, Sasaholi, Post Nevra, Tahsil Tilda, District Raipur (CG)
2. The New India Insurance Company Limited, Divisional Manager, the New India Insurance Company Limited, Divisional No.1, Kachahari Chowk, Jail Road, Raipur (CG)

---- Respondents

For Appellant	:	Shri Malay Kumar Bhaduri, Advocate
For Respondent no. 2	:	Shri Raj Awasthi, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****13/09/2017**

The present is an appeal under Section 30 of the Workmen's Compensation Act by the worker challenging the award dated 05.12.2009 passed by the Commissioner for Workmen's Compensation, Labour Court, Raipur in Case No.1/B/100/WC Act/06 non fatal.

2. The limited challenge in the present appeal is the non granting of interest as has been defined under Section 4A of the Workmen's Compensation Act (for short hereinafter referred as 'the Act'). Further challenge is also on the ground that the Commissioner has committed an error in not accepting 100% loss of earning capacity of the appellant as a result of the amputation of his left leg below knee.

3. Though the appeal was admitted earlier but no question of law was framed. The questions of law which have been raised by the appellant are as under:

- i) whether the commissioner was justified in not awarding interest as is statutorily required under section 4 A of the Act.
- ii) Whether the Commissioner was justified in confining the loss of earning capacity of the appellant at 60% as per the schedule of the Workmen's Compensation Act and not accepting it as 100% on account of the appellant not being able to perform any duty after amputation of his left leg below knee.

4. So far as treating the case of the appellant one under 100% disability is concerned, counsel for the appellant relied upon the judgment of the Supreme Court in the case of S. Suresh Vs. Oriental Insurance Company Ltd. & Anr. reported in 2010 AIR SCW 437 wherein in the case of amputation of a leg below knee a driver by profession was accepted by the Supreme Court as 100% loss of earning capacity. Counsel for the appellant submits that the appellant at the time of accident was working as a machine operator at M/s Agrawal Parboiling Rice Mill and after amputation of his leg below knee, the appellant has not been able to perform his duties of machine operator. Therefore, there is a total loss of income of the appellant and for the purpose of calculating compensation, 100% disability ought to have been accepted by the Commissioner while granting compensation.

5. However, a perusal of the record, the statement of the claimant would reflect that he has not deposed before the Tribunal of having lost 100% earning capacity except for the fact that he is not able to work to the extent that he was working prior to the accident. In view of the same, it cannot be presumed that there is loss of 100% earning capacity sustained by the appellant entitling him compensation of 100% disability when the Commissioner has considered his disability in accordance with the schedule under Workmen's Compensation Act.

6. So far as the interest is concerned, what is reflected from the record is that for the disability that was suffered by the appellant was in the year 2004,

the Insurance Company had deposited an amount of Rs. 1,07,520/- before the Labour Court which was distributed to the worker in the year 2006. Subsequently, it is the claim of the differences of compensation which was claimed by the appellant before the Labour Court and which was allowed vide impugned award dated 05.12.2009. Section 4 A of the Act clearly stipulates that in the event of the employer defaulting in paying the compensation due under the Act within one month from the date it fell due, the amount shall carry interest @ 12% per annum. In the instant case, no justified reason has been assigned by the employer for not depositing the differences of amount at the relevant point of time i.e. in the year 2006 itself, therefore, the provision of Section 4-A would automatically become applicable under the said circumstances. Thus, this Court has no hesitation in reaching to the conclusion that non granting of interest in the said enhanced amount was not proper and the same therefore deserves to be and is accordingly modified to the extent that the amount of Rs.52,831/- as has been awarded by the Tribunal shall carry interest @ 12% per annum from the date of accident till the date of actual payment.

7. The substantial question of law so far as the claim for 100% earning capacity is concerned stands answered in the negative and so far as the grant of interest is concerned stands answered in favour of the workman.

8. The appeal is allowed in part.

**Sd/-
(P. Sam Koshy)
JUDGE**