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**(2009) 04 AP CK 0037**  
**In the Andhra Pradesh High Court**  
**Case No : C.M.A. No. 1266 of 2004**

New India Assurance Company Ltd.

APPELLANT

Vs

A. Narsimhulu and Another

RESPONDENT

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**Date of Decision :** 08-04-2009

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 2(1)(I), 22, 4A, 4A(1), 4A(2)

**Citation :** (2010) ACJ 1593 : (2009) 4 ALT 162 : (2009) 123 FLR 57 : (2011) 1 TAC 971

**Hon'ble Judges :** V.V.S. Rao, J

**Bench :** Single Bench

**Advocate :** C.V. Rajeeva Reddy, for the Appellant; G. Sekhar Reddy, for the Respondent

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## Judgement

V.V.S. Rao, J.—First respondent is workman of second respondent, who is owner of lorry bearing No. AP 23 U 57. While he was on duty as driver on lorry, vehicle met with an accident on 30-01-2003. Workman suffered injuries. He was operated upon. His right leg was shortened through surgery for fracture and steel rods were inserted. In his application before Commissioner for Workmen's Compensation and Assistant Commissioner of Labour III, Hyderabad, (Commissioner, for brevity) u/s 22 of the Workmen's Compensation Act, 1923 (the Act, brevity), he claimed Rs. 4,00,000/- as compensation. Same was opposed by insurer. On " considering evidence learned Commissioner awarded Rs. 3,36,769/- (2674 X 60/100 X 209.92). While doing so, age and income of workmen was treated as 28 and Rs. 2,674/- per month based on minimum wage notification issued by Government of Andhra Pradesh.

2. In this appeal learned Counsel for appellant - insurer raised two contentions. When Doctor - A.W.2 who gave Ex.A-4 disability certificate deposed that workman suffered 45% disability, total disablement of 100% cannot be taken. Secondly award of interest at 9% p.a., from the date of accident is erroneous.

3. Section 2(1)(I) of the Act defines "total disablement" - means such

disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement. Therefore even if a workman suffers physical disablement to a lesser extent, say 25%, 40%, 50% etc., if such physical disablement itself totally incapacitates the workman from doing any work which he was capable of performing before accident, it can be treated total disablement. In this case Ex.A-4 - disability certificate shows that physical disability suffered by workman is 45% but Doctor -A.W.2 stated that right leg of the workman was shortened which means that workman can never be driver and therefore, he suffered total disablement. In such situation amount assessed by Commissioner remained unassailable. Insofar amount of interest is concerned, impugned award needs modification as in National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, Supreme Court held as under.

Interest is payable u/s 4A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability u/s 4A was dealt with by this Court in Maghar Singh Vs. Jashwant Singh, . By Amending Act, 14 of 1995, Section 4A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4A(1) prescribes that compensation u/s 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication u/s 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of Sub-section (2) of Section 4A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise.

(emphasis supplied)

4. Above decision was followed in Kamla Chaturvedi Vs. National Insurance Co. and Others, . Keeping the ratio laid down by Supreme Court, this Court holds that workman shall be entitled to claim simple interest at 8% p.a., if the amount was not paid by insurer within one month of award passed by Commissioner.

5. In the result, for the above reasons, subject to modifying interest at 8% the Civil Miscellaneous Appeal is partly allowed. No costs.