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**(2009) 11 SHI CK 0073**  
**In the High Court Of Himachal Pradesh**

New India Assurance Company Ltd.

APPELLANT

Vs

Smt. Biasan Devi and Others

RESPONDENT

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**Date of Decision :** 04-11-2009

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 30

**Citation :** (2011) ACJ 112 : (2009) 3 ShimLC 354 : (2011) 1 TAC 963

**Hon'ble Judges :** V.K. Ahuja, J

**Bench :** Single Bench

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## Judgement

V.K. Ahuja, J.—This is an appeal filed by the appellant u/s 30 of the Workmen's Compensation Act hereinafter referred to as "the Act", against the award of the Commissioner under the Workmen's Compensation Act (S.D.M.) Sadar Mandi, H.P. dated 7.7.2004, whereby he awarded a sum of Rs. 2,07,980/- alongwith interest at the rate of 12% per annum from the date of the accident till payment.

2. Briefly stated, the facts of the case are that an application u/s 22 of the Act was filed by Smt. Chinti Devi, original complainant, now represented by her L.Rs., respondent Smt. Biasan Devi. It was alleged by the claimant that her son Amar Nath died in an accident on 4.1.1994, who was employed as driver on their tractor bearing No. HID-8635 by the original owner, namely, Lachman Ram, now represented by his L.Rs, respondents No. 2 to 5. The deceased was driving the tractor during the course of his employment and the tractor suddenly fell down from the road and Amar Nath received multiple injuries and died thereafter. The deceased was alleged to be of the age of 30 years, was un-married and the claimant being widowed mother of the deceased and dependent upon the deceased, had claimed compensation to the extent of Rs. 6.50 Lacs. The case was tried by the learned Workmen Commissioner and on conclusion of the trial, the claimant was held entitled to a sum of Rs. 2,07,980/- alongwith interest at the rate of 12% per annum.

3. Being aggrieved, the appellant has preferred the present appeal.

4. I have heard the learned Counsel for the parties and have gone through the record of the case.

5. The two points were canvassed before this Court by the learned Counsel for the appellant during arguments. The first point taken was that wages were wrongly assessed at Rs. 2,000/- per month, though it should have been assessed at Rs. 1,000/- prior to the amendment of the Act on 15.9.1995. My attention has been drawn to the provisions of Section 4, Explanation (II), wherein it was alleged that where the monthly wages of a workman exceed two thousand rupees, this two thousand rupees was substituted by word four thousand rupees with effect from 8.12.2000. The amended provision will apply from the date it came into effect, that is, from 8.12.2000 and since the accident in question had taken place on 4.1.1994, the provisions have to be read as these were existing on the date of the accident. Accordingly, the amount of monthly wages has to be taken at Rs. 2,000/-. According to Section 4(l)(a), where death results from the injury, an amount equal to 50% of the monthly wages of the deceased workman has to be applied by the relevant factor. However, this amendment was made and 50% was inserted in place of 40% with effect from 15.9.1995. Thus, according to the Act as it existed on the date of accident on 4.1.1994, 40% of the monthly wages had to be multiplied by the relevant factor.

6. It, therefore, follows from the above discussion that wages had to be taken at Rs. 2,000/- per month, while the calculation had to be made at the rate of 40% of Rs. 1,000/- multiplied by the relevant factor. It was applied as 207.98 and this was not disputed by the learned Counsel for the respondents that the relevant factor was correctly applied, though the amount and interest were not applied correctly by the Workmen Commissioner. There can be no dispute that the amendments made are to be given effect from the date the provisions came into force. The present case was, therefore, covered prior to the amendment of 1995 and accordingly, the compensation was to be raised at the rate of 40% at Rs. 1,000/-. This point was also considered by the learned Single Judge of this Court in *New India Assurance Company Ltd. v. Nand Lal and Anr.* Latest HLJ 2006 (HP) 456, wherein it was held that the maximum wages on that date could not be more than Rs. 1,000/-.

7. Coming to the second plea raised by the learned Counsel for the appellant that the interest was wrongly counted at the rate of 12%. This amendment was effected in Section 4(a) with effect from 15.9.1995. Before that date, the rate of interest provided therein was 6%. It was also observed by the learned Single in the above referred case. The provisions of the Act are very clear that on the date of the accident, the interest payable was 6% and accordingly, both these points raised by the learned Counsel for the appellant have substance. It was also rightly submitted that the interest is payable after one month from the date of the accident as held in the above case by the learned Single Judge of this Court.

8. In view of the above discussion, the appeal filed by the appellant is allowed and the claimant shall be entitled to the compensation at the rate of 40% of Rs.

1,000/- multiplied by 207.98 alongwith interest at the rate of 6% one month after the date of accident, that is, with effect from 4.2.1994. The compensation awarded is accordingly assessed at  $207.98 \times \text{Rs. } 400/-$  (40% of Rs. 1,000/-) = Rs. 83, 192/-. The appeal is allowed accordingly. There is no order as to costs.