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**(1971) 04 AHC CK 0005**  
**In the Allahabad High Court**

Saraswathi Press

APPELLANT

Vs

Nand Ram

RESPONDENT

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**Date of Decision :** 30-04-1971

**Acts Referred:**

Employees Compensation Act, 1923 — Section 3, 4, 4A

**Citation :** (1971) ACJ 316 : (1971) 2 LLJ 384

**Hon'ble Judges :** D.S. Mathur, J

**Bench :** Single Bench

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**Judgement**

D.S. Mathur, J.—This is an appeal by the employer, Messrs Saraswati Press, against the order of the Commissioner, Workmen's Compensation, directing him to pay Rs. 1176/- as compensation to the workman, Nand Ram. Two points were argued before me, namely, that there was no loss of earning capacity as the workman was getting the same salary as before the accident, and secondly, that the percentage of loss of earning capacity as fixed is excessive.

2. It is true that the workman is getting the same salary after the accident as before the accident but loss of earning capacity is different from the actual wages or income of the workman. Once there is a loss in earning capacity, though the income remains the same, the workman becomes entitled to compensation at the prescribed rates. My attention was drawn to the case of Upper India Sugar Mills Ltd. v. Kartara 1970 A.L.J. 81 where on the basis of an English case King v. Port of London [1920] A.C. 1, only a suspensory award was made, i.e., liability of the employer to pay compensation to the workman was declared but it was to be enforced only when the respondent could prove that his earning capacity had diminished and gave evidence of the percentage of diminution. Section 4 of the Workmen's Compensation Act lays down the amount of compensation payable to the workman. It is u/s 3(1) that a liability has been placed upon the employer to pay compensation in accordance with the provisions of chapter II where personal injury is caused to a workman by accident arising out of and in the course of his employment. Section 4 lays down the various modes of calculation of

compensation money. In the case of permanent partial disablement the compensation payable shall be such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified in Part II of Schedule I, as being the percentage of the loss of earning capacity caused by that injury.

3. u/s 4A of the Act compensation u/s 4 shall be paid as soon as it falls due. Consequently, the workman becomes entitled to the compensation as soon as it falls due, i.e., when the liability for payment of compensation is fixed on the employers. This shall, as laid down in Section 3, be on the date the injury is caused and not at any subsequent occasion. Any rule laid down by the English Courts may, if necessary, be applied by the Courts in India only if there is no provision to the contrary in the enactment. When the Workmen's Compensation Act lays down that compensation shall be payable on a personal injury being caused, the compensation has to be determined and paid forthwith and not that there be a mere declaration of the liability and the determination of the amount of compensation and the payment thereof postponed for a future date.

4. The facts of Upper India Sugar Mills Ltd. v. Kartara (supra) are different. There was an injury caused to the right wrist and fingers which caused certain physical incapacity. It does not appear that there was chopping off of the tips of fingers. Hence, it is not necessary to refer the case to a large Bench and the F.A.F.O. can be disposed of on legal principles.

5. As there was no severance of the phalanx the case would be governed by items Nos. 34 and 38 of Part II of Schedule I and the percentage of loss of earning capacity shall be 4 plus 2, i.e., 6%, and not 12 per cent. The workman Nand Ram was, therefore, entitled to a compensation of Rs. 588.

6. The F.A.F.O. is hereby partly allowed and the amount of compensation payable to the workman, Nand Ram, is held to be Rs. 588. This amount shall be paid to him by way of compensation and the balance of the deposit made by the appellant shall be refunded to him. Costs of both the Courts easy (sic). Stay order is vacated.