

**(2003) 03 KL CK 0101**

**High Court Of Kerala**

**Case No:** M.F.A. No. 515 of 1997

Sebastian Mathew

APPELLANT

Vs

Joseph Sebastian and National  
Insurance Company Ltd.

RESPONDENT

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**Date of Decision:** March 4, 2003

**Acts Referred:**

- Workmens Compensation Act, 1923 - Section 4, 4(1), 4A(2), 4A(3)

**Citation:** (2004) 1 ILR (Ker) 156

**Hon'ble Judges:** K.A. Abdul Gafoor, J; K. Thankappan, J

**Bench:** Division Bench

**Advocate:** T.P. Varghese and Philip T. Varghese, for the Appellant; Joe Kalliath, for R2, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Abdul Gafoor, J.

The workman has approached this Court assailing the order of the Workmen's Compensation Commissioner raising two substantial questions of law. They are:

i. On the basis of the evidence that the workman is totally disabled, can the workmens" Compensation Commissioner assess the loss of earning capacity in excess of the disability certified in the disability certificate.

ii. Is not the commissioner liable to award 12% interest in terms of Sub-section 3 of Section 4A of the Workmens" Compensation Act, 1923 as the award has been passed subsequent to the amendment to that section.

2. Admittedly the injury suffered by the appellant was not an injury mentioned in Schedule-I to the Act. So, going by the provisions contained in Section 4(1)(c)(ii) of the Act the loss of earning capacity shall be as assessed by the qualified medical practitioner. Admittedly Ext. A3 is the disability certificate. The qualified medical

practitioner assessed only a disability of 50%. He did not separately assess the loss of earning capacity as a result of such disablement. It is probable that loss of earning excess may be either equal to or in certain cases in excess of the extent of the disability certified. It is inspite of that the qualified medical practitioner apart from assessing the extent of disability did not assess the extent of loss of earning capacity. Therefore the appellant was sent for an examination by a medical board. Admittedly, medical board assessed and found disability to the extent of 30%. Same situation arose there also, as the medical board did not separately assess the loss of earning capacity is equal to the extent of disability certified by them. So going by the provisions contained in Section 4(1)(c)(ii) the extent certified by the medical board alone can be, whatever be the evidence to the contra, accepted by the Commissioner for workmens' compensation. That is what is done here. So the first question of law is answered against the appellant. A Full Bench of this Court has held in *New India Assurance Co. Ltd. v. Sreedharan* (1995 (1) KLT 275). That when the provision refers to the loss of earning capacity as assessed by a qualified medical practitioner shall be taken by the commissioner. So the certificate of the Medical Board shall be the basis.

2. The second question of law is on interest. Accident occurred on 4.11.1993, before the enforcement of Act 30 of 1995 amending the Workmen's Compensation Act, 1923 including the provision relating to the rate of interest. Rate of interest was enhanced from 6% to 12% or such other higher market rate of interest as the Commissioner may fix, to be effective from 15.9.1995. It is contended on the strength of a Division Bench decision of this Court reported in *Oriental Insurance Co. v. Muhammed* (2002 (1) KLT 131) that the rate of interest to be calculated shall be the rate available on the date of payment of compensation. As per Section 4A(2) the date of payment of compensation mentioned is one month after the date of accident. It is on that date the liability for payment arises. If there is delay in payment interest is provided for in Sub-section 3 of Section 4A. The interest rate was enhanced as mentioned above only from 15.9.95. That amendment is effective only from the date of such amendment. Examining the applicability of Section 4 and Section 4A as amended by Act 30 of 1995 a Full Bench of this Court in *United India Insurance Co. Ltd. v. Alavi*, 1998 (1) KLT 951 has made it clear that the said provision will be only perspective in operation and cannot over the accident occurred prior to its enforcement. The revised rate of interest at 12% as contained in Section 4A(3) as now stands is thus effective only from 15.9.1995. Apart from that the Supreme Court in a decision in *KSEB v. Valsala* (1999 (3) KLT 348) has made it clear that the liability for payment arising out of Workmens' Compensation Act will arise on the date of accident and the quantum of compensation payable shall be in terms of the provision as applicable on the date of accident, not on the date of payment. It is applicable to the rate of interest also. It is not discernible from the Division Bench decision cited by the counsel for the appellant that the aforesaid Full Bench decision has been brought to the notice of that Division Bench. When the Full Bench decision

had made it clear that amended provision including in Section 4A will be applicable only from 15.9.1995, necessarily the appellant can get only 6% interest as awarded by the Commissioner. The question of law shall also be answered against the appellant.

Appeal fails and is dismissed.