

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case No. MA No. 370/2011

Reserved on: 29.09.2026

Pronounced on: 05.10.2026

Uploaded on: 05.10.2026

Whether the operative part or
full judgment is pronounced:- Full

Mohi Ud Din S/o Late Abdulla R/o Village Shagan Tehsil Banihal
District Ramban.

.....Petitioner/Appellant(s)

Through: Mr. O.P Thakur, Sr. Advocate with
Ms. Anandita Thakur, Advocate.

Vs

1.Union of India through
Ministry of Defence New
Delhi.

2.Officer Commanding 367
RMP Khannabal Kashmir.

3.Company Commander
99 REC, GREF Udhampur.

..... Respondent(s)

Through: Mr. Suneel Malhotra, CGSC

CORAM: HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

(JUDGMENT)

1. This appeal under Section 30 of the Employees Compensation Act, 1923 [**Act of 1923**] is directed against the award dated 10.01.2011 passed by Assistant Labour Commissioner, Jammu, as Commissioner in file No. Injuries-

67/WC Act/07, whereby the compensation of Rs. 93,000/- with simple interest @ 12% per annum from 20.09.2006 to 10.01.2011, quantified at Rs. 47,400/- was awarded in favour of the appellant.

2. The appellant was engaged by the respondents as a casual labour. At the relevant time he was drilling on the Nachalana Hingni-Bhata road. He was paid Rs. 2520/- per month and further Rs. 650/- for operating the Drilling- machine/Jack-Hammer, in all Rs. 3170/-. On 20.09.2006, in the course of that employment, a rolling boulder struck his right leg and resulted in permanent disability assessed at 30%. A claim was laid for compensation for injury caused by an accident arising out of and in the course of employment. By the impugned award, compensation with interest was granted. Dissatisfied with the quantum, the appellant is in appeal.

3. Three grounds are pressed. First, that although medical disability is 30%, the appellant has suffered 100% loss of earning capacity, and the Commissioner erred in taking the disability at 30%. Second, that on the admitted wages and age, the compensation ought to have been Rs. 2,58,465/-, with interest @ 12% per annum from 20.09.2006 till payment. Third, that the Commissioner failed to award penalty under Section 4-A of Act of

1923, there being no justification for withholding compensation, and that a further 50% ought to be directed.

4. The respondents submit that the appellant suffered no loss of earning capacity, he having been employed as a Watchman, which he admitted in his statement before the Commissioner. On penalty, it is submitted that the appellant did not prove before the Commissioner that the delay was without justification, and that in the absence of such an opinion the penalty clause is not attracted.

5. Heard learned counsel for the parties and perused the record.

6. Wages of Rs. 3,170/- per month, age of 47 years on the date of accident, and permanent disability of 30% are admitted. The relevant factor in Schedule IV against the completed age of 47 years is 163.07. The injury is not a schedule imputation in part II of schedule I. It falls under Section 4(1)(c) (ii) of Act of 1923. Such percentage of the compensation payable for permanent total disablement, as is proportionate to the loss of earning capacity permanently caused by the injury.

7. The measure for permanent total disablement under Section 4(1)(b) is 60% of the monthly wages multiplied by the relevant factor. 60% of Rs. 3170/- is Rs. 1902/-. Multiplied by the factor

of 163.07, the amount payable for permanent total disablement is Rs.3,10,159/-. 30% of that sum, being the admitted loss of earning capacity, is Rs. 93,047.74/-, which rounds to Rs. 93,048/-. The same result follows from taking 30% of Rs. 1902/-, that is Rs. 570.60/- and multiplied by Rs.163.07/-. The Commissioner adopted Rs. 93,000/-. The difference is of rounding. It discloses neither a wrong factor nor an error in method of calculation.

8. Interest @ 12% per annum from 20.09.2006, the date of accident, to 10.01.2011, quantified at Rs. 47,400/- is the interest awarded. It is consistent with Section 4-A(3)(a) and is not shown to call for interference.

9. The figure of Rs. 2,58,465/-, on which the second ground rests, is 50% of Rs. 3170/- multiplied by relevant factor of 163.07/-. That is the measure for death under Section 4(1) (a). It has no application to permanent partial disablement. The plea of arithmetical mistake therefore fails.

10. The plea that loss of earning capacity must be taken at 100% is a question of fact. The appellant does not dispute the medical assessment of 30%. For a non-scheduled injury, compensation follows the percentage of loss of earning capacity, the assessment of a qualified medical practitioner being the

statutory starting point under Section 4(1)(c)(ii). The respondents' answer, resting on the appellant's own statement that he was engaged as a Watchman, and therefore, the injury caused and disablement suffered did not take away the work he was fit to do, which version should prevail, and whether functional disability exceeded the medical percentage, was within the domain of the Commissioner to appreciate on the basis of evidence. No perversity in adopting the admitted 30% disability is shown. Re-appreciation of that percentage is outside the jurisdiction of this Court under Section 30 of the Act of 1923.

11. The prayer for penalty stands on a different footing. Section 4-A(3)(a) makes interest a consequence of default, and requires no inquiry into the reasons for the delay. Section 4-A(3)(b) authorizes a further sum, not exceeding 50%, only where the Commissioner is of the opinion that there is no justification for the delay. The proviso enacts that an order for penalty shall not be passed without giving employer a reasonable opportunity to show cause. The two clauses are not interchangeable. Penalty is not imposed on a prayer alone. The Hon'ble Supreme Court in ***The Oriental Insurance Co. Ltd. Versus Siby George and Ors.*** (2012) 12 SCC 540, has held that interest follows default as such, and that a finding of unjustified delay, after show cause, is required only where penalty is proposed.

12. In view of the above facts and circumstances, this appeal is admitted on the following substantial question of law:

“Whether the Commissioner has grossly erred in not considering the entitlement to further sum by way of penalty in terms of Section 4-A(3)(b) of the Act of 1923, as the employer has failed to deposit the compensation within one month from the date of accident.”

13. A statutory duty is cast upon the employer to pay the compensation under Section 4 as soon as it falls due and in case, the Commissioner is of the opinion that there is no justification for the delay in making payment of compensation within statutory period, he shall direct that the employer shall in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding 50% of such amount by way of penalty.

14. In the present case, the date of accident indisputably is 20 September 2006, while the amount has not been deposited within one month under Section 4-A(3), therefore, once the employee has raised this issue, in that event, the Commissioner was enjoined upon to deal with this aspect of the matter, although it is an opinion to be formed by the Commissioner taking note of the justification for the delay.

15. Perusal of the impugned award would show that no show-cause notice under the proviso to Section 4-A(3)(b) was issued and even no evidence was led that the delay was without justification. The Commissioner recorded no opinion on that question. A prayer in the claim petition, repeated in this appeal, does not supply the proviso, nor the foundational facts on which the opinion has to rest.

16. This Court, in an appeal confined to a substantial question of law, cannot for the first time step into the shoes of the Commissioner, form that opinion, and impose penalty, therefore, it remains open to the appellant to move the Commissioner, who alone may issue show cause to the employer and thereafter form the opinion under Section 4-A(3)(b) of Act of 1923.

17. Except for the substantial question of law framed, the challenge is to the findings of fact, and to an arithmetic which, on the admitted wages, age and percentage, has been applied in accordance with Section 4 read with schedule IV of the Act of 1923, therefore to that extent, impugned award is upheld.

18. Once it is found that the Commissioner has failed to return a finding as to whether or not the employee is entitled to payment of penalty, in that event, under Section 4-A(3)(b) of the Act of 1923, the matter is required to be sent back to the Commissioner,

only on the aspect of entitlement to the further sum of penalty. Accordingly, the substantial question of law is answered in affirmative.

19. For the foregoing reasons, the matter is remitted to the Commissioner to consider the aspect of payment of penalty after hearing both the sides and following the procedural requirements of proviso to Section-4-A(3)(b) of Act of 1923. Accordingly, the appeal is allowed in part.

20. In the light of the limited order of remand, the Commissioner is directed to dispose of the case taking note of the observation made, within a period of three months from the date of receipt of certified copy of this order.

21. Let record be returned with due dispatch.

(SHAHZAD AZEEM)
JUDGE

JAMMU
05.10.2026
Surinder

<i>Whether order is speaking:</i>	<i>Yes</i>
<i>Whether order is reportable:</i>	<i>Yes</i>