

A NEW INDIA ASSURANCE CO. LTD.  
v.  
DR. SUKANTA KUMAR BEHERA & ORS.  
(Civil Appeal No. 2078 of 2015)  
FEBRUARY 20, 2015

B **[RANJAN GOGOI AND ARUN MISHRA, JJ.]**

*Motor Vehicles Act, 1988 - Motor accident – resulting in 60% permanent disability – Compensation for – Held: Considering the nature of disability, expenditure incurred on treatment attendant and special diet, loss of working capacity, loss of earning during course of treatment, physical pain and suffering, and by using multiplier of 16, compensation amount is determined at Rs. 35 lakhs.*

D **Partly allowing the appeal, the Court**

**HELD: Considering the fact that 60% permanent disability has been incurred and considering overall injuries caused, there was a loss of working capacity to the said extent. Monthly loss of earning capacity comes to Rs.15,000/-. Multiplier of 16 is applicable at the age of 36 years. Expenditure for surgery of right leg for and for insertion of two plates are quantified at Rs.20,000/-. There was loss of earning during course of treatment which has been determined by the Claims Tribunal and medical expenditure in another Hospital, comes to Rs.66,566/-. Compensation for pain and suffering, expenditure on attendant and on special diet has also to be awarded. The compensation after deducting medical reimbursement already received, compensation amount of Rs.35,00,000/- (Rupees Thirty Five lacs only) is awarded along with interest at the rate of 6% P.A. with effect from the date of filing of claim petition. [Para 7] [239-A-D; 240-A-B]**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. A  
2078 of 2015

From the Judgment and Order dated 09.05.2014 of the  
High Court of Orissa, Cuttack in M. A. C. A. No. 576 of 2008

M. K. Dua, Kishore Rawat for the Appellant. B

Robin David, Chitranshul Sinha, Febin Mathew, Dua  
Associates for the Respondents.

The Judgment of the Court was delivered by  
**ARUN MISHRA, J.** 1. Leave granted. C

2. The appeal has been preferred by the insurer against  
the order dated 9.5.2014, passed by the High Court of Orissa  
at Cuttack in M.A.C.A. No.576 of 2008 awarding  
compensation of Rs.55,00,000/- to the respondent, Dr.  
Sukanta Kumar Behera for the injuries sustained and  
permanent disability incurred by him in the accident dated  
9.9.2001. The Claims Tribunal had awarded compensation of  
Rs.4,01,414/-. D

3. The appellant was working as Senior Medical Officer  
in Bhilai Steel Plant. He met with an accident and ultimately  
due to permanent disability incurred by him, his services were  
terminated on 29.8.2007. He incurred 60% permanent  
disability owing to various injuries sustained in the accident.  
The question to be considered is whether the High Court is  
justified in awarding compensation of Rs.55,00,000/- without  
any discussion and computation. The approach of the High  
Court cannot be said to be justified in such cases of injury. It is  
necessary to make computation of compensation to be  
awarded on account of pecuniary and non-pecuniary heads. E  
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4. The claimant suffered fracture in the right forearm, right  
femur neck, fracture of right radius midshaft and fracture of  
right ulnar midshaft in the right hand and grievous fracture of  
tibia in the left leg. His cervical spinal cord was also injured. H

A He also suffered grievous abdomen injury for which he had to be operated. Besides, he also suffered injury in the chest.

B 5. He was admitted in various hospitals as indoor patient. Firstly from 9.9.2001 to 24.9.2001, he was treated in SCB Medical College and Hospital, Cuttack where his left leg was operated, operation of abdomen, traction of right leg was done and a slab was put in right hand. Secondly, he was treated in Shanti Hospital, Cuttack, from 24.9.2001 to 30.9.2001 where he was operated upon for implanting two steel plates in right leg. Thirdly, he was admitted in Kalinga Hospital, Bhubaneswar, for treatment from 1.10.2001 to 15.10.2001 for abdominal surgery in which considerable part of his stomach and large intestine was removed to save his life. Thereafter, he was admitted in C.M.C. Hospital, Vellore as indoor patient from 16.10.2001 to 25.5.2002 for 7-1/2 months and again in the month of February 2004 he was admitted there for a period of 8 days. At Vellore in CMC Hospital, several surgeries were performed, besides bone grafting in left leg and removal of implanted right femur due to infection and discharging sinus. The amount spent by him at Vellore CMC Hospital towards treatment and medical expenditure was reimbursed to the extent of Rs.10,72,013/-.

F 6. As per Dr. R.K. Pandey, the claimant Dr. Sukanta Kumar Behera sustained injuries resulting into 60% permanent disability. In future, treatment of left ankle, foot drop and right hip replacement surgery may also be required. It is also apparent that due to removal of large part of intestine the claimant will have to remain on special diet and his digestion capacity has been declined to a great extent due to abdominal surgery for rest of his life. It is also apparent that he had also suffered grievous injuries resulting into 60% permanent disability besides one inch shortening of right limb.

H 7. The insurer company has contended that claimant was getting Rs.23,000/- per month at the time of accident. It appears that he was getting non-practitioner allowance also

in addition to the salary. It would be appropriate to take his salary at Rs.25,000/- per month. Considering the fact that 60% permanent disability has been incurred and considering over all injuries caused, there is a loss of working capacity to the said extent. Monthly loss of earning capacity comes to Rs.15,000/-. Multiplier of 16 is applicable at the age of 36 years. Expenditure must have been incurred in 8 days when claimant was treated in Shanti Hospital when surgery of right leg was performed and two plates were inserted which we quantify at Rs.20,000/-. There was loss of earning during course of treatment which has been determined by the Claims Tribunal and medical expenditure in SCB Medical College and Hospital, Cuttack comes to Rs.66,566/-. Compensation for pain and suffering, expenditure on attendant and on special diet has also to be awarded. The compensation after deducting medical reimbursement already received, is awarded in the following manner :

<u>Description</u>	<u>Amount (Rs.)</u>	
For loss of earning capacity due to permanent disability (Rs. 15,000x12x16)	28,80,000/-	E
Loss of salary during treatment in the year 2001-2002	2,14,848/-	
Expenditure incurred in SCB Medical College & Hospital, Cuttack	66,566/-	
Expenditure incurred in Shanti Hospital	20,000/-	F
Physical pain and sufferings	2,00,000/-	
Expenditure incurred on attendant for 9 months during treatment	90,000/-	
Special diet	28,500/-	G
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Grand Total:	34,99,914/- rounded off	
	35,00,000/-	H
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- A Accordingly, the appeal is allowed in part. Compensation amount of Rs.35,00,000/- (Rupees Thirty Five lacs only) is awarded to the claimant along with interest at the rate of 6% per annum with effect from the date of filing of claim petition. The said amount be paid within a period of two months from today. No costs.
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Kalpana K. Tripathy

Appeal partly allowed