

(2015) 06 SHI CK 0082

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 96 of 2003 and Cross Objections No. 219 of 2003

Himachal Pradesh University

APPELLANT

Vs

Sushil Kukreja and Others

RESPONDENT

Date of Decision : 05-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1963 — Section 5

Citation : (2015) 2 ShimLC 1160

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : N.S. Chandel, for the Appellant; R.L. Sood, Senior Advocate and Arjun Lall, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dharam Chand Chaudhary, J.

1. This judgment shall dispose of the present appeal and also the cross-objections aforesaid preferred against the judgment and decree dated 28th November, 2002, passed by learned Additional District Judge, Shimla, in Civil Suit No. 22-S/1 of 2001/96.

2. Appellant-Himachal Pradesh University, hereinafter referred to as "defendant No. 2", is aggrieved by the decree for the recovery of Rs. 4 lacs passed by learned trial Court against it. The challenge to the judgment and decree is on the grounds, inter alia, that on account of misreading and mis-appreciation of oral as well as documentary evidence available on record, the judgment and decree under challenge is vitiated and as such, is not legally sustainable. In the absence of any evidence to show that this Court during the course of proceedings in CWP No. 572 of 1984 filed by the plaintiff ever directed defendant No. 2 to re-evaluate and recheck the answer sheets of the plaintiff and rather the writ petition was dismissed by this Court vide judgment dated 28th December, 1994, therefore,

the trial Court was not justified in decreeing the suit. The respondent/plaintiff was not a party in CWP No. 514 of 1984, titled Naresh Sharma vs. H.P. University nor CWP No. 572 of 1984 he filed ever consolidated therewith and as such he could have not been granted the benefit of the orders passed in CWP No. 514 of 1984. The plaintiff as per his own admission having been practicing as an Advocate in the High Court, was in touch with the proceedings in CWP No. 514 of 1984. The said writ petition continued to be listed on different dates and ultimately decided on 18th August, 1987. Before that rechecking of answer scripts of the candidates in the waiting list was conducted and the candidates at Sr. No. 32 to 45 of the merit list were admitted to the MBBS course on 28th January, 1985 and 19th July, 1985. Affidavits Exts. D2W-1/J and PW-7/D to this effect were also filed in the High Court in that writ petition. The plaintiff, an Advocate, was, therefore, in touch with the proceedings and as such the findings to the contrary recorded by learned trial Court are not factually sustainable, without any evidence on record that 223 marks were cut-off marks for the purpose of admission to MBBS course during the academic year 1984-85. The result of rechecking of papers conducted on different occasions by different experts viz-a-viz different key-answers of different subjects is said to be taken into consideration wrongly for equalization and comparison of the results based on such rechecking. The findings that defendant No. 2-University was negligent in performing its duties are perverse being not supported by the record. The evidence available on record is said to be misread and overlooked. The findings and the conclusions arrived at are based upon surmises and conjectures. The suit was hopelessly time barred and the findings that the same is within time, are also said to be wrong. The Court below allegedly erroneously concluded that the plaintiff was entitled to get admission to MBBS course during the academic year 1984-85.

3. Respondent-plaintiff Sushil Kukreja aggrieved by the insufficiency of the amount decreed, has preferred Cross-Objections on the grounds inter alia that learned trial Court has erred in partly decreeing the suit for the recovery of Rs. 4 lacs against the claim of the plaintiff to the tune of Rs. 10 lacs. It is averred that decreeing the suit partly is based on conjectures and surmises and in ignorance of the evidence qua the income of medical practitioner having come on record by way of testimony of PW-1, PW-2 and PW-5. The evidence so produced remained un-rebutted, however, erroneously ignored. Ext. PW-3/A, Ext. PW-3/A-1 and Ext. PW-3/B to PW-3/M containing the details qua pay scales of doctors were also erroneously ignored. The own testimony of the plaintiff and his father PW-6 which clearly establishes that the plaintiff was deprived of a brilliant and steady and assured career as a Medical Officer, has also not been taken into consideration. The fact that the plaintiff lost the chance of decent matrimonial alliance at an appropriate time is erroneously overlooked. The defendants did not produce any evidence to rebut the unimpeachable evidence produced by the plaintiff, however, irrespective of it the suit has not been decreed for the recovery of Rs. 10 lacs against them and thereby learned trial Court allegedly erred in law.

4. Now if coming to the factual matrix, the plaintiff sought admission to the MBBS course in the year 1984. The entrance test for the said course was conducted by respondents No. 2 and 3, i.e., State of Himachal Pradesh and Indira Gandhi Medical College and Hospital, respectively, hereinafter referred to as "defendants No. 1 and 3" through defendant No. 2. After declaration of the result, the plaintiff was shown to have secured 223 marks. Several candidates including the plaintiff challenged the evaluation of question papers so made by filing writ petitions in this Court. The plaintiff filed CWP No. 572 of 1984, titled as Sushil Kukreja vs. H.P. University and others. The question relating to correctness or otherwise of the key-answers was also subject matter of adjudication in CWP No. 514 of 1984, titled Miss Kiran Malhotra vs. H.P. University. Consequent upon interim direction in CWP No. 514 of 1984 the answer sheets of the petitioners in that writ petition and also that of plaintiff were re-evaluated by a committee constituted by defendant No. 2. The plaintiff allegedly secured 225 marks after re-evaluation of his answer-sheets against the cut-off marks of 223. He, therefore, became entitled to be declared successful candidate and ultimately to admission to the course for the academic year 1984-85. The improvement in his score, however, was neither brought to the notice of this Court by defendants No. 1 and 3 nor defendant No. 2 on different dates during the course of proceedings in CWP No. 514 of 1984. In the affidavit filed by the defendant-University on 18th July, 1987 on the record of CWP No. 514 of 1984, the plaintiff was shown to have obtained 225 marks against the cut-off marks allegedly 223. This Court, however, was informed that one Kashmir Singh, who secured 229 marks could only be admitted to the course and thereby allegedly misled this Court. Said Shri Kashmir Singh was also admitted to the course. During the course of proceedings in CWP No. 514 of 1984, it is petitioner Miss Kiran Malhotra, who was directed to be admitted to the course. The plaintiff allegedly was also entitled to seek admission on the basis of his revised score, however, deprived on account of true facts having not been placed before the Court by the defendant-University and defendant No. 3-College. The dream of the plaintiff and his parents was that he should join medical profession. He, on account of the negligence attributed to the defendants, however, was constrained to finish his B.Sc. with medical subjects and thereafter did LL.B. He started practice in the year 1990-91 and allegedly was struggling as a junior Advocate without any independent practice. The first choice of profession by selection was medical and his profession of law is not of his own volition, but by accident caused on account of various acts of omission and commission attributed to the defendants. The writ petition bearing No. 572 of 1984 filed by him came to be dismissed by a Division Bench of this Court vide judgment dated 28th December, 1994 with the observations that the petitioner cannot escape the blame for the aforesaid injustice, though long pendency of this writ petition in this Court is the reason for injustice. He should have taken steps to bring the matter to the notice of this Court at the earliest. Also that had the Court been apprised of the improved standing of the plaintiff in the merit list, the writ petition he filed would have been heard and decided long back and the benefit thereof made available

to him. Also that he did not take any interest in the matter at the appropriate time and permitted the petition to remain pending. This judgment further reads as follows:

"..... Now that more than ten years have passed, it is not possible for us to put the clock back and direct his admission in the batch of 1984 parameters have changed and, therefore, his position in the merit list for 1984 admission would not be sufficient now. Under the circumstances we have to regretfully hold that this petition has become infructuous. It is accordingly dismissed. No costs."

5. Against the observations in the judgment supra the plaintiff, of course, preferred a review petition and this Court was pleased to expunge the same. The further case of the plaintiff, therefore, is that consequent upon expunging of the offending observations, it is crystal clear that he was entitled to admission to MBBS course during the year 1984-85 and as such a serious injustice has allegedly been caused to him. On comparison of the position to which the plaintiff is relegated due to denial of admission to MBBS course and the impact thereof on his career, it is averred as follows:

"10. That if plaintiff had gained admission into the HP Medical College in 1984-85 batch, he would have finished his MBBS course by 1989-90. As the common practice now, he would have also succeeded in specializing in some discipline of medical science by 1992. In any case, by this time, the plaintiff would have been income tax payee of at least two to three years of standing with a steady source of income and the possibility of his having been happily married and settled in life cannot be ruled out. On the contrary, today he remains to be a struggling junior lawyer attached to another lawyer without any independent source of income to sustain himself. As such, the position of the plaintiff remains to be a cause for worry, tension and alarm to his parents instead of being a source of solace, satisfaction and contentment. In this respect, the plaintiff assesses the damages caused to him in the sum of Rs. 10,00,000/- along with interest @ 18% PA on account of above specified hands. This amount is accordingly claimed in the present suit along with interest thereon."

6. Therefore, the plaintiff has claimed a sum of Rs. 10 lacs alongwith interest at the rate of 18% per annum towards the loss he sustained, hence the suit.

7. In written statement, the defendant No. 2 has raised objection of limitation. On merits, it is submitted that the admission to MBBS course for 1984-85 session in defendant No. 3-College was based on merits attained in Pre-Medical Entrance Test. It has been further submitted that the plaintiff failed to attain merits and as such was rightly denied admission to the said course. While admitting that the plaintiff has secured 223 marks in the entrance test, it is pointed out that the last candidate with 224 marks was admitted to the course from general category. There were five more general category candidates in the waiting list having secured 224 marks and the sixth one having secured 223 marks and they all were placed in higher position in the merit as compared to the

plaintiff.

8. The correctness of key answers to certain questions in the subjects of Physics, Chemistry and Biology were subject matter of challenge in CWPs No. 514 of 1984 and 572 of 1984. Defendant No. 2 invited the opinions/comments of paper-setters qua the challenge thrown to the correctness of the key-answers. The answer scripts of five candidates with 224 marks in waiting list were got re-evaluated in the light of the opinions/comments so received. The plaintiff being lower in merit at Sr. No. 7 did not fall amongst the above five candidates as a consequence of re-evaluation of the answer scripts. Shri Kiran Vir Singh at Sr. No. 1 of the waiting list was given provisional admission to the course in January, 1985 against a vacant seat. Consequent upon order dated 9th June, 1987 passed by this Court in CWP No. 514 of 1984 key answers of nine questions were got verified with the understanding that the admission already granted will not be disturbed. As a consequence thereof based upon the re-evaluation fresh waiting list was drawn on 18th July, 1987. Though it is admitted that the plaintiff secured 225 marks, however, it is denied that he became entitled to the course during the year 1984-85. He rather by his acts, deeds and conduct lost every right of seeking admission for the session 1984-85. It is denied that defendant No. 2 made false averments in its affidavit dated 18th July, 1987 filed in CWP No. 514 of 1984 or that defendant No. 2 misled this Court.

9. Miss Kiran Malhotra was granted admission consequent upon order dated 21st July, 1987, which was confirmed/regularized vide order dated 20th August, 1987. Her score in the re-evaluation done in compliance of the orders of this Court dated 9th June, 1987, has gone high, i.e., 226 marks. It is also averred that CWP No. 572 of 1984 filed by the plaintiff was rightly dismissed by this Court on 28th December, 1994. It is denied that the plaintiff was kept in dark qua his score having gone up to 225 marks, as according to defendant No. 2 he was fully aware about the rechecking/re-evaluation of the answer scripts and also results thereof. Filing of Civil Review Petition No. 3 of 1995 with a prayer to review the judgment passed in CWP No. 72 of 1984, he filed, however, has been admitted. It is contended that neither there exists any enforceable cause of action in favour of the plaintiff to file the suit nor he has any locus-standi to do so. The suit, therefore, has been sought to be dismissed with exemplary costs.

10. Defendants No. 1 and 3 in separate written statement filed on their behalf, have denied any fault or negligence on their part and it is rather the plaintiff who himself has been blamed for negligence attributed to him during the course of proceedings in the writ petition. The factum of he having secured more marks on re-evaluation of the answer scripts was not known even to them also and as such how they could have initiated the process to grant him admission. It was defendant No. 2-University the final authority in the matter of sponsoring the name of the selected candidates. The objection of limitation has also been raised. On merits, it is denied that defendants No. 1 and 3 had knowledge of increase in the score of the plaintiff and as such no adverse role had been played by the said

defendants. The plaintiff of his own free volition has opted to become an Advocate and was not forced by the circumstances to do so. He should have been more vigilant about his career. The plaintiff, therefore, is said to be not entitled to the grant of any relief in this case.

11. In separate replications filed to the written statements on behalf of defendant No. 2 and defendants No. 1 and 3, the plaintiff has denied the contentions to the contrary in the written statements being wrong and reiterated his case as set out in the plaint.

12. Based upon the pleadings aforesaid, learned trial Court has framed the following issues:

1. Whether the suit is barred by limitation?

OPD.

2. Whether the plaintiff is entitled to any damages/compensation and interest? If so, to what extent and from whom?

OPP.

3. Relief.

13. Parties were put to trial on these issues. The plaintiff in turn has examined as many as eight witnesses in all and has himself stepped into the witness box as PW-9.

14. PW-1 Dr. Ashok Kumar Sood, PW-2 Dr. Kuldip Maria and PW-5 Dr. Shashi Pal Sood, all private medical practitioners have been examined to prove the income of a private practitioner from practice. PW-3 Budhi Singh, Senior Assistant, Office of Director Health Services Himachal Pradesh, has produced the record and proved the statements Ext. PW-3/A and Ext. PW-3/A-1 to Ext. PW-3/M, pertaining to pay, allowances and other perks of the doctors in government hospitals. According to him, they are also entitled to other facilities, such as LTC, medical reimbursement and government accommodation. PW-4 Shri Surinder Kumar, Senior Clerk in Indira Gandhi Medical College, Shimla has produced the record pertaining to calculations in respect of salaries and non-practicing allowance payable to Registrars and Assistant Professors, Exts. PW-4/A and PW-4/B, respectively.

15. PW-6 Gurdial Singh Kukreja is the father of the plaintiff. According to him, he and his son (plaintiff) had aimed that the plaintiff should qualify for the degree of a doctor and open his private clinic in their own shop in Lower Bazar, Shimla. PW-7 Om Chand, Senior Assistant, High Court of Himachal Pradesh, has produced the record of CWP No. 514 of 1984 and proved the application, CMP No. 1118/1985 Ext. PW-7/A, reply thereto Ext. PW-7/B and the order passed in the said application on 17th July, 1985 Ext. PW-7/C. He has also proved the affidavit dated 30th July, 1985 filed by Shri A.R. Chauhan, the then Registrar of H.P. University Ext. PW-7/D and copy of reply Ext. PW-7/E filed on behalf of

defendant. This witness has also proved Ext. PW-7/F, certified copy of judgment passed by this Court in CWP No. 572 of 1984, i.e., the writ petition filed by the plaintiff and also order dated 2nd August, 1995 Ext. PW-7/G in Civil Review Petition No. 93 of 1995 again filed by the plaintiff. When cross-examined on behalf of defendant No. 2-University, this witness has proved Ext. D-2/A, copy of order dated 6th November, 1984 passed in CWP No. 572 of 1984, Ext. D-2/B, copy of CWP No. 572 of 1984, Ext. D-2/C, copy of CMP No. 2044/1984, Ext. D-2/D, copy of CMP No. 2045 of 1984 and Ext. D-2/E, copy of order dated 4th January, 1985. He has also proved Ext. D-2/F, the copy of order dated 9th June, 1987 passed in CWP No. 514 of 1984. PW-8 Sanjay Verma, Clerk in the office of Income Tax, Shimla has produced the record pertaining to the assessment of Dr. Kuldip Maria.

16. Plaintiff has himself stepped into the witness box as PW-9 and proved the copy of notice under Section 80 of the Code of Civil Procedure served upon the defendants Ext. PW-9/A, postal receipts, Exts. PW-9/B, PW-9/C and PW-9/D. He has also proved acknowledgement due Ext. PW-9/E. In response to the notice he served upon the defendants, defendant No. 1 addressed letter Ext. PW-9/F to defendants No. 2 and 3. Defendant No. 3 replied the letter Ext. PW-9/F vide reply Ext. PW-9/G.

17. Defendant No. 2, on the other hand, has examined Shri K.P. Doger D2W1, who has produced in evidence prospectus Ext. D2W1/A issued for the entrance test, waiting list Ext. D2W1/B, correspondence made with Professors during the course of proceedings in the writ petitions Ext. D2W1/C, Ext. D2W1/D and Ext. D2W1/E. the replies received from the Professors were Ext. D2W1/F, Ext. D2W1/G and Ext. D2W1/H. The result compiled consequent upon re-evaluation is Ext. D2W1/J. Result Ext. D2W1/K is said to be prepared on the basis of re-evaluation of the answer scripts done consequent upon the order Ext. D-2/F dated 9th June, 1987 in CWP No. 514 of 1984. This witness has also tendered in evidence copy of review petition Ext. D2W1/L, preferred by the plaintiff in CWP No. 572 of 1984, copy of application under Section 5 of the Limitation Act, Ext. D2W1/M, replies to the review petition and application under Section 5 of the Limitation Act, Ext. D2W1/N and Ext. D2W1/O, certified copy of the application Ext. D2W1/P filed by the plaintiff in CWP No. 572 of 1984, reply thereto filed by defendant No. 2 Ext. D2W1/Q, copy of application Ext. D2W1/R filed by defendant No. 2-University in CWP No. 514 of 1984, copy of affidavit Ext. D2W1/S filed by the Medical Council of India and copy of writ order Ext. D2W1/T served upon defendant No. 2-University.

18. Defendants No. 1 and 3, however, not opted for producing any evidence, as per statement of learned Counsel representing them recorded separately.

19. Learned trial Court on appreciation of the evidence produced by both sides, has answered issue No. 2 in favour of the plaintiff whereas issue No. 1 against the defendants and decreed the suit for recovery of Rs. 4 lacs against appellant-defendant No. 2.

20. Mr. N.S. Chandel, Advocate, learned Counsel representing defendant No. 2, has vehemently argued that the plaintiff having failed to secure admission in defendant No. 3-College being not in merits cannot blame defendant No. 2 in this case in any manner whatsoever. According to Mr. Chandel, after doing LL.B. the plaintiff remained in active practice as an Advocate and in order to complete the facts it is pointed out that the plaintiff is now member of Judicial Service in the rank of District Judge. Therefore, professionally also he allegedly has not suffered with any loss. The judgment and decree, according to Mr. Chandel, being perverse is not legally and factually sustainable.

21. On the other hand, Mr. R.L. Sood, learned Senior Advocate has argued that had the plaintiff been given admission on the basis of his merit during the academic session 1984-85 he would have completed his course and started his career as a Medical Officer somewhere in 1989-90. He would have earned money and also name and fame as well as settled at an appropriate time in his life. The plaintiff, according to Mr. Sood, had to struggle as an Advocate for years together before his induction in the Judicial Service. He, therefore, allegedly suffered huge loss on account of negligence attributed to defendants. Therefore, while seeking dismissal of the appeal allowing the Cross-Objections, the suit has been sought to be decreed wholly.

22. Be it may be that the plaintiff because in spite of improvement in his score consequent upon re-evaluation of his answer-scripts along with other students approached this Court by filing CWP Nos. 514 of 1984 could not be granted admission to MBBS course and to the contrary the students with lesser marks, were allowed to continue and complete the course. It can be said ill-luck of the plaintiff that CWP No. 572 of 1984 he filed though should have been tagged with CWP No. 514 of 1984, however, on account of misstatement on the part of learned counsel representing him, the same vide order dated 6.11.1984 Ext. D2/A was ordered to be connected with CWP No. 524 of 1984. This fact is evident from the perusal of the order dated 6th November, 1984 passed by Division Bench of this Court in CWP No. 572 of 1984 (Ext. D2/A) and as a result thereof the writ petition he filed in this Court never came to be listed along with CWP No. 514 of 1984. CWP No. 514 of 1984, titled Naresh Sharma and others vs. Himachal Pradesh University and others, was filed by six students and out of them Naresh Sharma and Anmol Gupta were granted admission during the pendency of the writ petition. Their names, therefore, were ordered to be deleted and the title of the writ petition came to be amended as Miss Kiran Malhotra vs. Himachal Pradesh University. Miss Kiran Malhotra was also granted admission because consequent upon the direction of this Court and the decision Ext. D2W1/K taken by the Himachal Pradesh University to get the answer-scripts of Miss Kiran Malhotra and other candidates including the plaintiff higher in merit initially drawn in the waiting list. In the said re-evaluation as is evident from Ext. D2W1/K the score of Miss Kiran Malhotra was increased to 226 marks from 221 marks. She, therefore, was granted admission to the course. The score of the plaintiff in the said re-evaluation also increased from 223 to 225 marks. The plaintiff

irrespective of having filed CWP No. 572 of 1984 could not get admission because the writ petition he filed seems to be not pursued in right direction and on account of statement made by learned Counsel due to inadvertent mistake was tagged with CWP No. 524 of 1984 instead of CWP No. 514 of 1984, hence could not be taken up along with CWP No. 514 of 1984. Had the writ petition filed by the plaintiff been listed along with CWP No. 514 of 1984, he would have also got admission at least along with Kiran Malhotra because students with lesser marks were allowed to continue with the course at the cost of the plaintiff, who no doubt had scored 225 marks, whereas last candidate admitted to the course had obtained 223 marks.

23. The plaintiff though claims that the increase in his score from 223 to 225 was never brought to his notice either by defendant No. 2 nor respondent No. 3-College. It may be so, however, he himself was required to have exercised due diligence and should have vigilant while pursuing the writ petition he had filed. It is for this reason the observations quoted hereinabove in this judgment were made by the Division Bench of this Court (Ext. PW-7/F) in the judgment passed in CWP No. 572 of 1984 he filed. Anyhow, such remarks were ordered to be expunged later on again by the Division Bench of this Court in its judgment dated 2nd August, 1995, rendered in Civil Review Petition No. 93 of 1995.

24. In this backdrop it would not be improper to conclude that owing to the negligence of defendant No. 2 and also on account of wrong order qua tagging of the writ petition he filed with CWP No. 524 of 1984 the plaintiff was deprived of from seeking admission to MBBS course. He had qualified for Pre-Medical Entrance Test. True it is that in the merit list initially drawn he failed to secure a seat to the course on merit and was, therefore, placed at Sr. No. 7 in the waiting list, however, on re-evaluation his score was increased from 223 to 225. He, therefore, was entitled to be admitted to the course, but due to the reasons stated hereinabove failed to do so.

25. It is in this background his claim for recovery of Rs. 10 lacs towards damages has to be adjudged. Learned trial Court has decreed the suit for the recovery of Rs. 4 lacs together with interest at the rate of 6% per annum.

26. In order to substantiate his claim, the plaintiff has examined PW-1 Dr. Ashok Kumar Sood, PW-2 Dr. Kuldip Maria and PW-5 Dr. Shashi Pal Sood. They all are private medical practitioners in Shimla town. The testimony of PW-1 Dr. Ashok Kumar Sood goes to show that he belongs to a family of doctors. His father was also a doctor and running private clinic. He tells us that in order to set up one's own clinic investment of Rs. 25-30 lacs is required. According to him, in Shimla town in the year 1989-90 in ideal condition average income of a private practitioner must have been Rs. 20,000/- to Rs. 25,000/- per month. By ideal condition he means to say that the practitioner should have a place to start the clinic with ultra-sound, X-ray facilities and every knowledge of the profession on technical side etc. etc. Dr. Ashok Kumar Sood seems to have given the average income of a private practitioner as Rs. 20,000/- to Rs. 25,000/-, when there is

family background in medical profession and there is an established practice like in his own case because his father was also a doctor. However, in the case of the plaintiff, as per his own admission, what to speak of his family or any near relation, no doctor is even there in the entire community. Therefore, whether he could have also established a private practice like PW-1 is a big question mark.

27. If coming to Dr. Kuldip Maria (PW-2), he has given initial income from the practice as Rs. 3,000/- to Rs. 4,000/- per month, however, after 6-7 years the same according to him, may increase to Rs. 12,000/- to Rs. 15,000/- per month. He has also made this statement under the circumstances when he had come into contact and acquaintance with the people in Shimla and his wife is also a Gynecologist and in practice with him. Such, however, were not the circumstances so far the plaintiff is concerned.

28. If coming to PW-5 Dr. Shashi Pal Sood, he has disclosed the income of a private practitioner in the year 1993 as Rs. 9,000/- per month. He also tells us that normally a doctor by profession solemnizes marriage with a doctor. It is, however, not always so, when we believe in destiny and that the marriages are not settled on the earth, but a heavenly affair. Be it stated that doctor Kuldip Maria and Dr. Ashok Kumar Sood were income tax payee, as is apparent from the testimony of PW-8 Sanjay Verma, Clerk office of the Income Tax Department, Shimla. However, I am not persuaded to form an opinion on the basis of such evidence that the plaintiff has suffered damages to the tune of Rs. 10 lacs for the reasons recorded hereinabove. A doctor in private practice may earn more money as compared to a doctor in government job, as has been stated by PW-3 Budhi Singh Thakur, who has produced the record and proved documents Ext. PW-3/A and Ext. PW-3/A-1 to PW-3/M pertaining to calculations of salary and other allowances payable to a doctor in the government job and also by PW-4 Surinder Kumar Sharma, Senior Clerk, Indira Gandhi Medical College, Shimla, who has also proved on record calculations, Exts. PW-4/A and PW-4/B, respectively, in respect of the salaries and non-practicing allowance etc. payable to Registrars and Assistant Professors. However, the evidence as has come on record by way of testimony of PW-3 and PW-4 is not of much help to the plaintiff's case.

29. The plaintiff's father Shri Gurdial Singh Kukreja (PW-6), who has stepped into the witness-box and for that matter the plaintiff himself while in the witness box as PW-9, no doubt, tells us that the entry of the plaintiff in the medical profession was their only dream and that on account of the negligence on the part of the defendants they failed to fulfill the same. They further tell us that had the plaintiff undergone the medical course and obtained the degree, he would have started his own practice in the space available in their shop, 75, Lower Bazar, Shimla. They both mean to say that in view of the space available with them, the plaintiff could have been well settled in the medical profession. They may have the space available with them, however, it cannot be said with all exactness that he would have a successful medical practitioner. This Court,

therefore, is not persuaded with the evidence so come on record by way of their own testimonies. There is also no substance that on account of non-admission of the plaintiff to the course he failed to settle in his life including finding a suitable match for solemnization of marriage, because already observed hereinabove, the marriages are settled in heaven and only solemnized on the earth. Therefore, on this score also, the plaintiff is not entitled to claim any damages.

30. His further case is that legal profession was not his chosen profession and when failed to get admission to the MBBS course he was compelled to finish B.Sc. degree and thereafter to seek admission in LL. B. course. Also that in legal profession he could not establish and had to start practice as junior advocate with Shri R.L. Sood, Senior Advocate. Had the space been available in their shop, i.e., 75 Lower Bazar, Shimla, it is not understandable as to why the plaintiff did not start practice independently from that space instead of joining the Chambers of Shri R.L. Sood, Senior Advocate, as junior Advocate. Again it would not be improper to conclude that the medical profession is better than legal profession. Learned trial Court has very appropriately observed qua this part of the plaintiff's case as under:

"28. Though, I am not in full agreement with the submission made on behalf of the plaintiff that the medical profession is more Hon"ble and secured than the legal profession. To my mind an advocate by dint of hard work and labour can earn as much as a doctor and can also command respect in the society not less than a doctor. No institution or profession is good or bad but, ultimately the persons who are to work in that profession or institution is the deciding factor to bring laurels or ignominy to the said profession or institution. The Court can appreciate the agony and the pain suffered by the plaintiff on account of his non-admission in MBBS course, as plaintiff was very keen to join medical profession. As the luck would have it, he has to join the legal profession. Though, it is very difficult to say that what would be the income of plaintiff had he become doctor, as these questions are based upon hypothetical considerations and an element of guess work is always involved while making such assessment. But, certainly, the plaintiff is entitled to damages on account of negligent act of the officials of the defendants."

31. I am in agreement with the above observations made by learned trial Court in the judgment under challenge.

32. At this stage, judicial notice of the fact that the plaintiff with the passage of time was not only well settled in legal profession, but now is a Member of H.P. Judicial Service in the cadre of District Judge, can be taken. He, therefore, is not only earning handsome amount by way of salary, allowances and other perks, but also enjoy a status commanding reputation and respect in the society as a whole. Therefore, it lies ill to say that on account of his failure to seek admission to the MBBS course he has suffered financial loss, besides his prestige or reputation lowered down.

33. Of course, irrespective of being in merit he could not seek admission to the MBBS course, definitely may have resulted in mental agony, trauma and pains as well as distress to the plaintiff at that time. He, therefore, is definitely entitled to be compensated on this score. Learned trial Court has decreed the suit for the recovery of Rs. 4 lacs together with interest at the rate of 6% per annum. The relief so granted by learned trial Court is in consonance with the given facts and circumstances of this case and the contention to the contrary that the same is on lesser side or that the plaintiff is entitled to the recovery of a sum of Rs. 10 lacs towards damages against the defendants is neither factually nor legally sustainable. At the same time, the stand of defendant No. 2-University that the plaintiff himself remained negligent in pursuing the writ petition he had filed and that he is not entitled to the recovery of any amount against it, is also not legally and factually sustainable. It is rather defendant No. 2, who should have brought to the notice of the Court that the plaintiff was entitled to seek admission consequent upon increase in his score. No doubt, the students on account of revaluation of answer scripts above in merit as compared to Miss Kiran Malhotra were not granted admission to the course, however, only for the reason that they did not approach the Court. The plaintiff irrespective of having filed writ petition was also treated a student having not approached the Court because on account of the fault attributed to his counsel, the writ petition he filed irrespective of order to be tagged with CWP No. 514 of 1984 could not be taken up for hearing therewith because the counsel had inadvertently given wrong number of the writ petition. Therefore, I find no merit in this appeal and also in Cross-Objections. The same, therefore, in all fairness and in the ends of justice deserves dismissal and as regards the judgment and decree under challenge, the same having been passed on appreciation of the evidence available on record in its right perspective, to be upheld.

34. In view of what has been said hereinabove, this appeal and the Cross-Objections both fail and the same are accordingly dismissed. No order as to costs.