

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

**FAO No.181 of 2018 along with
Cross objections No. 103 of 2018.**

Reserved on : 22nd November, 2018.

Decided on : 30th November, 2018.

Rakesh Thakur

.....Appellant.

Versus

Ram Lal and others **....Respondents/Cross-
objectors.**

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?¹ Yes.

For the Appellant: Mr. P. S. Goverdhan, Advocate.

For Respondent No.1/Cross-objector: Mr. Anirudh
Sharma, Advocate.

For Respondent No.2: Mr. Chandan Goel, Advocate.

For Respondent No.3: Nemo.

Sureshwar Thakur, Judge.

The instant appeal stands directed by the claimant/appellant herein, against the award pronounced, upon, M.A.C. Petition No. 12-FTC/2 of 2010,

¹ Whether reporters of the local papers may be allowed to see the judgment?

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by the learned Motor Accident Claims Tribunal-III, Solan, wherethrough, he seek enhancement of compensation, as assessed, vis-a-vis, him, (ii) whereas, respondents No.1 herein/cross-objector, also prefer cross-objections, vis-a-vis, the impugned award, whereunder, vis-a-vis, the compensation amount, as stood determined qua the claimant/appellant herein, the, apt indemnificatory liability thereof, hence stood fastened, upon, him.

2. The learned counsel appearing, for the claimant/appellant herein, has contended with much vigour (i) that with rather ample evidence existing on record, and, its making upsurgings qua the claimant/appellant herein, hence, drawing a minimum salary of Rs.7,500/- per mensem, from his avocation, as Supervisor under PW-2, factum whereof remains uneroded of its efficacy, (ii) thereupon, he has contended with much vigour before this Court, that, the learned tribunal, in, taking the per mensem income of the

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claimant, to stand, borne in sum of Rs.3,600/-, has committed, a, gross illegality. He further contends that the rearing, of, afore sum, of, Rs.7,500/- per mesem by the claimant, was enjoined to borne in mind, by the learned tribunal concerned, (v) whereas, the learned tribunal concerned, for want of adduction, of, documentary proof, qua therewith, rather discarding the afore apposite claim, has under-assessed, compensation, vis-a-vis, the claimants. The afore submission has vigour, given PW-2, in his testification borne in his examination-in-chief, hence, categorically, voicing, that the claimant Rakesh Thakur, being employed, with him as Supervisor, and, his earning approximately Rs.30,000/- per mensem from his avocation. Though, the factum of the claimant, earning Rs.30,000/- per mensem, remained unproved on record, yet the claimant drawing a sum of Rs.7,500/- per annum, stands proven by Ex.PW2/A, exhibit whereof comprises, a certificate issued, vis-a-vis,

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the claimant by PW-2. Furthermore, PW-2 in his cross-examination, makes an echoing qua his making the apposite payment to PW-2, through cheque(s), and, also the claimant concerned, renders an apt testification, in, tandem therewith, (i) hence, the afore per mesem rearing of income by the claimant, was enjoined, to be borne in mind, by the learned tribunal concerned, (ii) whereas, the learned tribunal concerned, for want of adduction, of, documentary proof, qua therewith, rather discarding the afore apposite claim, has under-assessed, compensation, vis-a-vis, the claimant. Furthermore, the counsel for the insurer, while holding PW-2 to cross-examination, has, meted an affirmative suggestion, vis-a-vis, him, qua the salary of the deceased, being comprised, in, a sum, of, Rs.7,500/- per mensem, whereto an affirmative answer stood purveyed, by PW-2, (iii) thereupon, an inference is erectable qua the insurer, also accepting the afore echoings borne, in Ex.PW2/A, (iv) thereupon, it was

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inappropriate for the learned tribunal concerned, to, insist qua documentary proof, being adduced, vis-a-vis, the afore rearing, of, the afore per mensem income, by the deceased, (v) thereupon, the claimant is held to be earning, the, aforesaid sum of Rs.7,500/-, per mensem from his avocation. Consequently, the loss of monthly income is computed at $\text{Rs.7500} \times 40\% = \text{Rs.3000/-}$, and, loss of annual income is computed at $\text{Rs.3000} \times 12 = \text{Rs.36,000/-}$. Since, the injured/claimant at the time of accident was aged 32 years, hence, after applying the apt multiplier of 16, the total loss of future income computed at $\text{Rs.36,000/-} \times 16 = \text{Rs.5,76,000/-}$ (Rs.Five lakhs, seventy six thousand only).

3. Be that as it may, the learned counsel appearing for the appellant has proceeded to contend, that, the learned tribunal, has, made an under-assessment of the compensation, vis-a-vis, claimant, under the heads, pain and suffering, and, future loss of

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amenities and discomfort etc. On an incisive perusal, and, reading of the award impugned before this Court, as also material existing on record, this Court, is, of the opinion, that, the assessment of compensation, as made, by the learned tribunal, under the various heads, is, just, and, adequate, and, does not warrant any interference by this Court. Consequently, the afore submission addressed before this Court by the learned counsel appearing for the claimant is rejected. Consequently, the appellant/claimant is held entitled to a total compensation in the hereinafter extracted manner:-

	<u>Pecuniary damages</u>	
i	Loss of Future income	Rs.5,76,000/-
ii	Medical Expenses	Rs.60,749/-
iii	Transportation Charges	Rs.10,000/-
iv	Attendant charges	Rs.15,000/-
V	Special diet	Rs.20,000/-
	<u>Non Pecuniary damages</u>	
i	Pain and suffer	Rs.50,000/-
ii	Future loss of amenities, discomfort etc.	Rs.1,00,000/-
	Total	Rs.8,31,749/-

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6. The owner of the offending vehicle, respondent No.1, through, cross-objections bearing No. 103 of 2018 strived, to, exculpate the fastening of liability, vis-a-vis, compensation amount, upon, him. The learned tribunal for want of insurance policy, vis-a-vis, the offending vehicle, hence fastened the apt indemnificatory liability, upon, the owner of the offending vehicle. The aforesaid fastening, of, the indemnificatory liability, upon, the owner of the offending vehicle is inapt, (i) as, subsequent to the afore impugned award, qua the afore occurrence, hence being rendered, the, learned tribunal concerned, also pronouncing awards, upon, Claim Petition No.16-S/2 of 2011, and, upon, Claim Petition No. 16-S/2 of 2011, both reared, vis-a-vis, the alike hereat accident, (ii) and, whereunder, the apt indemnificatory liability, stood, fastened, upon, the insurer, given the insurer therein placing on record, the insurance cover issued, by the insurer, with, respect to the offending vehicle.

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Consequently, the insurer intentionally, for, escaping the fastening, upon it, of, the apt indemnificatory liability, rather has hereat avoided to place on record, the, apt insurance cover, hence, the fastening, of, the apt indemnificatory liability, upon, the owner concerned, cannot be condoned, (iii) rather in consonance with the verdicts/awards pronounced, by this Court, upon, FAO Nos. 86 of 2017, and, upon, 85 of 2017, the, insurer shall indemnify the owner of the offending vehicle qua the liability of compensation amount, assessed, vis-a-vis, the claimant.

5. For the foregoing reasons, the appeal bearing FAO No.181 of 2018, as also, the Cross-objections No.103 of 2018, are, partly allowed, and, the impugned award is modified in the aforesaid manner. In sequel, the claimant/appellant herein is held entitled to total compensation of Rs.8,31,749/- along with interest at the rate of 9% per annum from the date of filing of the petition,

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till realization thereof. The indemnificatory liability, vis-a-vis, the afore amount shall be borne by the insurer of the offending vehicle. All pending applications also stand disposed of. Records be sent back forthwith.

30th November, 2018.
(jai)

(Sureshwar Thakur)
Judge.