

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 208

Regular Second Appeal No.1801 of 2012 (O & M)
Date of Decision: September 28, 2017

Dakshin Haryana Bijli Vitran Nigam Limited & others

..... APPELLANTS

VERSUS

Ranjit Singh

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. K.S. Malik, Advocate, for the appellants.

None for the respondent.

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Jaspal Singh, J

The instant regular second appeal has been preferred by the defendants – appellants against judgment & decree dated November 25, 2011 passed by the Additional District Judge, Gurgaon whereby appeal filed by the plaintiff – respondent has been allowed and suit preferred by him was decreed.

Succinctly, plaintiff – respondent instituted a civil suit for declaration with consequential relief of mandatory injunction against the defendants – appellants. He averred that he is a retired Section Officer of Power General Corporation. After bifurcation of the erstwhile HSEB, he was drawing pension and medical facilities from the defendant – corporation. In the year 2007, vide letter dated October 23, 2007, plaintiff was granted

permission for taking treatment for prostate gland from Pushpanjali Hospital, Gurgaon, where he remained admitted for January 11, 2008 and January 12, 2008 and paid ₹ 23,580/- as bill. He claimed medical reimbursement on January 30, 2008 but was granted only ₹ 9,018/- on July 01, 2008. Balance amount of ₹ 14,562/- was not paid and he filed the suit under appeal.

Defendants contested the suit by filing written statement, taking preliminary objections of locus standi, suppression of material facts and maintainability. It was pleaded that vide circular dated September 26, 2006, charges incurred in Pushpanjali Hospital were restricted to the rates of PGI, Chandigarh and AIIMS, New Delhi. Therefore, reimbursement bill was passed to the tune of ₹ 9,018/-.

From the pleadings of parties, issues were framed. Parties led their evidence. After hearing learned counsel for the parties and appreciating the documents, suit filed by the plaintiff was dismissed by the trial court vide judgment & decree dated April 22, 2011, holding that plaintiff is not entitled to have the reimbursement of the actual expenditure incurred by him at Pushpanjali Hospital, Gurgaon for getting the treatment. Aggrieved plaintiff filed an appeal which was allowed vide judgment & decree dated November 25, 2011 passed by the lower appellate court while setting aside the decision rendered by the trial court.

Now, defendants – appellants have preferred the instant regular second appeal challenging judgment & decree dated November 25, 2011 passed by the lower appellate court.

Learned counsel for the appellant has contended that the impugned judgment is against law and evidence on record and is not sustainable in the eyes of law. Misappreciation of evidence has resulted into

miscarriage of justice. Admittedly, Pushpanjali Hospital, Gurgaon is approved by the appellants – Nigam vide circular dated September 26, 2006/ July 24, 2007 and it is specified that charges incurred in the hospital would be paid at par with the rates of PGI, Chandigarh/ AIIMS, New Delhi or actual, whichever is less. Plaintiff – respondent was granted permission for treatment from Pushpanjali Hospital subject to the condition that amount spent in the hospital would be paid at par with the rates of PGI, Chandigarh. Plaintiff – respondent is not entitled for full medical reimbursement.

This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellant and gone through the record available.

Undisputably, plaintiff – respondent retired from DHBVN and is drawing pension. It is also not in dispute that Pushpanjali Hospital is approved by the defendants – appellants for treatment of its employees. Admittedly, plaintiff – respondent got his treatment from the aforesaid hospital. Claim of the plaintiff is that he is entitled to full medical reimbursement of ₹ 23,580/- whereas he has been paid only ₹ 9,018/- vide cheque dated July 01, 2008.

A perusal of the permission letter Ex.PW2/4, vide which plaintiff was accorded permission to take treatment from Pushpanjali Hospital, clearly shows that it was a conditional permission with a stipulation that charges shall be reimbursed at par with the rates of PGI Chandigarh or the actual whichever are less. The lower appellate court based its decision on the ratio of judgment of Hon'ble Supreme Court of India in case '*The Secretary of the Government of Haryana vs. Vidya Sagar, 2009(3) Apex Court Judgments 350* as well as judgment of this Court in *Om Parkash*

be denied the medical reimbursement of full amount incurred on account of treatment. However, this Court is of the considered view that both the aforesaid judgments are not applicable to the facts & circumstances of the instant case and are distinguishable. In the case in hand, plaintiff – respondent was granted permission specifically with a condition that charges incurred on his treatment from Pushpanjali Hospital, Gurgaon shall be reimbursed at par with the rates of PGI Chandigarh or the actual whichever are less. Moreover, a perusal of circular dated July 24, 2007 clearly shows that Health Centre at Power Complex, Mehrauli Road, Gurgaon provides outdoor medical facility. In case of emergency and cases requiring surgical intervention, the approved centre is Civil Hospital, Gurgaon which is not geared to deal with the requirement of Nigam's employees and therefore, employees either can take treatment from private hospitals at Gurgaon or rush to approved hospitals at New Delhi. Accordingly, some private hospitals at Gurgaon, including Pushpanjali Hospital, Gurgaon, were recognized for DHBVN employees and their family members for all types of indoor emergencies/treatments. It was specifically decided by the Board of Directors in meeting held on June 26, 2007 that charges of treatments taken from private hospitals will be reimbursed to the Nigam's employees at par with the rates of AIMS, New Delhi.

Nigam did not accord the permission to plaintiff that he would be reimbursed the actual amount incurred in his treatment from Pushpanjali Hospital, Gurgaon. The aforesaid circular(s) also do not depict or confer any right to the plaintiff – respondent to claim actual amount incurred. Plaintiff was accorded permission to take treatment with a condition that charges incurred shall be reimbursed at par with the rates of

PGI Chandigarh. Plaintiff never challenged either the circular(s), referred to above, nor the limit.

Thus, this Court is of the considered view that plaintiff – respondent is not entitled to reimbursement of actual expenses incurred by him at Pushpanjali Hospital, Gurgaon. The judgment & decree dated November 25, 2011 certainly suffer from illegalities and irregularities. As such, impugned judgment & decree dated November 25, 2011 passed by the first appellate court is not sustainable in the eyes of law and deserves to be set aside.

Accordingly, in view of the aforesaid discussion, instant regular second appeal is allowed. Consequently, judgment & decree dated November 25, 2011 passed by the First Appellate Court (Additional District Judge, Gurgaon) is set aside and judgment & decree dated April 22, 2011 passed by the lower/trial court stands restored.

No order as to cost.

September 28, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No