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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9849/2015**

**BASANT DABAS**

..... Petitioner

Through Dr Kumar Jwala, Mr Sourabh  
Pandey, Advocates.

versus

**GOVT OF INDIA & ORS.**

..... Respondents

Through Mr Arun Bhardwaj, CGSC for  
UOI.

Ms Sonam Anand, Mr Yakesh Anand, Mr  
Akshay Thakur, Advocates with Mr Dhruv,  
UDC for R2 and R3.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**31.07.2019**

**VIBHU BAKHRU, J**

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondents to verify and reimburse the medical claim of Rs. 6,29,564/- to the petitioner. The said medical claim relates to the treatment of the petitioner at Paras Hospital, C-1, Sushant Lok, Sector-43, Gurgaon (hereafter 'the Hospital').

2. The petitioner states that he is a permanent employee in a private company known as 'Special Spring (India) Pvt. Ltd.'. The petitioner is an Employees' State Insurance (ESI) Cardholder and hence is covered under the said Scheme (ESI Scheme).

3. On 22.09.2014, the petitioner on one of his work trips to Gurgaon, suddenly became unconscious and fell down. Consequently, he was admitted to the Hospital. The petitioner was discharged from the Hospital on 25.09.2014. It is stated that during the treatment, he suffered a heart attack and a pacemaker was implanted into the petitioner's body.

4. A bill amounting to Rs. 6,29,564/- was raised by the Hospital for the treatment of the petitioner. The petitioner states that he paid the said amount with the help of his relatives.

5. The petitioner resumed his work on 07.11.2014. Thereafter, the petitioner sought reimbursement of his medical claim from respondent no. 2 (The Director, ESI Scheme). The petitioner's case was referred for the reimbursement of his medical claim. By an order dated 05.02.2015, the Directorate (Medical) Delhi, ESIC rejected the petitioner's claim on the ground that "*Pacemaker Implantation is a planned procedure not undertaken in emergency, hence reimbursement cannot be permitted.*"

6. On 24.02.2015, the petitioner sent a letter to respondent no.3 (The IMO Incharge, ESI Dispensary), *inter alia*, requesting him to reimburse his medical claim at the earliest. The petitioner also enclosed the requisite documents with the aforesaid letter.

7. Admittedly, the said amount has not been reimbursed to the petitioner as yet.

8. The petitioner contends that he has been paying contributions under the ESI Scheme on a regular basis and thus, the respondents are under an obligation to reimburse his medical bills. It is further submitted that the pacemaker was implanted in emergency for saving his life and the petitioner had been admitted to the Hospital in an emergency.

9. The learned counsel appearing for the respondents have countered the aforesaid submissions. She submits that the Hospital in which the petitioner was admitted and treated, is not empanelled with ESIC and reimbursement for treatment from such non-empanelled hospitals can only be claimed in case of emergency treatment. She contends that the petitioner's treatment was not an emergency treatment and thus, he is not entitled to the reimbursement under the said Scheme. She further submits that in any event, the reimbursement of medical expenses cannot be made to the full extent and could at best, be done only to the extent of CGHS rates.

10. Concededly, the petitioner would be entitled for reimbursement of medical expenses notwithstanding that the petitioner had not approached an ESIC empanelled hospital, provided that the petitioner had been admitted in an emergency situation. Ms Anand, learned counsel appearing for the respondents has referred to the ESIC Operational Manual, 2015, which expressly provides that ESIC beneficiaries may be provided super specialty treatment (SST) services on reimbursement basis in case it is found that it was "*a dire*

*life-threatening emergency and the condition of patient would have severely deteriorated if he had gone to ESI Hospital for reference.”*

11. In the present case, the concerned authority has concluded that pacemaker implantation is a planned procedure and therefore, the decision to plant a pacemaker into the petitioner’s body was not taken in an emergency. Ms Anand had referred to the discharge summary and contended that the same shows that the petitioner suffered from a cardiac arrest and he was admitted on 14.09.2014. His angiography was done at Max Hospital and he was admitted to Paras Hospital thereafter only for the purpose of further evaluation and management.

12. The petitioner had submitted that he lost consciousness on 14.09.2014 and was resuscitated. He had thereafter, also undergone a procedure at Max Hospital. However, the pacemaker implantation was not a planned procedure. The petitioner had explained that he had fallen unconscious while he was at work at Gurgaon on 22.09.2014. He was carried by his two colleagues to the nearest hospital (Paras Hospital) which was two kilometers away from the place where the petitioner became unconscious. He was admitted in an emergency at the said Hospital on that date (that is, 22.09.2014).

13. The certificate issued by the Hospital indicates that the petitioner was “*presented to emergency on 22.09.2014 with sudden unresponsiveness and loss of postures after rigorous activity on 14.09.2014*”. The said certificate is not happily worded, as it also refers to petitioner’s episode on 14.09.2014. However, it has been

clarified that the petitioner was admitted in an emergency on 22.09.2014 after he had lost consciousness. He was, thereafter, admitted in the CCU and his echo-screening indicated that the petitioner was suffering from “severe LV systolic dysfunction”. This, clearly, indicated that there was an issue with the functioning of the Left Ventricle of the petitioner’s heart and therefore, the petitioner had to undergo a pacemaker implantation. The aforesaid facts leave little room for doubt that the petitioner was, in fact, facing a life-threatening condition that had to be addressed on an emergency basis.

14. In view of the above, the impugned order rejecting the petitioner’s claim for reimbursement on the ground that the petitioner was not admitted in an emergency, is unsustainable.

15. This Court is of the view that the petitioner would be entitled to complete reimbursement of the expenses incurred and the same cannot be limited to CGHS rates alone. The petitioner enjoyed complete cover and the fact that he had to rush in an emergency to the nearest hospital cannot curtail his right to reimbursement of medical expenses. This question had also fallen for the consideration of a Coordinate Bench of this Court in ***Gurcharan Singh v. Union of India and Ors.: 166 (2010) DLT 610***, wherein this Court after considering the facts and circumstances of the case, directed the respondents to reimburse the balance payment towards the medical claim of the petitioner therein for the treatment of his wife. The Court rejected the respondents’ contention that the reimbursement has to be restricted to specified rates only. In ***Shiva Kant Jha v. Union of India: (2018) 16***

**SCC 187**, the Supreme Court after expressing its dissatisfaction as to the state of affairs and had observed that the relevant authorities are required to be more responsive and cannot act in a mechanical manner to deprive the employees of their legitimate reimbursement. The Court had observed that the treatment of the petitioner therein in a non-empanelled hospital was genuine and there was no option left with him at the relevant time. In that case, the Court had directed the respondents to reimburse the medical expenses to the petitioner to the full extent.

16. This Court has no reason to doubt that the petitioner's treatment in this case was also genuine and he had little choice in the matter.

17. In view of the above, the petition is allowed and the respondents are directed to reimburse the petitioner's entire expenses, incurred by him on treatment at various hospitals, after due verification.

18. The parties are left to bear their own costs.

**VIBHU BAKHRU, J**

**JULY 31, 2019**  
**pkv/RK**