

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.8197 of 2016
Date of decision : 13.1.2020

Rajinder Singh

....Petitioner

versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Jai Vir Yadav, Advocate, for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

Nirmaljit Kaur, J. (Oral)

Claim in the present writ petition is for reimbursement of the medical expenses incurred on treatment of the petitioner at the Central Medical Centre (CMC), Hisar, which was denied vide impugned order dated 22.1.2016 (Annexure P-4) (Colly) passed by respondent No.3 on the ground that the treatment taken was not in emergency.

Reply has been filed. As per para No.4 of the reply, the petitioner was referred to the CMC, Hisar on 24.9.2015, whereas, Maharaja Agrasen Medical College, Agroha is at a distance of 59 KM from Tohana, whereas, CMC, Hisar is 75 KM. It is further stated that the Maharaja Agrasen Medical College, Agroha was having super specialist medical facilities.

Heard.

As per the instructions dated 6.5.2005 placed on record as Annexure R-3, if the emergency is certified by the Civil Surgeon, Fatehabad, then the petitioner is entitled for reimbursement as per rates of the All India Institute of Medical Science, New Delhi and PGIMER,

Chandigarh and the excess amount is borne by the petitioner himself.

The petitioner herein is claiming reimbursement only as per the rates of the All India Institute of Medical Science, New Delhi/PGIMER, Chandigarh and no more. The only ground for rejecting the claim is that the Civil Surgeon, Fatehabad did not certify that the condition of the petitioner was an emergency. A perusal of the certificate dated 19.1.2016 issued by the Civil Surgeon, Fatehabad shows that the concerned Civil Surgeon took note only of the 'bills' and did not peruse any other document except 'medical bills' and in pursuance to the said order, the District Attorney, Fatehabad too declined to recommend the payment of the bill on the ground that the Civil Surgeon, Fatehabad had declined to release the emergency certificate on perusal of medical bills. Whereas, learned counsel for the petitioner had supplied the emergency certificate and the relevant document of discharge duly certified by the doctor of the CMC, Hisar alongwith his application for reimbursement, which was returned to the petitioner. Learned counsel for the petitioner has shown to this Court the discharge certificate, copy of which is taken on record showing that the petitioner had even undergone an operation. Thus, the emergency certificate seems to have been denied without application of mind and without considering the discharge certificate.

Be that as it may, the respondents could not have denied the reimbursement at the rate of PGI as long as the petitioner had admittedly taken treatment.

Hon'ble the Apex Court in the case of Shiva Kant Jha vs. Union of India, 2018 AIR (SC) 1975 while allowing the reimbursement to the said extent, even though the treatment was taken from non-empanelled hospital,

held in para No.13 as under:-

“13. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.”

In the present case, the petitioner is stated to have got treatment from Bhatia Nursing Home, Tohana upto 24.9.2015 but position remain unimproved and rather worsened. Thereafter, the doctor of Bhatia Nursing Home, Tohana referred the petitioner for treatment to CMC, Hisar as emergency case.

In view of the same, the treatment of the petitioner in the non-empanelled hospital is genuine and he has taken treatment in emergency at that point of time. In these circumstances, the respondent is liable to reimburse the amount towards the treatment at the rates prescribed by All India Institute of Medical Science, New Delhi/PGIMER, Chandigarh for the same treatment.

In view the same, the present writ petition is allowed as above and the due amount after calculation be released forthwith.

(NIRMALJIT KAUR)
JUDGE

13.1.2020
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No