

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

(1)

LPA-629-2020 (O&M)

Oriental Insurance Company Ltd.

.....Appellant

Versus

Maninder Singh Patwari and others

.....Respondents

(2)

LPA-630-2020 (O&M)

The Oriental Insurance Company

.....Appellant

Versus

Avtar Singh and others

.....Respondents

(3)

LPA-631-2020 (O&M)

MD India Health Insurance TPA Pvt. Ltd.

.....Appellant

Versus

Anant Singh and others

.....Respondents

Date of Decision:- 30.03.2022

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Ashwani Talwar, Advocate and
Mr. Varun Sharma, Advocate for the appellant.

Mr. Sarbjit Singh, Advocate for respondent No.1 in
LPA-629-2020.

Mr. Harvinder Singh Maan, Advocate for

Respondent No.1 in LPA-630-2020.

Mr. H.S. Saini, Advocate for respondent No.1 in LPA-631-2020.

Mr. S.P.S. Tinna, Addl. A.G., Punjab.

G.S. SANDHAWALIA, J. (Oral)

The present set of appeals arise out of the judgment of the learned Single Judge dated 04.03.2020, whereby, the writ petitions were allowed of the private respondents and directions were granted that the appellant-Insurance Company would reimburse the medical bills, as per the policy ignoring the delay. Interest @ 9 % was to be paid from the date the bills were received in the office of the Deputy Commissioner till they are paid, within a period of one month from the date of receipt of certified copy of the order. Penalty clause was imposed that the liability would be to pay interest @ 12 % if the amount is not paid within the period prescribed. Further, in case the payment was not made by the Company, the State was held liable to make the payment towards the medical bills and recover the same from the company.

The reasoning which prevailed with the learned Single Judge while placing reliance upon the judgments of the Division Bench in ***Baljinder Kaur Vs. State of Punjab and others, 2008 (2) S.C.T. 820*** and ***Rajwant Kaur Vs. State of Punjab, 2001 (2) S.C.T. 1035***, was that the objection taken by the appellant-company was that the claims of the bills were not made within a period of 30 days of the discharge from the

hospital. The same was to be as per 'Punjab Government Employees and Pensioners Health Insurance Scheme' (for short PGEPHIS) guidelines under Clause 11.6 and was held not justifiable, as they were not mandatory and the claims could not be rejected, since the treatment had been taken and premium had been received from the Government. It was also noticed that the delay as such was on account of the Deputy Commissioner in not forwarding the same to the Insurance Company and the Third Party Administrator (TPA) namely, India Health Insurance who has been arrayed as respondent No.7 herein.

Finding was recorded that the petitioners were being made to run from one authority to the other. As per the Department, the employee has to apply directly to the Oriental Insurance Company as per the procedure and the same had not been brought to the notice of the respective employees for claiming medical bills. Accordingly, it was held that there was negligence on the part of the respondent-State for not forwarding the same to the Oriental Insurance Company in case the bills had been received by the Department, since it was the duty of the State as such to ensure that medical bills are reimbursed keeping in view the fact that the agreement had been entered into between the State and the appellant company.

A perusal of the paper book of LPA-629-2020 would go on to show that the claim as such, was made by the writ petitioner Maninder Singh, Patwari on account of the fact that he was undergoing treatment of

his kidney in Fortis Escorts Hospital, Amritsar for the period from March, 2016 till August, 2016. A transplant was done on 23.08.2016, in which his wife was also involved who had donated a kidney to him. It is averred that the couple was having two minor sons and two minor daughters and after the improvement of his health, he supplied all the bills of his treatment to respondent No.5, the Tehsildar, for forwarding the same to the Deputy Commissioner for necessary action. A perusal of Annexure P-2 would go on to show that the same were forwarded to the Civil Surgeon on 26.09.2016 and then returned on 14.10.2016 as the health insurance policy of the Government as such provided the bills to be sent to the Insurance Company. Thereafter, it seems that on 17.03.2017, the Deputy Commissioner brought to the notice of the Tehsildar that the medical bill claims had to be paid by the insurance company. Eventually, on 31.03.2017 the bills were sent by the Tehsildar to the Insurance Company who raised the objection on 07.04.2017, rejecting the TPA on the same by falling back on part of clause 11.6 of PGEPHIS, which reads as under:-

“The treatment availed by the beneficiary shall be on reimbursement basis, subject to submission of the claim to the TPA within 30 days from the date of discharge from the hospital.”

It is in such circumstances, Mr. Talwar has vehemently argued that the fault does not lie with the Insurance Company but lies

with the State and therefore, fixing of the interest on the Insurance Company by the learned Single Judge is not justified. Similarly, the default interest rate is also challenged on the ground that it is highly excessive. Apart from that, he has submitted that clause 11.6 would be mandatory and binding between the appellant and the State.

Counsel for the writ petitioners on the other hand have supported the judgment saying that it is justified in the facts and circumstances since the insurance company was receiving premium. It is accordingly submitted that they are under an obligation to pay interest and firstly that the request had been made at the initial stage, immediately after discharge on 22.09.2016 by the Deputy Commissioner and it is not their fault that the file was kept pending at the District level.

Counsel for the State on the other hand, has submitted that as per the terms of clause 11.6 (i) of PGEPHIS, the treatment was to be mandatorily on cashless basis for private hospitals in Punjab and Chandigarh and whereas for Government hospitals in Punjab and Chandigarh, the reimbursement could be done provided the same was submitted within 30 days from the date of discharge. Clause 11.6 reads as under:-

*“11.6 The rates to be charged by various
Network Hospitals for all types of treatment shall be as
under:-*

i) For private hospitals in Punjab & Chandigarh :

Rates shall be determined in accordance with the

PGEPHIS rates, fixed by the Nodal Department/State Government. For treatments that have not been mentioned in the PGEPHIS rates, the rates shall be as may be negotiated by the TPA with the Network Hospital. The treatment provided shall be mandatorily on cashless basis.

ii) For Govt. hospitals in Punjab & Chandigarh:

Rates shall be determined in accordance with the PGEPHIS rates, fixed by the Nodal Department/State Government. For treatments that have not been mentioned in the PGEPHIS rates, the rates shall be internal rates of the respective Govt. Hospital. The treatment provided shall be essentially on cashless basis, however in cases where cashless services has not been rendered by the hospital, due to any reasons whatsoever; the beneficiary shall be eligible for reimbursement, subject to submission of the claim to the TPA within 30 days from the date of discharge from the hospital.”

The stand of the State in its short affidavit as such before the learned Single Judge was that the claim was liable to be settled by the Insurance company since the policy started was for the year 2016 and on account of the fact that the claim had not been made within 30 days of the date of the discharge from hospital the same had been declined. The

petitioner had thus not fulfilled the stipulated condition for reimbursement of the medical bills. The objection taken was that recourse could be taken with the District Grievance Redressal Committee constituted by the Government of Punjab and the fact that Insurance Company was to indemnify the State Government for any liability occurring due to the operationalization of the scheme.

The stand of the appellant/company is that on account of the delay as such, in terms of clause 11.6 the case of the petitioner was not liable to be entertained and to be returned on the same day and thus, there was gross negligence.

The above facts would go on to show that the writ petitioner had filed his application within the prescribed period before the competent authority but the same was not forwarded and rather kept on shuttling between Civil Surgeon and the Deputy Commissioner, which eventually found its way to the Insurance Company and TPA on 07.04.2017 and the same was rejected.

A perusal of clause 11.6 would go on to show that in private hospitals the treatment is to be mandatorily on cashless basis. Nothing has been shown by the State in its response that as such any such cards were issued in favour of the employees as per the appended Notification dated 20.10.2015 (Annexure R-1), which provided that the enrollment under scheme was to start and the insurance company was to deliver the insured enrollment cards up to 31.12.2015.

A perusal of Annexure R-9/3, which is the PGEPHIS would go on to show that a photo I.D. card was to be issued as per clause 6 which reads as under:-

“6. IDENTIFICATION OF FAMILY:

Beneficiaries shall be identified by a “Photo ID Card” issued by the insurer/TPA to all the beneficiaries which would contain Unique Health Identification Number (UHID No.) and all relevant details of the PGEPHIS members. This card would be used at the Provider Network to access ‘Health Insurance Benefits. The photograph printed on the ID will be taken as the proof for determining the eligibility of the beneficiaries.”

Nothing has been shown in the reply filed by the Insurance Company that any such cards were issued or not and reimbursement was being done on cashless basis. Neither any defence has been taken by the State or by the Insurance Company that they had issued cards in pursuance of the scheme. However, in LPA-631-2020, the employee has attached one cashless card as Annexure P-1 the benefit of which he could not avail apparently both in the private hospital and in the PGIMER where treatment was taken. Thus, in our considered opinion, fall back on clause 11.6 (ii) in such circumstances to contend that the claim had to be made within 30 days would not be applicable in the facts and

circumstances.

It is in such circumstances apparently that the employee as such had to shell out the amount at the time of the kidney transplant. The reliance as such upon the limitation, which prescribes 30 days from the date of discharge from the hospital was only in the cases of Government hospitals in Punjab and Chandigarh and cannot be applied as such to clause 11.6 (i) in the case of private hospitals. As noticed, in LPA-629-2020, the treatment was taken from Fortis Hospital, Amritsar which is a private hospital. Similarly, in Avtar Singh's case also, the treatment was taken from Fortis Hospital, Mohali and from the Rajiv Gandhi Cancer Hospital, Delhi and Amar Hospital, Patiala.

It is only in LPA-631-2020, there is some material to show that there was a card issued (Annexure P-1) by the Insurance Company which provide cashless reimbursement. In the said case, the claim had been rejected by filing reply dated 07.09.2017 (Annexure P-7) to the legal notice which had been served by way of demand and that also by the counsel for the Insurance Company wherein the stand taken is that the claimants therein had remained admitted from 03.04.2016 to 05.04.2016 and the claim was submitted on 06.03.2017 and not within 30 days of discharge from the hospital.

In the considered opinion of this Court, the rejection of the claim by counsel is without authority or jurisdiction since the counsel does not have any authority to take a decision on behalf of his client

which is the TPA. Even otherwise, a perusal of the paperbook would go on to show that various treatments were also taken from Mata Nanki Charitable Hospital, Anandpur Sahib which is again a private hospital and therefore, the provisions of Clause 11.6(i) would come into play which provided for cashless treatment and Sub-clause (ii) would not be applicable. In the said appeal, there is another amount of Rs.1,05,613/- regarding bills of PGIMER and there was specific averment that the claim of Rs.1,17,646/- for the period from 03.04.2016 to 05.04.2016 had been sanctioned only to the tune of Rs.1,05,613/- by the Director, Health & Family Welfare, Punjab on 08.08.2016. Instead of making the said payment, the same had been returned by respondent No.4, the Executive Engineer on account of the fact that there was reimbursement provided under the scheme. It was then submitted to the TPA on 06.03.2017. On non reimbursement, the demand notice had been sent which was replied by the counsel. The said facts are also admitted by the State in its reply.

It is thus apparent that the State instead of informing the employee that the amount had to be claimed within a period of 30 days from the date of discharge chose to pass the bills. Then at the time of payment, referred the matter to the TPA and therefore, once the cashless service had not been rendered by the PGIMER, the delay had occurred more on account of the conduct of the State for which the employee cannot be held liable.

In the considered opinion of this Court, the stand taken by

the appellant as such, was baseless that the claim had to be made within the prescribed period of 30 days, as the reading of the above two clauses would be very clear. In such circumstances, we are of the considered view that the learned Single Judge is justified inasmuch as the premium admittedly had been received by the Insurance Company and it was under a legal obligation to reimburse the amount.

We do not intend to repeat the view of the earlier Division Bench's which has already been relied upon by the learned Single Judge. It is to be seen that medical reimbursement is a beneficial piece of a privilege which is provided to the Government servants and the State Government has disbursed a huge amount of premium to the Insurance Company. As such to deny the same on the technical plea of 30 days was totally unjustified as the said clause would not be applicable. In such circumstances, the payment of interest also which was directed by the learned Single Judge was well justified.

However, keeping in view the fact that the matter was pending as such before this Court and there was an interim order operating in favour of the Insurance Company dated 22.09.2020, the penalty clause as such of 12% in our view could not be justified in the facts and circumstances.

Mr. Sarabjit Singh, Advocate, has submitted that in LPA-629-2020, the State has made part payment. The writ petitioner therein shall supply the details of the payment to the Insurance Company who

shall pay the balance amount.

In these circumstances, the present appeals are bereft of any merit and accordingly, dismissed. All pending application(s) are also disposed of, accordingly. The principal amount along with interest @ 9% will be paid by the appellant within a period of two months from the date of receipt of certified copy of this order.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 30, 2022.
sandeep/sailesh

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No