IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

208 **CWP-13165-2017 (O&M)**
Date of Decision :-25.09.2023

Subhash Sharma **...Petitioner**

Versus

State of Haryana and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amandeep Vashisth, Advocate for the petitioner.

Mr. Sourabh Mohunta, DAG, Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

In the present petition, the claim of the petitioner is that though, he is entitled for reimbursement of the medical expenses incurred by him upon undergoing a liver transplantation/surgery but the said benefit has not been extended to him by the respondents and that too without any valid justification.

The petitioner, who has retired from the post of Chief Account Officer was suffering from liver ailment and after getting diagnosed he was advised to undergo liver transplantation keeping in view the ailment being suffered by him. Petitioner has availed the medical facilities from various hospitals and ultimately keeping in view the fact that no donor was available in the North India, the petitioner got registered himself in Manipal hospital, Bengaluru, which is a Super Specialty hospital and ultimately he was operated upon for the liver transplantation on 10.06.2016. In the said treatment, which was emergent in nature, the petitioner remained admitted

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in hospital for a period of more than two weeks and had incurred expenses of a total amount of Rs.24 lacs. The said amount was paid by the petitioner from his own pocket and, thereafter, he raised a medical claim for reimbursement of the said amount. Initially, the respondents did not reimburse the medical claim of the petitioner on the ground that no package was provided for undergoing liver transplantation but during the pendency of the writ petition, the respondents reimbursed a sum of Rs.10 lacs to the petitioner out of the total amount of Rs.24 lacs incurred on medical treatement on the ground that had the petitioner undertaken the treatment from the PGIMER, Chandigarh, he would have spent an amount of Rs.10 lacs for the said medical treatment, which amount was reimbursed to him.

Learned counsel for the petitioner submits that the ground being raised by the respondents to reimburse a sum of Rs.10 lacs is that the said treatment/surgery was available at PGIMER, Chandigarh and the same would have costed Rs.10 lacs, if undertaken from there, whereas the said treatment/surgery is not available in the PGIMER, Chandigarh and hence, reimbursing the amount which would have incurred by the petitioner in case the treatment would have taken from the PGIMER, Chandigarh is without any basis.

Learned counsel for the petitioner further submits that as per the settled principle of law settled by the Hon'ble Suprme Court of India in ***CWP-694-2015*** titled as ***Shiva Kant Jha vs. Union of India***, decided on 13.04.2018, once, it is a undisputed fact that the petitioner had undertaken the treatment, which treatment was emergent in nature, the total amount incurred and claimed by the petitioner should be reimbursed.

Upon notice of motion, the respondents have filed reply and

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thereafter an affidavit has also been filed by Mithilesh Gupta, Flying Squad Officer, O/o Director General, Treasuries and Accounts Department, Haryana Chandigarh, wherein it has been mentioned that Government of Haryana had issued the guidelines/policy dated 06.05.2005 regarding medical reimbursement according to which, reimbursement for the treatment taken in an emergency in an unapproved hospital will be allowed at PGIMER, Chandigarh rates with the approval of the Finance department hence, PGIMER, Chandigarh rates has been worked out in the case of the petitioner and a sum of Rs.10 lacs has been reimbursed to the petitioner.

Learned counsel for the respondents submits that once a particular sum has been worked out and reimbursed, which is equal to the amount which petitioner would have incurred if the petitioner would have undertaken the treatment from PGIMER, Chandigarh, no further claim can be raised by the petitioner and the present petition has been rendered infructuous.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a conceded position that though, initially the medical claim of the petitioner for reimbursement was not entertained by the respondents but thereafter, upon reconsideration, the respondents have allowed the medical claim of the petitioner under the instructions dated 06.05.2005 issued by the Government of Haryana. Under the said instructions, out of the total claim of Rs.24. lacs, a sum of Rs.10 lacs has been reimbursed to the petitioner as a full and final payment on the basis of fact that had the petitioner undertaken the said treatment from PGIMER, Chandigarh, he would have incurred an amount of Rs.10 lacs on the treatment in question

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hence, as per the instructions dated 06.05.2005, in case treatment has been undertaken from an unapproved hospital in emergent situation, reimbursement can only be made as per the PGIMER, Chandigarh rates and not beyond that.

The said argument cannot be raised by the respondents for the reason that it is a conceded position that no liver transplantation/surgery from a dead donor was being conducted at PGIMER, Chandigarh at the relevant time and the said facility was only available at the hospital where the petitioner had undergone the said treatment. Further, once the said surgery/treatment undertaken by the petitioner was not available in the PGIMER, Chandigarh, calculation of the medical reimbursement claim on the basis of the PGIMER, Chandigarh rates is without any valid justification. PGIMER, Chandigarh rates can only be applied/considered in case the said facility was very much available in the PGIMER, Chandigarh but still the claimant availed the same from the unapproved hospital due to emergent situation. Once, the liver transplantation from a dead donor was not available in the PGIMER, Chandigarh, calculation of the medical claim for reimbursement on the basis of the PGIMER, Chandigarh rates is upon wrong interpretation of the instructions dated 06.05.2005 qua the petitioner in the facts and circumstances of the present case.

Furthermore, as per the law settled by the Hon'ble Supreme Court of India in ***Shiva kant Jha (supra)***, where a claimant has actually undertaken the treatment and the factum of treatment is supported by the medical record duly certified by the doctor of the hospital and the same was in emergent situation, the medical claim is liable to be reimbursed. Relevant paragraph of the judgment is as under:-

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> "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."

Hence, keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in ***Shiva kant Jha (supra)***, claim of the petitioner is liable to be reconsidered qua remaining claim of Rs.14 lacs as well.

Respondents are directed to reconsider the claim of the petitioner for remaining amount of Rs.14 lacs keeping in view the observations of this Court in the order and for whatever amount the petitioner is entitled for qua medical facilities and procedure for the liver transplantation, the same be reimbursed to him. With regard to the payment for room rent rates etc., the same will be given as per the PGIMER, Chandigarh rates only.

Let a fresh consideration to the claim of the petitioner for remaining amount be finalised within a period of 08 weeks from the date of receipt of copy of this order and for whatever amount the petitioner is found

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entitled for be released to him within a period of next 04 weeks.

Petition stands allowed in above terms.

Civil miscellaneous application pending if any, is also disposed of.

September 25, 2023 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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