



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

106

CWP-2792-2023 (O&M)
Date of decision: 05.08.2024

Anita Chaudhary
....Petitioner

Versus

State of Haryana and Others
...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Manoj Chahal, Advocate for the applicant-petitioner
Mr. Harish Nain, AAG Haryana

AMAN CHAUDHARY. J. (ORAL)

1. The prayer in the present petition is for directing the respondents to reimburse the full medical claim raised by the petitioner on account of her husband Liver Transplant Surgery in an emergency situation.
2. Learned counsel submits that the claim of the petitioner for full medical reimbursement on account of her husband having undergone Liver Transplant Surgery in an emergency situation has been wrongly declined and only an amount of Rs.10,07,652/- has been granted, while the total bill amounted to Rs.25,22,686/-. The petitioner is serving as Principal at Government Elementary Teacher Training Institute, Morni Hills, District Panchkula and her husband suffered from Chronic Liver Disease for 12 years and in the year, 2021 was diagnosed with HPS and was advised to undertake liver transplant. Samples of son and her daughter did not match and there was no deceased donor available in



North India and therefore, he was registered with Vellammal Medical College and Hospital, Madurai, Tamil Nadu, which is a super specialty hospital registered under NABH (National Accreditation Board for Super Specialty Hospitals and Health Care) and also on the panel of Tamil Nadu State Government. Finally, the transplant took place on 27.10.2021, which is planned on emergency basis. Certificate regarding, it being conducted in emergency treatment given by Civil Surgeon, Panchkula on 15.03.2022, Annexure P-4. He submits that his case is squarely covered by the judgment passed by this Court in **Roshan Lal Garg vs. State of Haryana and Others** in CWP-19105-2021, decided on 08.07.2024, however, with regard to the room rent, the same on instructions from the petitioner submits that it be reimbursed at the rate of PGIMER, Chandigarh as per entitlement in view of the judgment of this Court in **Kamla Devi vs. State of Haryana and Others** in CWP-10015-2015, decided on 23.01.2024. Relevant paras of **Roshal Lal Garg** (supra) read thus:

“7. The only point involved in the present case is as to whether the petitioner is entitled for grant of full medical reimbursement on the basis of the facts and circumstances of the present case or will he be entitled for partial reimbursement of PGI, Chandigarh rates in accordance with the policy of the Government of Haryana (Annexure R-1) which provides that when a patient is treated in an unapproved hospital even in emergency condition then he will be entitled for reimbursement according to PGI rates.

8. The facts and circumstances of the present case make it crystal clear that son of the petitioner is a handicapped person as per Annexure P-1 and as per learned counsel for the petitioner he is also a mentally challenged person. There is no dispute that he was suffering from severe abdominal pain on 06.12.2019 at the time when he was shifted to the aforesaid hospital which is an unapproved hospital and on the date of admission, he was operated upon and was discharged on the next date i.e.07.12.2019. This Court had an occasion to deal with in such like situation in CWP No.10669 of 2017 titled as **Raghubir Singh Vs. Chief Administrator and others** wherein this Court while referring to the judgment of Hon’ble Supreme



Court in “**Shiva Kant Jha Vs. Union of India**”, (2018) 16 SCC 187 held that the petitioner was entitled for full reimbursement in the light of Article 21 of the Constitution of India. The relevant portion of the aforesaid judgment of Hon’ble Supreme Court in **Shiva Kant Jha’s** case (Supra) is reproduced as under:-

“13. Further, the writ petitioner was admitted in emergency condition with complaint of breathlessness on 11.11.2013 in Fortis Escorts Health Institute, which was a non-empanelled hospital at the relevant time. He underwent angiography on 12.11.2013 which revealed diffused disease in left anterior descending coronary artery 50-60%. He had been implanted the CRT-D device (Combo) as part of cardiac resynchronization therapy (CRT) on 12.11.2013. The hospital charged an amount of ₹11,56,293/- for the said treatment, out of which, an amount of 10,70,000/- was for the cost of the unlisted cardiac implant (CRT-D) and an amount of 3,19,950/- ₹ was paid by the Insurance company directly to the hospital.

17. 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.

18. This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the central government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals.”

9. The facts of the present case suggest that it has not been disputed by the respondent-department that son of the petitioner was taken to the aforesaid hospital in an emergency condition which is also supported by a certificate issued by the aforesaid hospital and also by the Civil Surgeon, Gurugram. Whenever a patient is suffering from an emergency condition then the entire focus is always on saving the life of the patient and in case there is some pain then the focus is also to relieve the pain. It would be inhuman to say that whenever such like emergency situation arises then an employee should keep on searching the list of approved hospitals and should first go to an approved hospital or a government hospital by ignoring the developing pain and at the risk of life. It would be not only perverse but it will also be violative of Right to Life guaranteed under Article 21 of the Constitution of India.

10. In view of the aforesaid facts and circumstances of the present case, present petition is allowed. The respondents are directed to pay full medical reimbursement of Rs.75,037/- to the petitioner after deducting the amount already paid to the petitioner within a period of three months from today.”



3. Learned State counsel has been unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.
4. In wake of the aforesaid, the present petition is disposed of in terms of the judgment passed in **Roshal Lal Garg** (supra).

(AMAN CHAUDHARY)
JUDGE

05.08.2024
M.Kamra

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