IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

216 **CWP-14757-2018**
Date of Decision: 04.12.2024

RAM PHAL DHAKA **…Petitioner(s)**

Versus

STATE OF HARYANA AND OTHERS **…Respondent(s)**

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Anil Rathee, Advocate for the petitioner.

Mr. R.S. Budhwar, Addl. A.G., Haryana

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed seeking a writ of *certiorari* quashing the letter dated 16.10.2017, Annexure P-8, whereby the respondents have refused to give an emergency certificate for reimbursement of medical expenses incurred on the treatment of petitioner's deceased wife. Further, a writ of *mandamus* has been sought directing the respondents to reimburse the medical expenses claim amounting ₹12,50,000, with eighteen per cent interest from the date of its submission.

2. Facts of the case in brief are, the petitioner's wife retired as Principal from Government Senior Secondary School, Rohtak, on 31.03.2009, and was residing with her son at Gurugram. She developed severe pain in stomach and was taken to the nearby Fortis Memorial Research Institute, Gurugram. After being diagnosed with 'carcinoma ovary', she was admitted for treatment in emergency on 03.11.2014, and discharged the next day on 04.11.2014. Thereafter, she was admitted in the hospital twenty times from 11.11.2014 to 23.06.2016, for further treatment; as established by the discharge summary along with medical bills for the same appended as

Annexures P-5 and P-6 to the petition. On each day of admission she was given the advised treatment, including chemotherapy. Unfortunately, she could not survive for long and breathed her last on 07.12.2016. The petitioner submitted medical reimbursement claim for the expenses incurred on her treatment to the respondents along with emergency certificate dated 06.11.2015, Annexure P-3, issued by the fourth respondent/Civil Surgeon, Rohtak, certifying that his wife had been treated as an emergency case in the Institute/Hospital from 03.11.2014 to 04.11.2014. The second respondent asked for emergency certificate from the concerned Civil Surgeon for each of the dates on which the deceased remained admitted for treatment in the Hospital after 04.11.2014, vide letter dated 04.04.2016, Annexure R-2. The fourth respondent, however, refused to issue the same vide letter dated 30.06.2016, Annexure R-4. In this situation, the respondents cleared the petitioner's medical reimbursement claim only for the expenses incurred during admission from 03 to 04.11.2014 at the unapproved hospital rates, and declined the remaining claim for want of emergency certificate.

3. In this factual background, learned counsel for the petitioner has contended that once the respondents have cleared the medical reimbursement claim for the emergency treatment taken by the deceased from unapproved Fortis Institute/Hospital for first admission on 03/04.11.2014, there is no basis to decline the remaining medical reimbursement claims for subsequent dates of admission in the same hospital. The deceased had taken an emergency treatment initially from Fortis Hospital, and was required to take the follow up treatment also from the same hospital. Therefore, there is no justification for the respondents to accept only a part of the claim, though

the entire treatment has been taken for the same disease and in the same hospital.

4. *Per contra*, learned State counsel has contended that the petitioner's claim for medical reimbursement has been considered in the light of reimbursement Policy dated 06.05.2005; para 4 whereof specifically requires that reimbursement for treatment taken in emergency in an unapproved hospital by an employee/dependent will be allowed on rates equal to those of the Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh, with the approval of the Finance Department. Since Fortis Hospital, Gurugram, is not on the approved list of hospitals notified by the Government, reimbursement is admissible only for the treatment taken by her in emergency on 03/04.11.2014 which has already been given. There is no provision in the Policy to reimburse expenses incurred for the treatment not taken in emergency from an unapproved hospital.

5. Submissions made by learned counsel for the parties have been considered.

6. Undisputed facts on record are, the petitioner's wife, who retired as Principal of Government School, had taken emergency treatment from an unapproved hospital for 'carcinoma ovary'. Initially she was admitted there from 03 to 04.11.2014, given chemotherapy cycle of day one, and was required to continue the treatment/subsequent chemotherapy cycles in the days to come; for this purpose, she had to be admitted in the hospital on different dates at least twenty times between 11.11.2014 to 23.06.2016, on the dates mentioned in the discharge slips. The only ground for refusing the medical reimbursement claim is that the subsequent chemotherapy cycles/later treatment was not taken in urgent situation, and therefore emergency

certificate regarding the same could not be issued by the fourth respondent which made the claim inadmissible under the reimbursement Policy dated 06.05.2005.

6.1. While deciding the issue of entitlement to reimbursement of medical expenses incurred on the treatment taken in a private hospital abroad, this Court discussed the object of the Policy dated 06.05.2005, in judgment dated 02.05.2024, rendered in CWP-24342-2017 titled *Darshana Rani* v. *State of Haryana and others*, holding as under:

> 7.1. The Policy has been framed to provide financial help by reimbursing medical expenses incurred on treatment by a government servant/retiree. The rates of reimbursement differ depending upon the type of hospital the treatment is taken from, and whether it is in emergency, as already discussed. In case it is emergency treatment from a hospital not on the approved lists of hospitals, the employees are entitled to reimbursement at PGIMER rates. Meaning thereby, the rates of reimbursement for emergency treatment from unapproved hospitals are pre-determined, no matter wherefrom the government servant takes the treatment….

6.2. In the instant case, the rejection essentially has been made by relying upon the following para of the reimbursement Policy:

> 4. Un approved Hospitals
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> a) The reimbursement for the treatment taken in an emergency in an un approved hospital will be allowed equal to PGI, Chandigarh rates with the approval of the Finance Department.
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> b) Head of the department in consultation with concerned Civil Surgeon is competent to certify an emergency.

6.3. A perusal of para 4 of the Policy shows that a government employee is allowed reimbursement for *treatment taken in an emergency* from

an unapproved hospital at the PGIMER rates. It is for a disease that has been caused, detected, or aggravated unexpectedly, requiring immediate attention. Once a person is admitted in a hospital in such a situation, he/she is taken in the protective care of the doctors for medication, surgery, or therapy, as may be required, to cure the disease. It is for them to advise the treatment, which may be continual/in one go or staggered and spread over a period of time, depending upon the nature of disease suffered and the cure needed. The emergent situation may not continue for the entire period of treatment which has been prescribed, in case it is staggered over a period of time. Accordingly, there is no rationale in insisting upon continuous state of emergency as a *sine qua non* for reimbursement of expenses. In case a person/patient has come out of emergency situation but is required to continue with the treatment, it should not work to his disadvantage. Reading para 4 of the Policy to mean that entire prescribed treatment has to be taken in emergency situation to be entitled to reimbursement; or, to put it differently, only the expenses incurred on that part of the treatment which has been taken in emergency can be reimbursed, would disentitle the employees for refund of expenses for a part of the treatment which was advised in emergency but continued after the emergent situation was over. It denies reimbursement only because the employee no longer needs treatment in emergency, though he is to continue with it, as advised. It is too pedantic a reading of the Policy to be acceptable, and defeats its purpose by detaching the treatment from the emergency it has been prescribed in which can never be the case. This is illogical and unreasonable, as the treatment advised is for the disease that required emergency attention. Therefore, if the patient/employee needs to continue with the treatment to cure the disease even

after the emergency abates, reimbursement for the expenses incurred thereupon cannot be denied under the Policy and in terms thereof.

6.4. Further, once an employee/dependent is admitted in a hospital, it is for the concerned doctors to advise the course of treatment, which is a professional advice and brooks no interference. At the same time, the concerned employee/dependent has every right to insist on being treated by those doctors for the entire treatment, as advised. The choice to undergo the treatment advised is an important aspect of the right to life guaranteed under Article 21 of the constitution, and cannot be interfered with, as it will be unconstitutional. Therefore, once a treatment is certified to have been advised in an emergency, it has to be considered as *treatment taken in an emergency* for the entire duration, whether it is continuous or staggered over a period of time, for the purpose of reimbursement of expenses at the admissible rates. And the claim cannot be denied for want of medical emergency for entire duration of the treatment.

6.5. Consequently, looking from any angle the denial of petitioner's claim for reimbursement of medical expenses for want of emergency certificate is illogical, irrational, and uncalled for. The certificate of emergency cannot be insisted upon to clear reimbursement claims for treatment advised in emergency but continued beyond the period of emergency. Accordingly, in the face of conceded position on record that the petitioner's wife had taken treatment in an emergency from the unapproved hospital at Gurugram on 03-04.11.2014 which continued from 11.11.2014 to 23.06.2016, her medical reimbursement claim could not have been denied on the ground that the later treatment was not taken in an emergency.

7. In view of the reasons recorded, the writ petition is allowed and the impugned letter, dated 16.10.2017, is hereby set aside. The petitioner is held entitled to medical reimbursement claim amounting ₹12,50,000, which shall be paid to him with interest at the rate of six per cent per annum from expiry of three months from the date of its submission up to actual payment. The parties are left to bear their own costs.

(TRIBHUVAN DAHIYA)
JUDGE

04.12.2024
Ad

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*