



2024:DHC:9915-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9176/2019**

HIRA LAL BHAT

.....Petitioner

Through: Petitioner in person.

versus

CHAIRMAN AND MANAGING DIRECTOR

BSNL AND ORS.

.....Respondents

Through: Mr. H.K. Gangwani, Adv. for
R1.

Mr. Farman Ali, SPC with Ms. Usha Jamnal
and Mr. Krishan Kumar, Advocates for R4.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

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18.12.2024

C. HARI SHANKAR, J.

1. That the respondent Bharat Sanchar Nigam Ltd, a Public Sector Undertaking, has chosen to contest this matter despite the law in this regard having been settled by the Supreme Court as well at least four Division Benches of this Court rendered within the past one year, frankly, disturbs us.

2. The facts are brief.

3. The petitioner retired as Deputy General Manager in the respondent/BSNL on 31 March 2014.



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4. Prior thereto, in July 2013, he was diagnosed as suffering from liver cirrhosis and was thereafter undergoing medical treatment for the said ailment. He was admitted in the Indraprastha Apollo Hospital¹ on 19 March 2015 for being treated for liver cirrhosis and was discharged from the hospital on 1 April 2015. However, he had to be re-admitted *the very same day* and was advised Liver Transplant Surgery. In certification thereof, the Hospital issued an Emergency Certificate on 11 April 2015, and we for reasons which would become apparent hereinafter, deem it appropriate to provide a screen shot of the Emergency Certificate, thus:

 4 

Date: - 11-04-2015

EMERGENCY CERTIFICATE

This is to certify that Mr/Ms. Hima Lal Bhat aged 61
W/o, S/o, F/O, S.N. Bhat was admitted to this hospital on 19.03.2015
through emergency.
He / She was suffering from CLD; jaundice; Hepatic encephalopathy & fever
discharged on 01.04.2015 He / She has been under the care of
Dr. N.M. Tikoo & readmitted same day for
liver transplant surgery on 2.4.2015.

CMO: Dr. R. Yusuf Consultant: Dr. N.M. Tikoo
Signature of CMO: [Signature] Signature of Consultant: [Signature]
Registration No: DMC-33152 Unit: SGE
E.M.O. Registration No: 14693 (DMC)
Indraprastha Apollo Hospitals
Sarita Vihar New Delhi

Dr. N.M. Tikoo, MD
Senior Consultant
Liver Transplant & Hepatology
Indraprastha Apollo Hospital
Sarita Vihar, Delhi-110028
New Delhi-110028
Phone No. 14693 (Ext.)

[Signature]

Keep the records carefully and bring them along during your next visit to our hospital



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5. After having thus been re-admitted in the Hospital for liver transplant surgery on 2 April 2015, the petitioner was able to undergo the liver transplant surgery as his son, commendably, offered to donate a part of his liver to his father. The petitioner was directed to deposit an amount of ₹ 21 lakhs for undergoing the surgery, which included hospitalization charges. Thereafter, on the very same day i.e. 2 April 2015, the liver transplant surgery of the petitioner was performed.

6. Thankfully, the petitioner recuperated from the surgery and was discharged from the Apollo Hospital on 21 April 2015.

7. The petitioner, thereafter, filed an application before the respondent for reimbursement of the expenses incurred by him in hospital treatment as well as subsequent liver transplant surgery. The total expenses incurred by the petitioner came to ₹ 25,03,344/-. The respondent, however, reimbursed only ₹ 14 lakhs to the petitioner, stated to be the amount reimbursable as per the Central Government Health Service rates².

8. Aggrieved thereby, the petitioner approached the Central Administrative Tribunal³ seeking quashing of the letter whereby his claim of ₹ 25,03,344/- was allowed only to the extent of ₹14 lakhs and for a direction to the respondents to reimburse the differential amount

¹ "the Apollo Hospital" hereinafter

² "the CGHS rates" hereinafter

³ "the Tribunal" hereinafter



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along with interest at the rate of 18% p.a.

9. The respondent BSNL, in its counter affidavit before the Tribunal, stated that as the Apollo Hospital was not an empanelled hospital for the purpose of liver transplant surgery and the liver transplant surgery undertaken by the petitioner could not be treated as an emergency, he was not entitled to reimbursement of the entire amount charged by the Apollo Hospital for the said surgery. It was sought to be contended by the BSNL that, in fact, the BSNL had taken an expansive view in the matter and, despite the fact that the Apollo Hospital was not an empanelled hospital for liver transplant surgery, had nonetheless sanctioned an amount of ₹ 14 lakhs against the claim of the petitioner, as per the CGHS rates. The petitioner, it was, therefore submitted, had no cause for grievance.

10. Accepting BSNL's stand, the petitioner's OA 3205/2018 was dismissed by the Tribunal by judgment dated 9 May 2019, against which the petitioner has approached this Court under Article 226 of the Constitution of India.

11. Reliance was placed by the petitioner, before the Tribunal, on the judgment of the Supreme Court in *Shiva Kant Jha v UOI*⁴. The Tribunal has taken the view that the facts of the said case were different from those of the case of the petitioner. Thereafter, the Tribunal has recorded the contention of the respondent before it in paras 5.2 and has proceeded to dismiss the petition on the basis of the

⁴ (2018) 16 SCC 187



reasoning contained in paras 6, 6.2 and 7 of the impugned judgment.

We deem it appropriate to reproduce these paragraphs in *extenso* thus :

“5.2 Learned counsel for the respondents argued that for this kind of ailment, which has been going on for some time, the applicant should have gone to the hospital prescribed for Liver Transplant by BSNL. However, he chose to go to the Indraprastha Apollo Hospital. Secondly, there was no emergency. At the same time, the rules prescribed for reimbursement are only for certain types of indoor treatment surgeries etc. as per CGHS guidelines and the rules also govern the rates on which the reimbursement can be made towards medical expenses to the employees. In support of their arguments, the learned counsel of the respondents have relied upon the judgment of Hon'ble Supreme Court in the case of ***State of Punjab v Ram Lubhaya Bagga***⁵. The relevant paras of the judgment are as under:-

"29. No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.

30. xxx

31. xxx

32. Any State endeavor for giving best possible health facility has direct co-relation with finances. Every State for discharging its obligation to provide some projects to its subject requires finances. Article 41 of the Constitution gives recognition to this aspect.

"41. Right to work, to educate and to public assistance in certain cases: The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and

⁵ (1998) 4 SCC 117



to public assistance in cases of unemployment, old age sickness and disablement, and in other cases of undeserved want."

6. After hearing the arguments, it is observed that the applicant had been suffering from Liver Cirrhosis since July, 2013 as indicated in the O.A. and has been taking treatment for the same. He remained admitted in the hospital from 19.03.2015 to 01.04.2015. After his discharge on 01.04.2015, he was readmitted on the same day and had undergone Liver Transplant on 02.04.2015. His reimbursement claims for total amount of Rs.25 lacs, are for the period prior to his surgery for an amount of Rs.4,03,344/- for the period from 19.03.2015 to 01.04.2015 and for an amount of Rs. 21,00,000/- for surgery and post surgery from 02.04.2015 to 21.04.2015. These bills for reimbursement of the medical expenses were submitted to the BSNL authorities. The BSNL authorities had initially took objections in terms of the treatment and the surgery having been done in a hospital, is not empanelled in BSNL for Liver Transplant but decided to consider the applicant's case sympathetically. The Medical Committee examined the case of the applicant and after due deliberations approved reimbursement of an amount of Rs. 14 lacs (Rs.11,50,000 for transplant and Rs.2,50,000/- for pre-transplant evaluation of donor and recipient) to the applicant as per CGHS rates. The rulings of Hon'ble Supreme Court in the case of **State of Punjab and Ors.** (supra) hold that providing adequate medical facilities to the people is on essential part of the obligations under taken by the Government in the welfare State. No State of any country can have unlimited resources to spend on any of its projects. The same holds good for providing medical facilities to its citizen including its employees. It is also held that "Any State endeavour for giving best possible health facility has direct correlation with finances."

6.2 The applicant in this OA has also sought directions to the respondents to reimburse the medical claim given by the applicant with 18% interest. In so far as payment of interest on delayed medical reimbursement is concerned, the Apex Court in the case of **Om Prakash Gargi v State of Punjab and Others**⁶ passed the following order

"4. We do not find any force in the contention. It is true that but for the benefit of reimbursement of the amount granted by the Government, the petitioner has no right to claim

⁶ (1996) 11 SCC 399



reimbursement. The question is whether on account of delay in reimbursing the amount incurred towards medical expenses, the State should be liable to pay also interest on the delayed payment? We are of the view that it is inexpedient and not proper to direct the State to pay interest for delay in payment of the reimbursement amount. It requires verification of the amounts spent by the petitioner and similar person. His right only is to get medical reimbursement, he should also be entitled to interest thereon. The order passed by the Court on an earlier occasion was to the effect of dismissing the special leave petition in limine. Therefore, it does not furnish any ratio decidendi for following the same. Under these circumstances, we do not think that it would be proper to direct payment of interest on the delayed reimbursement of the medical expenses incurred by a government servant."

7. In view of the above mentioned, I find that the respondents have considered and reimbursed the due medical expenses incurred by the applicant in terms of the prescribed rules. As far as interest is concerned, in terms of the above quoted Apex Court ruling, interest on medical reimbursement for delayed payment cannot be allowed. The OA does not deserve any further consideration and the same is accordingly dismissed. There shall be no order as to costs."

12. Aggrieved by the judgment of the Tribunal, the petitioner has approached this Court by means of the present writ petition.

13. It is worthwhile to note that during the course of these proceedings, a tentative view has already been taken by a Coordinate Bench of this Court on 6 May 2024 regarding the aspect of whether the liver transplant surgery undertaken by the petitioner could, or could not, be regarded as an emergency surgery. The order dated 6 May 2024 deserves to be reproduced, in full, thus:

"1. The present petition under Article 226 of the Constitution of India seeks to assail the order dated 09.05.2019 passed by the learned Central Administrative Tribunal (the learned Tribunal) in O.A. No. 3205/2018. Vide the impugned order, the learned Tribunal has rejected the original application filed by the



petitioner/applicant by holding that there was nothing to show that his admission in the Indraprastha Apollo Hospital on 19.03.2015 and thereafter again on 01.04.2015 was on account of any 'Emergency'.

2. Having perused the impugned order and heard the learned counsel for the parties, we are of the view that even if the petitioner's admission from 19.03.2015 to 01.04.2015 cannot be treated as an 'Emergency', the fact that the same petitioner, after being discharged from the hospital on 01.04.2015, was not only again required to be readmitted on the very same day i.e. 01.04.2015 itself, but he also had to undergo a Liver Transplant Surgery the very next day i.e. on 02.04.2015 itself, leads this Court to the conclusion that there was indeed some 'Emergency'.

3. In fact, we are constrained to observe that the learned Tribunal has not even examined the aforesaid aspect as the impugned order is silent qua the petitioner's claim that on account of his failing health, he was after his discharge on 01.04.2015, required to be re-admitted on the same day. It appears that the impugned order has been passed by the learned Tribunal holding that there was no 'Emergency', by merely taking into account that the petitioner was suffering from Liver Cirrhosis since the year 2013.

4. We are, therefore, of the considered view that the impugned order deserves to be set aside to this extent.

5. At this stage, learned counsel for the respondent no.1 prays for time to obtain instructions.

6. At his request, renotify on 13.05.2024."

14. To a query as to whether, despite this order, he was seeking to re-argue that the surgery undertaken by the petitioner was not an emergency surgery, Mr Gangwani, learned Counsel for the respondent, answered in the affirmative, and we have accordingly heard him.

15. We may note that pursuant to the directions passed by this Court, the petitioner has also placed on record the original bills issued



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by the Apollo Hospital for his treatment.

16. We have heard the petitioner, who appears in person, and Mr. H.K. Gangwani, learned counsel for the respondent, at some length.

17. The petitioner, who appears in person, submits that the Tribunal was in error in holding that the petitioner's treatment was not an emergency treatment and, on that basis, rejecting the petitioner's claim for reimbursement of actual expenses incurred on his Liver Transplant Surgery.

18. Mr. Gangwani, opposing the petition, submits that there is no evidence to show that the petitioner's liver transplant surgery was in fact an emergency surgery.

19. Apropos the Emergency Certificate dated 11 April 2015, Mr. Gangwani submits that the said certificate was a standard certificate issued at the time when a patient is admitted to the Emergency Ward in a hospital. Apropos the hand written entry at the end of the certificate, to the effect that the petitioner, having been discharged on 1 April 2015, had to be readmitted on the very same day for liver transplant surgery to be conducted on the very next day, Mr. Gangwani submits that these words have been later interpolated in the certificate. The hand writing in which these words have been entered is different from the hand writing contained in the other entries in the certificate, and the hand written portion is not countersigned separately by the doctor or other person who entered the hand writing.



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20. We may note that, thankfully, no such stand was ever taken by the respondent before the Tribunal.

21. Mr. Gangwani has also shown us the original record of the Apollo Hospital which clearly indicates that the screenshot of the Emergency Certificate, contained on the file and reproduced in para 4 *supra*, is, in fact, a faithful photocopy of the original Emergency Certificate. It is not, therefore, as though the words “and re-admitted on the same day for liver transplant surgery on 2 April 2015” were entered later, after the certificate was issued.

22. The fact that the petitioner actually underwent liver transplant surgery on 2 April 2015 is not disputed by the respondent.

23. In these circumstances, we are deeply disturbed by the fact that the petitioner’s case has been so vociferously opposed by the respondent.

24. The entitlement of the petitioner, in such cases, to medical reimbursement on the basis of actual expenses incurred by him stands confirmed by at least four judgments passed by Coordinate Benches of this Court, of which two have been authored by one of us (Anoop Kumar Mendiratta, J.), chronologically, *UOI v Joginder Singh*⁷; *UOI v Surender Kumar Kaur*⁸, *Jasbir Singh v UOI*⁹ and *Jagir Kaur v*

⁷ 2023 (3) LLJ 404

⁸ MANU/DE/6169/2023

⁹ MANU/DE/0004/2024



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UOI¹⁰.

25. We may reproduce, for advantage, the relevant paragraphs from each of these decisions as under:

From *Joginder Singh*

“2. In brief, as per the facts noticed in O.A. No. 4664/2018, the respondent retired as Senior Carpenter on March 30, 2016 and is a pensioner availing the CGHS facility. On November 03, 2017, respondent fell unconscious and was taken to Mata Chanan Devi Hospital, Janak Puri, Delhi wherein he was examined in the Neurology Department and advised further treatment at Rancan Gamma Knife Centre-VIMHANS Hospital, Nehru Nagar, Delhi specializing in Neurosurgery cases. The wife of the respondent accordingly took him in emergency to VIMHANS Hospital wherein respondent underwent a surgery on November 04, 2017 and was discharged on November 05, 2017.

3. Respondent thereafter submitted the medical bills amounting to ₹ 2,60,000/- as raised by VIMHANS, for reimbursement on November 14, 2017 along with the emergency certificate at CGHS Dispensary, Rajouri Garden. However, respondent was reimbursed only an amount of ₹ 31,556/- against the claim for ₹ 2,60,000/-.

4. Aggrieved by the rejection of his claim, *vide* letter dated October 16, 2018, respondent preferred O.A. No. 4664/2018 before the Tribunal.

5. The claim of the respondent was opposed by the petitioners herein and it was submitted before the Tribunal that emergency certificate was not submitted by the respondent from Mata Chanan Devi Hospital, wherein he took the treatment on November 03, 2017. The case of the respondent was also examined by the Standing Technical Committee on October 10, 2018 which did not find justification in the treatment availed by respondent, as it was not a case of medical emergency and the treatment is stated to be available in several Government hospitals at lower price.

6. Considering the records of treatment at VIMHANS, the

¹⁰ 2024 SCC Online Del 4698



Tribunal observed that there is no reason to refute the emergency as indicated in the certificate issued by VIMHANS and the fact that the respondent was operated on November 04, 2017 makes it clear that this was a medical emergency. Further, relying upon the judgments passed by Hon'ble Supreme Court in *Shiva Kant Jha v UOI* and *Basant Dabas v. Government of India*, W.P. (C) No. 9849/2015 decided on July 31, 2019 by High Court of Delhi, the O.A. preferred on behalf of the respondent was allowed and the impugned order dated October 16, 2018 rejecting the claim of the respondent was set aside.

10. Respondent is a retired pensioner, who was merely employed as a Senior Carpenter with the Central Government. On November 03, 2017, he was initially taken to Mata Chanan Devi Hospital, Janak Puri, Delhi since he fell unconscious and was duly examined. Further, as advised at Mata Chanan Devi Hospital, respondent was taken by his wife for treatment to Rancan Gamma Knife Centre-VIMHANS Hospital, Nehru Nagar, Delhi which specializes in Neurosurgery and underwent surgery on November 04, 2017.

11. It may be noticed that "Trigeminal Neuralgia" is a chronic pain condition affecting the trigeminal nerve in the face which carries the sensation from the face to the brain. The symptoms of the disease range from mild to severe facial pain often triggered by chewing, speaking or brushing of teeth. The treatment available to alleviate the debilitating pain may be with combination of medication, surgery and complementary therapies. Generally, if a patient does not respond to the medication or condition worsens over a period of time, surgical option may have to be preferred, which includes stereotactic radiation surgery using gamma knife and cyber knife.

12. It is pertinent to note that prescription dated November 03, 2017 issued by Dr. Jayant Misra, MS M Ch. Consultant Neurosurgeon, Rancan Gamma Knife Centre reflects that 'the respondent was advised Gamma Knife Radiosurgery as emergency treatment' apart from other treatment as advised therein. Merely because the respondent was conscious, awake and oriented at time of admission at VIMHANS cannot lead to an inference that his claim of being admitted in emergency, is false. It may further be noticed that an emergency treatment certificate was again issued on October 18, 2018 by Dr. Jayant Misra certifying that the respondent was admitted on November 04, 2017 after OPD consultation on November 03, 2017 on emergency basis for his



severe 'Right Sided V1V2 Region Trigeminal Neuralgia.' The certificate also reflects that the respondent was unable to eat/drink/sleep/wipe his face/speak at the time of admission on November 04, 2017. In the facts and circumstances, there existed continued emergent condition for undertaking the treatment by respondent at VIMHANS, as advised at Mata Chanan Devi Hospital. Merely because the respondent was suffering from the 'Right Sided V1V2 Region Trigeminal Neuralgia' for past four months, does not lead to an inference that the medical condition did not require emergent treatment, which was undertaken as a last resort by the respondent as advised.

13. The medical claim for treatment undertaken in emergency should not be denied for reimbursement merely because the hospital is not empanelled. The test remains whether the claimant had actually undertaken the treatment in emergent condition as advised and if the same is supported by record. Preservation of human life is of paramount importance. The State is under an obligation to ensure timely medical treatment to a person in need of such treatment and a negation of the same would be a violation of Article 21 of the Constitution of India. Administrative action should be just on test of fair play and reasonableness. Accordingly, keeping into consideration the constitutional values, the executive instructions need to be applied than rejecting the claim on technical ground of undertaking treatment in a nonempanelled hospital, since the CGHS/State is responsible to ensure proper medical treatment in an emergent condition and further cannot escape the liability, if the treatment undertaken is genuine. Any denial of claim by the authorities in such cases only adds to the misery of the Government servant by further forcing him to resort to Court of law.

14. Observations of the Hon'ble Apex Court in *Shiva Kant Jha* (*supra*), as reflected in paras 17, 18 & 19 may also be beneficially reproduced: —

“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 Ministry concerned, 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.*

19. In the present view of the matter, we are of the considered opinion that the CGHS is responsible for taking care of healthcare needs and wellbeing of the central



government employees and pensioners. In the facts and circumstances of the case, *we are of opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time.* We, therefore, direct the respondent-State to pay the balance amount of ₹ 4,99,555/- to the writ petitioner. We also make it clear that the said decision is confined to this case only”

15. It needs to be kept in perspective that patient has a little scope to decide the nature of treatment and merely looks forward to an expert guidance/treatment for relieving him from immense pain and suffering. The patient in distress is not in a position to go against the specialist medical advice for surgery in emergency.

16. Even assuming that in emergency, gamma knife surgery may not render an immediate relief as contended by learned counsel for the petitioners, but it is an established alternative medical treatment for trigeminal neuralgia as per literature. There may be a difference of opinion on the line of treatment to be adopted by the experts but only the treating physician/surgeon appears to be the best placed to adopt the right course of treatment in an emergent situation.

17. Keeping in view the emergency certificate and the treatment papers filed by the respondent, it cannot be said that the treatment was not taken in an emergent condition or the respondent should have deferred the immediate surgery by gamma knife, as advised by the Specialist.”

(Emphasis supplied)

From **Surender Kumar Kaur**

“2. The challenge of the respondent before the Tribunal was to an order dated October 17, 2018, by which his claim for reimbursement of the amount incurred by him on medical treatment of his wife has been rejected. The wife of the respondent was suffering from Chronic Liver Disease (CLD), which is said to be life threatening. On September 09, 2012, she suffered serious medical complications and in a state of panic and emergency, she was rushed to a nearby private hospital called Ayushman Hospital, situated in Dwarka, New Delhi.

3. After the examination of the wife of the respondent, she was treated in the said hospital and thereafter discharged on September 14, 2012. The respondent incurred expenditure of Rs.



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95,118/-on the treatment of his wife in the above hospital. When he sought reimbursement of the expenditure incurred, the claim was restricted to Rs. 59,559/-only on the ground that the admissibility of the reimbursement was governed by the rates applicable in the Central Government Health Scheme (CGHS).

12. On the last date of hearing, it was put to Mr. Manish Mohan, learned counsel appearing for the petitioners, whether there was no emergency for the wife of the respondent to be rushed to the hospital, wherein she had undertaken the treatment, Mr. Manish Mohan has fairly drawn our attention to page 76 of the paper-book, which is an Emergency Certificate issued by Authorized Railway Medical Officer on October 01, 2012. That apart we note that the Discharge Summary dated September 14, 2012, which read as under, also depict the emergency situation for which the wife of the respondent was admitted in the hospital at Dwarka.

Emergency Certificate

This is to certify that the patient, SUNITA GILL
Sister/Daughter of Shri. S. S. Gill Designation
CTO Station DEL was admitted for treatment
at Dr. S. S. Gill Hospital, Dwarka non-
recognized hospital in emergency which has been verified by undersigned. I have
carefully gone through the hospital documents/records related to treatment/
diagnosis of the patient in the non-recognized hospital.
Dr. S. S. Gill Hospital, Dwarka
Based on the documents/records in the light of Railway Board's letter
letter no. 10054/1004/2007 dated 01.10.2007, emergency for treatment
admission of patient SUNITA GILL in Dr. S. S. Gill Hospital
hospital is considered/satisfied.
Date 01.10.12
Place DEL
(Signature of Authorized Railway Medical Officer)
(Signature of Station Master in black ink)
(Signature of Station Master in blue ink)
Signature of ADO/MS
(Name with seal and stamp)

13. If that be so, it necessarily follows that the treatment undertaken by the wife of the respondent was under emergency situation and as such, the case of the respondent is covered by the judgment of the Supreme Court in *Shiva Kant Jha*, of which a reference has been made above. The relevant paragraphs thereof are reproduced as under:



14. We are of the view that present petition is without any merit and is liable to be dismissed. It is ordered accordingly.

From *Jasbir Singh*

“2. ... On October 05, 2012, Sujan Kaur was admitted in emergency in Neurosurgery Unit of Paras Hospital, Gurgaon and was operated for "Left parieto occipital horse shoe shaped craniotomy and evacuation of Intracerebral Hematoma" on October 06, 2012. An intimation was forwarded by the petitioner to competent authority on October 08, 2012 regarding the treatment of his mother in emergency, who was finally discharged on October 26, 2012. A claim for reimbursement of medical expenses of Rs. 3,21,574/-was accordingly made by the petitioner, on behalf of his mother.

3. Sujan Kaur again developed some complications and was admitted in emergency in ICU in Paras Hospital on November 23, 2012 and was diagnosed as case of "Urosepsis and Pneumonitis". She was thereafter discharged on December 02, 2012. Reimbursement Bill for Rs. 1,75,814/-was thereafter raised with respondents.

4. Unfortunately, Sujan Kaur had to be again admitted at Paras Hospital on December 22, 2012 and was diagnosed with "Septicemia with UTI and Hypernatremia and Shock" and expired on December 30, 2012 during the course of treatment. A bill for reimbursement of medical expenditure of Rs. 2,14,579/-was further raised by the petitioner.

5. In nutshell, petitioner claims reimbursement of medical expenditure for Rs. 7,11,967/-(Rs. 3,21,574/-+Rs. 1,75,814/-+Rs. 2,14,579/-) incurred by him for the treatment of his mother Sujan Kaur in emergent condition. However, only an amount of Rs. 45,643/-was reimbursed by the Chief Medical Director/respondent vide order dated June 04, 2013, out of the medical bill of Rs. 3,21,574/-in respect of first treatment received in between October 05, 2012 and October 26, 2012 and the balance amount of Rs. 2,75,931/-was rejected. Similarly, in respect of remaining two claims, for admission in the hospital from November 23, 2012 to December 02, 2012 and December 22, 2012 to December 30, 2012, the claim was rejected by the respondents on the sole reason that emergency is not justified as per Railway Board circular dated January 31, 2007. The same was reiterated vide order dated September 26, 2013.



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9. On the other hand, the order passed by the Tribunal is supported by learned counsel for the respondent and the stand taken before the Tribunal is reiterated. It is also urged that the mother of the petitioner could not have been taken for treatment to non-empanelled hospital contrary to circular/policy dated January 31, 2007 and there was no emergency during second and third admission. It is contended that reimbursement in such a case may open flood gates for similar cases since treatment in private hospital is not recognised by the Railway Authorities except as an exception as spelt out in circular dated January 31, 2007, issued by Railway Board. Reimbursement of Rs. 45,643/-for admission for the period from October 05, 2012 to October 26, 2012 is stated to have been made based on CGHS Rate List.

15. ... *The condition of Late Sujan Kaur can be clearly gauged from the nature of treatment undertaken after admission in neurosurgery department on October 05, 2012.* At advanced stages, it is practically not feasible, at times, in emergent situation to shift the patient at a distantly situated empanelled hospital or follow the procedure of seeking permission through AMA. Any delay can be life threatening as well as detrimental to the patient. Insistence as pleaded by the respondents for strictly following the medical procedure in such conditions appears to be a hyper technical approach.

16. *The respondents are expected to be compassionate and give a sympathetic consideration while considering the claim for medical reimbursement, in order to mitigate the financial hardships, rather than aggravate the situation by rejecting/restricting the claims. It needs no reiteration that right to health is integral to right to life and the authorities are under an obligation to provide full reimbursement for medical facilities availed in emergency.*

17. Unfortunately, the respondents merely proceeded to deny the 'reimbursement claim' without any clinching evidence to conclude that emergency admission was not required at the nearest hospital despite clear depiction in 'emergency certificates' given by Paras Hospital for the subsequent admissions. *The treating doctors/physicians/specialists are best in position to assess whether the emergent treatment is required in order to save the life of the patient. In view of above, presumption drawn by the respondents that the treatment was not in an emergent condition is*



unjustified in the facts and circumstances of this case. The respondents, as such, could not have denied the medical reimbursement claim for subsequent admissions or restrict the claim in respect of first admission in October, 2012.

For the foregoing reasons, the order passed by the Tribunal restricting the claim in respect of first medical reimbursement and order passed by the respondents denying the complete medical reimbursement for subsequent admissions is set aside.

18. *It is unfortunate that the petitioner has been made to run from pillar to post for the purpose of reimbursement of medical expenses on account of treatment of his deceased mother and has been contesting the petition for over a decade. In the facts and circumstances, respondents are directed to reimburse the medical claims preferred by the petitioner, after deducting the amount already paid, along with simple interest @ 7% per annum.”*

(Emphasis supplied)

From **Jagir Kaur**

“2.2 On 06.06.2020, Sh. Pritam Singh had to be admitted in the Indraprastha Apollo Hospital in emergency and was diagnosed with Covid-19. On 10.06.2020, following an episode of desaturation, he had to be shifted to the Intensive Care Unit (ICU) where his health was managed with supplement of oxygen and nebulisation. On 11.06.2020, he was shifted back to the ward but on 18.06.2020 he had to be again shifted to ICU as his condition deteriorated. On 05.07.2020, his condition further deteriorated so he had to be electively intubated and was shifted to ventilator. On the morning of 07.07.2020, he passed away in the hospital itself.

2.3 Towards cost of Covid treatment of Sh. Pritam Singh, the hospital raised bills dated 07.07.2020 for a sum of Rs. 10,06,730.15 *paise*, which was entirely paid by the petitioner from her and other family members' savings.

2.4 Since, during his lifetime, Sh. Pritam Singh was a CGHS beneficiary, the petitioner submitted those medical bills of ₹ 10,06,730.15 *paise* for reimbursement, but by way of Sanction Order dated 27.01.2021, the respondent no. 2 directed only part reimbursement to the tune of ₹ 5,25,854/-. As such, son of petitioner made a representation through email dated 02.09.2020 for reimbursement of the entire medical claim, but the respondents failed to respond, so the petitioner preferred the Original Application before the learned Tribunal.



2.5 Before the learned Tribunal, the respondents filed a counter-affidavit, pleading that claim of the petitioner had to be rejected on the basis of Circular dated 10.07.2020, issued by the Director, CGHS on the basis of directions dated 20.06.2020 issued by the Disaster Management Authorities to the hospitals in general *qua* capping of the expenses to certain fixed rates. However, according to the petitioner, the said circular was applicable prospectively, so not applicable to the claim of the petitioner as her husband had passed away prior to issuance of the same. By way of the impugned order, the learned Tribunal dismissed the Original Application of the petitioner, mainly on the ground that if the law laid down in the judicial precedents flowing from this court was applied pertaining to the medical treatment taken from non empanelled private hospitals, it would create a burden on the exchequer. Hence, the present petition.

3. During arguments, learned counsel for petitioner submitted that since late Sh. Pritam Singh had to be admitted in the Indraprastha Apollo Hospital in emergency, even though the said hospital is not on the panel of CGHS, the petitioner cannot be denied full reimbursement of the money paid by her towards his medical bills. In support of his arguments, learned counsel for petitioner placed reliance on the judgments in the cases titled *Shiva Kant Jha v UOI*, *UOI v Joginder Singh* and *Dinesh Kumar v Government of National Capital Territory of Delhi*¹¹.

3A. On the other hand, learned counsel for respondents supported the impugned order and contended that the writ petition is devoid of merits. Learned counsel for respondents argued that since the Indraprastha Apollo Hospital is admittedly not on the panel of CGHS, the petitioner could be allowed reimbursement only to the limited extent of rates specified for empanelled hospitals.

4. In the impugned order, the learned Tribunal took a view that the judicial precedents quoted above were “judgments in person and not judgments in rem” and if ratio of those judgments is applied to all cases, thereby directing full reimbursement of medical bills raised by non empanelled private hospitals, it would create a situation where significant amount of money from government exchequer would be claimed by the private hospitals by over-invoicing. The learned Tribunal also took a view that the Technical Standing Committee had recommended reimbursement of medical bills as per the limitations contained in OM dated

¹¹ 2022 SCC OnLine Del 3937



20.06.2020 of the Ministry of Health and Family Welfare and that the earlier OM dated 06.06.2018 cannot be completely ignored, especially because the latter was issued in compliance with the directions of the Supreme Court in the case of *Shiva Kant Jha (supra)*.

5. Having examined the said OM dated 20.06.2020, we are of the considered view that the same cannot be a ground to deny relief to the petitioner. For, the said OM dated 20.06.2020 was directed towards the hospitals; and there is nothing on record to show that the petitioner was aware of the same, so as to give her an opportunity of informed choice of the hospital, which in any case was not possible during those grave circumstances across the world. *If the respondents suspect that the subject medical bills raised by the Indraprastha Apollo Hospital are inflated ones, nothing prevents them from initiating appropriate legal proceedings against the hospital, instead of depriving the petitioner a full reimbursement, especially it not being their case that the petitioner colluded with the hospital to obtain an inflated bill.*

6. The provision under Article 21 of the Constitution of India ensures health and timely medical treatment being necessary components of the fundamental right to life, and *the same cannot be negated or even diluted on the basis of bald suspicion of the State that the non empanelled hospitals would unjustly enrich themselves even in such dire situations of the pandemic. Right to health being an integral part of right to life, it was the bounden duty of the State to ensure best possible medical treatment, at least for survival of its Subjects through government medical facilities. And that having collapsed, now the State cannot turn around to reject the medical claims on the ground that the medical treatment was availed from a non empanelled hospital.*

7. One cannot dispute the peculiar circumstances that were created during Covid pandemic worldwide, in which on account of extreme scarcity of medical beds and collapse of infrastructure, number of lives were lost. During Covid, the unprecedented calamity across the world, hospitals and clinics were inundated with patients, far exceeding their capacity with extensive strain on the intensive care units and emergency rooms. There was acute shortage of medical oxygen, so the demand skyrocketed. The pandemic exacerbated economic inequalities, whereby the economically disadvantaged met with extreme difficulty to access the necessary medical care. That crisis underscored the need for comprehensive reforms in the healthcare sector across the world and especially in our country writhing under severe resource



crunch. In such frantic and forlorn scenario the priority above financial implications was to save lives of kith and kin, so one could not be expected to wait for a bed and/or oxygen etc. in CGHS panelled hospital. The Covid patients were being shifted wherever the medical beds, oxygen, ICU and ventilators were available across the country. Priority, as aforesaid was to save life.

8. *The only test in such extraordinary situations must be as to whether the medical treatment was actually availed of. Once the answer is in affirmative, the reimbursement must be full while dealing with such cases pertaining to Covid pandemic. In the present case, it is not at all in dispute that late Sh. Pritam Singh had to be admitted in the Indraprastha Apollo Hospital in emergency, where he was diagnosed with Covid and in the course of medical treatment, shuttling between the Ward and the ICU, he passed away while being on ventilator support. That should be a close of the chapter so far as reimbursement claim of petitioner is concerned.*

9. We find the guiding light extended by the Hon'ble Supreme Court in the case of ***Shiva Kant Jha*** (*supra*) as follows:

10. In view of the above discussion, we are unable to uphold the impugned order, so the same is set aside and consequently the present petition is allowed, thereby directing the respondents to reimburse to the petitioner the entire remaining amount of ₹ 4,80,879.15 *paise* with interest thereon at the rate of 4.5% per annum for the period from the due date till payment of the same within a period of four weeks from date of this order.”

26. These decisions, which follow the exordium in ***Shiva Kant Jha***, make it clear that in a case in which the patient has to undertake emergency treatment, she or he is entitled to reimbursement of the actual expenses undergone. The Court cannot go behind the Emergency Certificate. In such a situation, the issue of whether the hospital is, or is not, empanelled, recedes into insignificance. The only factor which remains as relevant is whether the claimant did, or did not, undergo the concerned treatment. If she, or he, did, *complete*



reimbursement of the expenses incurred must follow.

27. In a departure from normal practice, we have deemed it appropriate to reproduce the passages, from the above cited decisions of this Court which set out the facts in the said cases only to underscore the stark similarity between those cases and the present. It is a matter of regret that, despite these decisions, the respondent is constraining claimant after claimant to subject herself, or himself, to endless litigation, merely to obtain her, or his, just dues.

28. Needless to say, we are in complete disagreement with Mr. Gangwani in his contention that the liver transplant surgery undertaken by the petitioner was not an emergency treatment. Even *de hors* the certificate, the facts speak eloquently for themselves. The petitioner had been admitted, for a protracted period of time, in the Apollo Hospital, undergoing treatment for liver cirrhosis. Though he was discharged on 1 April 2015, he had to be re-admitted *on the very same day*, for liver transplant. The transplant was performed *the very next day*. The less said about the respondent's stand, in such circumstances, that the transplant surgery was not an emergency, the better.

29. The submission of Mr. Gangwani that the Emergency Certificate, of which a screen shot is provided in para 4 *supra* was a stock certificate issued at the time of admission of a patient in emergency, is clearly incorrect, as the certificate is issued on 11 April 2015, 9 days after the liver transplant surgery was undertaken, and not at the time when the patient was admitted to emergency. The



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certificate clearly records that the petitioner was undergoing treatment for liver cirrhosis in the Apollo Hospital. It is a well-known fact that liver cirrhosis is a serious ailment and often results in the requirement for liver transplant. The fact that the petitioner, having been discharged on 1 April 2015, had to be readmitted on the very same day, for undergoing liver transplant surgery clearly indicates that the surgery was an emergency. This is further underscored by the fact that the surgery had to be performed on the very next day i.e. 2 April 2015. In fact, the surgery could have taken place earlier but the petitioner was in search of a donor but no donor was available. His son, ultimately, and as we note commendably, came forward to donate a part of his liver for father's treatment. The submission that the liver transplant surgery undertaken by the petitioner was not an emergency is therefore rejected at the outset.

30. For reasons which we do not even deem it necessary to state, we also unequivocally reject Mr Gangwani's contention that the words "& readmitted same day for liver transplant surgery on 2.4.2015" may have been an interpolation, as it is different in a different hand, as compared to the writing elsewhere on the Certificate. It has to be remembered that the Certificate was issued on 11 April 2015. The noting that the petitioner was readmitted on 2 April 2015, therefore, merely stated a fact – which, mercifully, the respondent does not dispute – and, consequently, was obviously entered in the hand of the doctor, or other hospital staff, who wrote it. It is also a matter of common knowledge that, in speciality hospitals, oftentimes a prescription, or certificate, is not written by the doctor in charge, and



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may be entered by the Senior Resident or Junior Resident who works with her, or him. We merely seek to emphasize, by these observations, that Mr Gangwani's reliance on the "difference" in the handwriting in the words "& readmitted same day for liver transplant surgery on 2.4.2015" were written on the Emergency Certificate merits outright rejection.

31. Mr. Gangwani has placed reliance on the judgment of the Supreme Court in *Chhotu Ram Yadav v State of Haryana*¹² as well as the judgment of a Coordinate Bench of this Court in *Manish Kumar v UOI*¹³.

32. In fact, the judgment in *Chhotu Ram Yadav* would operate against the stand taken by Mr. Gangwani rather than support it. In the said case, the Supreme Court has categorically disapproved of the High Court's approach in arriving at a finding on its own that the treatment undertaken by the appellant in that case was not an emergency treatment. In the present case, the petitioner has in his favour, an Emergency Certificate issued by the hospital. Applying *Chhotu Ram Yadav*, therefore, the terms of the Emergency Certificate are sacrosanct and we cannot take a view to the contrary.

33. In so far as the judgment in *Manish Kumar* is concerned, the Coordinate Bench has noted, at the very commencement of para 15 of the report thus:

¹² (2005) 13 SCC 393

¹³ 2024 SCC Online Del 864



“15. At the very outset, it is pertinent to note that *it is not the case of the petitioner that he was facing any emergency* or that he was suffering from any ailment for which no treatment was available with the list of CGHS empanelled Hospitals or that he was denied any kind of, specific treatment(s) for any disease at any stage or that he had ever sought or tried seeking any permission from the respondents to that effect or that such permission had ever been denied to him.”

(Emphasis supplied)

Thus, the Division Bench in **Manish Kumar** proceeded on the premise that it was not a case of emergency treatment. In view of this fact, the High Court observed that the petitioner had no justification not to get himself treated in an empanelled hospital. This judgment is clearly inapplicable in the present case, which involves emergency liver transplant, duly certified.

34. We express our displeasure at the manner in which this case has been contested by the respondent. The Supreme Court, in the passages from its judgement in **Shiva Kant Jha** already extracted *supra*, has clearly advocated an expansive approach while dealing with medical reimbursement claims of persons who have undergone serious and emergency medical treatment. We regret to say that these words of advice of Supreme Court have apparently fallen on deaf ears as, in case after case where emergency treatment is undertaken, the concerned persons, after having suffered the ailment and undergone emergency treatment, are having to battle for years before Court for getting their due reimbursement.

35. The petitioner in this case itself had to fight before the Tribunal for nearly a year and has had to wait for six years before obtaining



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succour from this Court.

36. We are of the view that the Tribunal was clearly in error in rejecting the petitioner's claim. We, therefore, quash and set aside the impugned judgment of the Tribunal. OA 3205/2018 as well as WP(C) 9176/2019 filed before this Court stand allowed. The respondent is directed to reimburse the entire medical expenses claimed by the petitioner within a period of two weeks from today. In the event of the said expenses not being reimbursed within a period of two weeks from today, the respondent would also be liable to pay costs to the petitioner of ₹ 50,000/-, which would be additionally payable, within two weeks thereof.

37. We refrain from imposing any additional or further costs.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

DECEMBER 18, 2024/yg

Click here to check corrigendum, if any