(2004) 05 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 754 of 2004

Chander Bhan — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 26-05-2004

Acts Referred:
Constitution of India, 1950 — Article 21

Citation : (2004) 138 PLR 322

Hon'ble Judges : K.S. Grewal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Naveender P.K. Singh, Amicus Curiae, S.P. Singh, for the Appellant; Vijay Dahiya, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

K.S. Garewal, J.—Petitioner-Chander Bhan has filed this petition to challenge the order dated October 6, 2003 (Annexure P-7) passed by Audit Officer rejecting his claim for medical reimbursement of Rs. 2,49,381/-. The petitioner has sought a direction that he be paid the same amount of medical expenses alongwith interest at 18%.

2. The petitioner is Sub Inspector (Audit) in the Department of Cooperation, Government of Haryana. He is still in service and the date of his superannuation is April 30, 2005, when he shall attain age of 58 years.

3. On January 16, 2003 the petitioner a permanent resident of village Ramana-Ramani, Kaithal suffered a heart attack and was rendered unconscious. He was taken to General Hospital, Kaithal but that hospital did not have a heart specialist nor was there any facility for conducting angiography or angioplasty. Therefore, the petitioner''s family, on the advice of the said hospital, removed him to Sanjeevani Hospital, Kaithal where he was examined by Dr. Parveen Kumar Garg. After check up the petitioner''s attendants were told that the condition was very critical. Dr. Garg advised that instead of taking the petitioner to Chandigarh, he

should be taken to Patiala which was the nearest medical centre and a heart specialist was available there. Consequently the petitioner was removed to the Patiala Heart and Health Care Institute where he was admitted on January 16, 2003 and life saving procedures were performed. The petitioner''s condition improved slowly and lie was discharged on February 8, 2003 in satisfactory condition. The petitioner incurred expenses to the tune of Rs. 2,49,381/- for his treatment and submitted the medical bill for reimbursement through proper channel. His claim was rejected vide letter dated October 6, 2003 (Annexure P-7),

4. The petitioner has challenged the rejection of his claim on the ground that Ms claim could not have been declined because his condition was very critical and he was unconscious when he was taken to Patiala Heart and Health Care Institute, since there was no facility of angiography and angioplasty at General Hospital, Kaithal. The petitioner had been admitted in Paliala Heart Institute when his family members felt that there was no other option. This decision was taken to save the petitioner who was in a critical condition. The members of the family had exercised their best judgment and had acted on the advice of Dr. Garg of Sanjeevani Hospital at Kaithal, According to the petitioner, he was entitled to medical reimbursement of the amount as per rates which were charged by All India Institute of Medical Sciences (AIIMS)/Post Graduate Institute of Medical Education and Research (PGIMER).

5. The petition was opposed by the respondents on the plea that he ought to have gone to an approved hospital/institute for treatment. The Patiala Heart and Health Care Institute was not an approved or recognised institute. Therefore, the petitioner''s claim was returned with the objection that he should produce a certificate whether this hospital was a duly approved/recognised hospital by the Government of Haryana. Furthermore, the respondents pleaded that if the claim was rejected the petitioner should have represented to higher authorities, like Financial Commissioner and Principal Secretary to the Government of Haryana, Department of Cooperation and Registrar, Cooperative Societies, Haryana instead of rushing to the Court.

6. When a person is suddenly taken ill, his first, anxiety is to seek proper treatment. Under ordinary circumstances and in case of most diseases, government servants go for treatment to recognised hospitals or medical centres, but when the onset of the disease is sudden and acute, there may be no lime to reach a recognised hospital. In the case of heart disease, time is of the essence. If treated on time, the patient may survive if not the patient may die. Such would have been the thoughts of the petitioner and members of his close family. The petitioner''s case is that after he suffered heart attack he became unconscious and was admitted to Government Hospital, Kaithal but there was no heart specialist in that hospital al that time and there was no facility for conducting angiography/angioplasty. Petitioner''s attendants, as per advice of the Government Hospital, took the petitioner to a heart specialist in Sanjeevani Hospital at Kaithal where he was cheeked up by Dr. Garg and was advised to be

taken to the nearest hospital which was the Patiala Heart and Health Care Institute at Patiala. Indeed, the petitioner''s family had requested Dr. Garg to refer the patient to Chandigarh, but Dr. Garg advised them to take the patient to Patiala on account of the emergent situation. A certificate to this effect by Dr. Parveen Kumar Garg has been attached as Annexure P-1. This certificate is dated January 16, 2003, 5-00 a.m. and stales that the patient was admitted in the hospital at 3.00 a.m. with acute exhaustive myocardial infarction with cardiogenic shock. The patient was not responding to conservative treatment. Therefore, he was referred to Patiala for further management.

7. Certificate dated February 8, 2003 of Dr. Parmod Jaiswal of the Patiala Heart Institute was to the effect that the petitioner was admitted at the institute on January 16, 2003 and he showed acme anterior wall MI with cardiogenic shock. He was put on IABP. He was taken for emergency PTCA to LAD as a life saving procedure.

8. It is strange that the respondents have not examined the cases from the medical point of view to determine whether the treatment given to the patient was medically required or not and was, in fact carried out. Surely, this ought to be a part of the procedure when a patient has been treated by a medical centre or institute which is not recognised by the Government. Was the treatment given to the petitioner at all necessary, how serious was his condition and what had been the follow-up. These should be some of the questions which respondents could have well asked but did not. Therefore, it seems that the respondents have not challenged he diagnosis and the line of treatment, but have simply confined their defence to the Patiala Institute being an unrecognised one.

9. In Surjit Singh v. State of Punjab and Ors. 1996(1) S.L.R. (S.C.) 786, the patient had fallen ill due to the heart disease while on a visit to England and underwent heart bye-pass surgery at a hospital in London. The patient was held entitled to be reimbursed medical expenses at the rates which ESCORT Hospital charged for the same treatment.

10. In State of Punjab and others Vs. Mohinder Singh Chawala, etc., , the patient an employee of the Punjab Government was treated at AIIMS. The medical reimbursement bill which included room rent of the hospital was rejected by the Government but a Division Bench of this Court directed reimbursement of the room rent. The view of this Court was upheld by the Supreme Court.

11. In State of Punjab v. Prem Kumar 2001(4) S.C.T. 404, the patient had sought reimbursement of a bill of treatment received by him after he was injured in an accident. Reimbursement had been denied because the patient had taken treatment from a hospital which was not recognised by the State of Punjab (C.M.C. Hospital, Ludhiana) but the suit was decreed and the Stale appeal was dismissed. Second appeal filed by the State was also dismissed. In Amina Kundu v. State of Haryana 2001(2) S.C.T. 619, the petitioner''s husband had died and the widow had sought reimbursement of the medical expenses. Reimbursement

had been denied on the ground that treatment had been given by Rajiv Gandhi Cancer and Research Institute Rohini which was not a recognised institute. The petition was allowed and the respondents were directed to reimburse the medical claim of the deceased husband of the petitioner as per the rates chargeable by AIIMS or PGI.

12. Similarly, in Dr. Daulat Ram v. State of Punjab, 2000(4) S.C.T. 590, reimbursement was granted at government rates after by-pass surgery had been carried out at Escort Heart Hospital, unrecognised institute.

13. Similar was the position in M.G. Mohindru v. U.O.I 2001(3) S.C.T. 1026, Gouri Sengupta v. State of Assam 2000(1) S.C.T. 341 and Narinder Pal Singh v. Onion of India 1993(3) S.C.T. 578.

14. In Shakuntla v. State of Haryana 2004(1) R.S.J. 283 the petitioner''s husband had suffered kidney failure and had been referred to All India Institute of Medical Sciences, New Delhi by Post Graduate Institute of Medical Sciences, Rohtak and had been advised transplant surgery. Later, the patient went to Sir Ganga Ram Hospital where the kidney transfer was successfully carried out. Division Bench of this Court held that rejection of the medical reimbursement claim on the ground that the treatment had been taken from a hospital which was not on the approved list of the government was not proper. Resultantly, reimbursement was ordered.

15. In Amar Nath Dhingra v. State of Punjab 1997(1) S.C.T. 650, the petitioner had suffered a sudden heart attack and was immediately taken to Batra Hospital, New Delhi. Reimbursement of the claim was opposed by the government but was allowed by the Court.

16. Similarly, in Kultar Singh Virk v. State of Punjab 1997(3) S.C.T. 360, the petitioner''s bill for bye-pass surgery at Escorts, New Delhi had been earlier opposed by the Department, but was allowed by the Court.

17. In Ravi Kant v. State of Haryana 1998(4) S.C.T. 206, Division Bench of this Court IK Id that employees of Cooperative Societies were also entitled to reimbursement of medical bill on the lines of State Government employees.

18. On the request of the Bench, Ms. Naveender P.K. Singh, Advocate assisted the Court and submitted a written brief. Learned amicus curiae was of the view that delay in payment of medical reimbursement to State Government employees should incur interest, and the right to claim medial reimbursement was a part of the right to enjoy a healthy life as enshrined in Article 21 of the Constitution of India.

19. In addition to some of the case cited above, the learned amicus curiae referred to K.P. Singh v. Union of India and Ors., (2001) 10 SCC 167 . Some useful suggestions were also made by the learned amicus curiae. It was suggested that a cut-off date should be fixed for processing the payment of medical reimbursement bills, delay beyond the cut-off date should invite interest

and responsibility for the delay should be fixed on the concerned officials. The policy should be reviewed every 3 to 5 years and guide-lines, for simplication of purchase of medicines and for private treatment should be laid down. Lastly, it was suggested that government should make it mandatory for its employees to buy medical insurance of their choice while the government should only pay the necessary premium (a similar suggestion had indeed been made by Division Bench in para 14 in Shakuntla''s case (supra).

20. The petitioner''s predicament is not an uncommon one. Even medical scientists, psychologists and philosophers have been grappling with the question of why disease strikes a particular person. No clear answer is in sight. To some extent genetics provides a scientific explanation why certain people are more likely to suffer from certain diseases. If all diseases were predictable and completely curable, then we would all be living Utopia. There would be no need for hospitalisation, no medical reimbursement bills to be examined and every one would be healthy. We know that there is no way to predict when and in what manner a particular disease would strike a particular person. And because there is such unpredictability and suddenness about some diseases it is not always possible to get treatment from recognised hospitals.

21. When disease does strike and a person becomes critically ill, the first and foremost thought of the stricken patient is to consult a good Doctor for treatment. In case of many diseases there may be no emergency involved, but in the case of a sudden heart attack or a stroke or even a roadside accident, the sick or the injured man may not have the time to consider whether a particular hospital is recognised by the Government or not. He requires immediate attention therefore, he would go to the nearest hospital of his choice. Naturally treatment is expensive and money is spent on diagnostic tests, X-rays, surgery and nursing etc. Money is also spent on medicines and other items required for purposes of treatment. Therefore, the medical bill could consist of many heads and its reimbursement would require close examination before payment is made but to deny payment on the ground that hospitalisation was at an unrecognised hospital or medical centre is grossly unjust and unfair. Does the Government expect the patient to die in search of a recognised centre when he could very well get treatment from a nearby hospital and survive.

22. The petitioner has been able to satisfy us that he was struck by a heart attack in the wee hours on January 16, 2003. Me was taken to Government Hospital where no heart specialist was available, he was then taken to a private hospital whose Doctor advised that he be removed to a specialised heart hospital nearest to Kaithal. It was, thus, that the petitioner landed at the Patiala Heart and Health Care Institute, Patiala which was nearest to Kaithal. The petitioner deserves reimbursement of his medical bill which was wrongly denied to him. However, the reimbursement shall be in accordance with the rates charged by AIIMS/PGIMER.

23. We feel it is high time that the respondents lay down a firm policy regarding

reimbursement of expenses for emergency medical treatment at an unrecognised Medical Centre/Institute. Government should also consider time-bound reimbursement of medical bills, fixation of responsibility for delay, payment of interest. Lastly it should seriously consider giving employees the option to go in for medical insurance with premium payments to be made by their respective Departments.

24. Resultantly, this petition is accepted and the respondents arc directed to re-examine the medical bill of the petitioner and grant medical reimbursement to him at the rates charged by AHMS/PGIMER. The petitioner shall also be entitled to payment of interest at 9% if the reimbursement is not made within a month of the receipt of certified copy of this order. Furthermore, the petitioner shall be entitled to costs which are assessed at Rs. 5000/-.

