
(2014) 01 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

District Project Coordinator, Sarva Siksha Abhiyan

APPELLANT

Vs

VIDHYA DEVI

RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Citation : 2014 0 NCDRC 59 : 2014 1 CPJ 384

Hon'ble Judges : J.M.MALIK , S.M.Kantkar J.

Advocate : Amit Lubhaya , NIKHIL JAIN

Judgement

1. THE Complainant/respondent Smt Vidhya Devi 's husband Yashwant Singh was working under Rajasthan Primary Education Council (OP -2) in District Primary Education Program on the post of BRCF at Kishangarh Bas. Her husband was suffering from cancer, she got his treatment of cancer at Alwar, then at other private hospitals in New Delhi like AIIMS, Gangaram Hospital, and at Tata Memorial Hospital, Mumbai. However, he died on 13.12.2007. The complainant submitted the bills of Rs.5,24,675/- before the OPs for reimbursement. The OP denied for the payment of aforesaid medical bills on the ground that, the treatment was taken from private hospitals without proper permission from concerned authorities. Non reimbursement of aforesaid medical bills by the OPs amounts to deficiency in services. The complainant approached District Consumer Disputes Redressal Forum, Alwar (in short, "District Forum ") with a prayer for reimbursement of Rs.5,24,675/- along with costs and compensation towards mental agony.

2. THE District Forum on perusal of the pleadings and evidence accepted the complaint with following order dated 16.04.2010, awarded a sum of Rs.5,24,675/- for reimbursement of medical bills on treatment of her deceased husband along with interest @12% p.a. from date of filing of the complainant, i.e.06.04.2009. An appeal filed against this order was dismissed by the State Commission vide impugned order dated 3.2.2012. This has resulted in filing of the revision petition. We have heard learned Counsels for both the parties. Mr. Amit Lubhya counsel for the petitioners has contended that the impugned order

is not sustainable, being based on incorrect appreciation of law and facts. Expanding on the argument, learned counsel for the petitioners took us through the notification of Rajasthan Civil Services (Medical attendance rules 2008) and copy of Scheme for grant of medical concession to State Government Pensioners . However, in the instant case, as per the allegations in the complaint Mr. Nikhil Jain learned counsel for the complainant on the contrary has argued in support of the impugned order and prays for dismissal of the revision petition.

3. WE have considered the rival contentions and perused the record. It is undisputed that the complainant suffered medical expenses on her husband 's treatment of cancer. We agree that it was the administrative decision of OP for the reimbursement of the claim, the Complainant got the treatment of her husband from the private hospital and outside the State without taking permission from the State Government and the Tata Memorial Hospital, Bombay is neither empanelled not a Government hospital. Therefore, to ascertain the reality and truth we need to see the rules prevalent before the death of the deceased herein. It is pertinent to note that, during hearing on 5.12.2013, we have ordered as follows: ""The Learned Counsel for the Petitioners is directed to file rules, which were prevalent in the year 2007 because it is made clear that the rules dated 16.09.2008 have no application in this case. The matter is adjourned to 09.01.2014 "".

Despite our specific direction in the said order, the petitioner produced, the notification of Rajasthan Civil Services (Medical attendance rules 2008) and the order dated 27.11.2009 No. F.6 (4) FD (Rules) / 03 Pt -1 regarding "" Reimbursement of cost of implants, medical attendance and treatment in private or charitable hospitals within the State, pertaining to the period prior to 16.09.2008 "". These rules of 2008 are not applicable in the instant case , which also lack an y details pertaining to referral hospitals outside the state.

4. WE have procured the Rule 7 of the Rajasthan Civil Services Medical Attendant Rules 1970 (for short 1970 Rules) and noted a valuable office memorandum of The State of Rajasthan vide No. F.12 (1) FD / (Gr -2) / 89 dated February 21, 1989 which has identified and recognized following hospitals as referral hospitals outside the State having facilities for specialized treatment: - (a) Bypass Coronary Surgery: (i) Christian Medical College and Hospital Vallore; (ii) K.E.M. Hospital, Bombay; (iii) Jaslok Hospital, Bombay; (iv) Bombay Hospital, Bombay; (v) Apollo Hospital, Madras. (b) Kidney Transplant: (i) Christian Medical College and Hospital, Vallore; (ii) All India Institute of Medical Sciences, New Delhi; (iii) Post Graduate Institute, Chandigarh; (iv) Jaslok Hospital, Bombay. (c) Blood Cancer: (i) Tata Memorial Hospital, Bombay; (ii) Cancer Institute Adayar, Madras. (d) Complicated heart surgery Cases: (i) Christian Medical College and Hospital Vallore; (ii) K.E.M. Hospital, Bombay; (iii) All India Institute of Medical Sciences, New Delhi; (iv) Bombay Hospital, Bombay; (v) G.B. Pant Hospital, Delhi; (vi) Post Graduate Institute, Chandigarh.

The Ld. Counsel for the Complainant vehemently argued that the deceased was

suffering from cancer and had undergone private treatment outside the State in grave exigencies as the disease was fatal. According to Rule 10 of the Rajasthan Civil Services (Medical attendance rules 2008), about Treatment including specialized treatment, outside Rajasthan in hospitals other than Government hospitals, under Rule 10(3) it is clear that, : If a Government servant undertakes indoor treatment of life threatening disease like kidney, heart and some sudden accident, in a private hospital outside the State, without reference in cash of emergent circumstances, Government may allow reimbursement of the medical expenses incurred upto the cost of treatment, that would have been incurred had the treatment been taken in SMS Hospital, Jaipur and if facility of that treatment is not available in SMS Hospital, Jaipur up to the cost of treatment at AIIMS, New Delhi upon such emergent circumstances being explained satisfactorily. No Travelling Allowance shall be admissible in such cases.

5. WE have further put more reliance upon various authorities from Hon "ble Supreme Court It is well settled that right to health is an integral to right to life. Their Lordships of the Supreme Court in *Surjeet Singh v. State of Punjab and Ors.*, JT 1996 (2) SC 28, indicated as under: -(Para 10) "It is otherwise important to bear in mind that self preservation of one"s life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self preservation has a species in the right of self defence in criminal law. Centuries ago thinkers of this Great Land conceived of such right and recognised it.

6. IN *State of Punjab v. Mohinder Singh Chawla*, JT 1997 (1) SC 416, Hon"ble Supreme Court held that, Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government Servant. Division Bench of Rajasthan High Court in *Shanker Lal v. State of Rajasthan*, (2000) 3 WLC (Raj.) 585 = RLW 2001(1) Raj. 1, observed thus: - (Para 25) "It is clear that Escorts Heart and Research Institute is one of the recognised Hospital for specialised treatment, there is no escape from the conclusion that the State Government is liable to reimburse such expenses without insisting for certification from the authorised Medical Attendant or other competent officer, when such a facility was not available in the State of Rajasthan."

7. WE can assess that, the Cancer disease is fatal one and anxiety of family members is to prolong the life at the maximum extent. There was a provision for referral of cancer patient to Tata Memorial Hospital, Mumbai. Our sympathy is with the complainant, who is a poor widow running from pillar to post since seven years. The claim of complainant about the expenditure incurred and bills is genuine. Hence, the denial of reimbursement of medical bills is unjust and not proper on behalf of OPs and a deficiency in service.

8. ACCORDINGLY , we dismiss this revision petition with no orders as to costs.