

(2021) 09 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal (MA) No. 71 Of 2018

Om Parkash And Others

APPELLANT

Vs

Bhupender Singh

RESPONDENT

Date of Decision : 09-09-2021

Acts Referred:

Jammu And Kashmir Consumer Protection Act, 1987 — Section 3, 17
Employees Insurance Act, 1948 — Section 75(3)

Citation : (2021) 09 J&K CK 0008

Hon'ble Judges : Pankaj Mithal, CJ; Puneet Gupta, J

Bench : Division Bench

Advocate : Pranav Kohli, Vikas Mahajan

Final Decision : Dismissed

Judgement

Pankaj Mithal, CJ

1. In this Miscellaneous Appeal filed under Section 17 of the Jammu & Kashmir Consumer Protection Act, 1987, the challenge is to the order dated 22.12.2017 passed by the Jammu & Kashmir State Consumer Disputes Redressal Commission, Jammu, hereinafter referred to as 'Commission', in the complaint filed by the respondent-Bhupinder Singh claiming reimbursement of medical charges in respect of his liver transplant surgery at the Mendanta Hospital Gurgaon.

2. The Commission by the impugned order has permitted reimbursement of the medical claim to the tune of Rs.29,28,435.96/- as the amount spent on treatment as aforesaid with 12% interest on the said amount with effect from the date of filing of the complaint i.e. 10.11.2015 till its payment and a sum of Rs.01 lakh as compensation for the mental agony and harassment suffered by the respondent. The aforesaid amount was directed to be paid within a period of six weeks from the date of the award failing which interest at the rate of 18% was also awarded on the entire amount awarded.

3. The brief facts which gave rise to the above complaint are that the respondent was an employee of the Neptune Plastics, Phase-I S.I.C. Bari Brahamina, Jammu. He was insured with the Employees State Insurance Corporation and had made all required contributions for the relevant period. He fell seriously ill on June 10, 2012 and was taken to the Emergency Ward of Government Medical College (GMC), Jammu. On the advice of doctors, he was shifted to Dayanand Medical College (DMC), Ludhiana, Punjab for specialized treatment where he remained admitted from 11.06.2012 to 17.06.2012. He was advised liver transplant. It was alleged that the senior specialists at D.M.C. Ludhiana, verbally advised the family members of the respondent for emergency treatment and liver transplant which was not possible in that hospital. Accordingly, they advised them to take the respondent to Medanta City Hospital, Gurgaon, which is one of the best in Asia in private sector for such treatment. On the advice of the doctors, the respondent was immediately shifted to the Medanta Hospital, Gurgaon, on 19.06.2012. The doctors there declared his condition to be very serious and advised that he needs immediate liver transplant and surgery of kidney to save his life. Both the surgeries i.e., in connection with the liver transplant and kidney were simultaneously performed in the Medanta Hospital, wherefrom he was finally discharged on 18.08.2012.

4. The respondent in connection with his above treatment and operation at Medanta Hospital, Gurgaon, incurred expenses of Rs.29,28,435.96. Accordingly, he submitted an application for reimbursement of the above amount on 23rd January, 2013 with all necessary details and documents. The respondent, however, did not claim any medical reimbursement in respect of his treatment at G.M.C, Jammu, and D. M. C. Ludhiana. The entire papers relating to the above claim were also submitted to the Medical Officer, ESI Dispensary, Bari Brahamna, but no action whatsoever was taken to consider his claim.

5. The respondent was thus forced to make a complaint to the Commission regarding the deficiency in service of the ESI in considering his medical reimbursement claim (MRC) claiming the said amount with 14% interest and a compensation of Rs. 20 lakhs for deficient services.

6. The complaint was contested by the ESI. It was pleaded that the Commission has no jurisdiction to hear the matter in view of bar under Section 75(3) of the Employees Insurance Act, 1948. It was admitted that MRC from the respondent was received on 31st December, 2013 and the same was placed before the State Medical Commissioner, Baddi (HP), and the claim was rejected. The new State Medical Commissioner who took charge with effect from March, 2014, vide letter dated 24th July, 2014, referred the case of the respondent to the Medical Commissioner, ESIC Headquarters, New Delhi, for consideration of relaxation, if any, and for placing the same before the Technical Standing Committee as per the office memorandum dated 20th February, 2009. On the directions of the Headquarter, the State Medical Commissioner, J&K, processed and sanctioned an amount of Rs. 19,27,491/- as part of the MRC to the respondent but even then

no payment made or orders for release of the same were issued. Subsequently, the ESIC Headquarter, Delhi, returned the original MRC of the respondent along with the guidelines for reimbursement for liver transplant surgery to be placed before the Technical Committee for examination. A Technical Committee was constituted on 3rd August, 2015, with five members who gave its recommendations to the effect that expenditure for the treatment of the respondent at D.M.C. Ludhiana from 11th June, 2012 to 17th June, 2012 may be reimbursed as his emergency admission therein is justified. Thus, it was submitted that the respondent is not entitled to any reimbursement except for his treatment at D.M.C. Ludhiana, for which he has not submitted any claim.

7. The Commission repelled the technical contention of the ESI that it has no jurisdiction to hear the matter observing that the issue is no longer res-integra inasmuch as a larger Bench of the Apex Court in *Kishore Lal v. Chairman, Employees' State Insurance Corporation* : (2007) 4 SCC 579, after elaborate discussion viz-a-viz Section 3 of the Consumer Protection Act which is *pari materia* with the Jammu & Kashmir Act of 1987, has laid down that ESI Act does not extinguish the jurisdiction of the Consumer Fora as the Consumer Protection Act provides an additional or alternative remedy.

8. The aforesaid decision was followed in a later Supreme Court decision in *Trans Mediterranean Airways v. M/s Universal Exports & anr.* : AIR 2011 SCW 6028.

9. As regards the merits of the complaint made by the respondent, the ESI accepts the ailment of the respondent, his admission in G.M.C. Jammu, treatment at D.M.C. Ludhiana and of liver transplant at Medanta Hospital, Gurgaon, and that he had incurred expenses of Rs.29,28,435.96 only for his treatment at Medanta Hospital. The Commission also observed that at one stage ESI sanctioned a sum of Rs.19,27,491/- but it was subsequently put on hold for no reason and even the said payment was not made for no justifiable reason. It also recorded a finding that no legal impediment was established in sanctioning of Rs.29,28,435.96/- as the claim to that effect was most genuine. The Commission, accordingly, made the award as mentioned above.

10. Sh. Harshwardhan Gupta, learned counsel for the ESI-appellants, submits that the Commission has erred in not considering the office memorandum dated 15.05.2013 which specifically lays down the guidelines for reimbursement of medical claims in cases of liver transplant surgery. According to him, the liver transplant surgery is a planned surgery and, therefore, prior permission has to be obtained before undertaking it and since there was no such permission, the respondent is not entitled to any reimbursement.

11. Sh. Pranav Kohli, learned Amicus Curaie on behalf of the respondent, contended that it was a case of extreme urgency and that the respondent was admitted to G.M. C. Jammu and then to D.M.C., Ludhiana, without wasting any time and it was on the advice of the medical experts that he was shifted to Medanta Hospital, Gurgaon. There was no time gap between the shifting except

for a day where, on medical advice, liver transplant and kidney surgery was undertaken forthwith. In these circumstances, it is incorrect to allege that it was not a case of extreme emergency and that prior permission was necessary. He has further argued that even in cases where such emergency surgery is performed, the Technical Committee can grant ex-post facto permission. The ESI failed to consider the matter for ex-post facto sanction and the decision of the Technical Committee is completely silent as to why such ex-post facto permission cannot be granted. The MRC of the respondent has been brushed aside by the Technical Committee by only saying that he is entitled to reimbursement for the expenses of treatment at D.M.C. Ludhiana and for which no claim was raised by the respondent. It fails to record reason for not accepting the claim for treatment of Medanta Hospital, Gurgaon.

12. The only issues before us in the facts and circumstances of the case is whether the MRC of the respondent can be defeated for want of prior permission in getting the liver transplant done as per the office memorandum and whether the ESI manifestly erred in not specifically considering the case of the ex-post facto grant of permission.

13. In order to answer the above issues, it would be appropriate to refer to the office memorandum dated 15.05.2013.

14. The aforesaid office memorandum lays down guidelines and ceiling rates for liver transplant surgery in respect of ESI beneficiaries. It is an admitted fact that respondent is an ESI beneficiary and is entitled for consideration of his MRC in respect of his liver transplant.

15. The aforesaid office memorandum vide Clause VI provides for the reimbursement criteria. It reads as under:

"VI. Reimbursement Criteria:

As Liver Transplant Surgery is planned surgery and therefore, prior permission has to be obtained before surgery is undertaken. However, if for some reason it is done in emergency to save the life of patient, the Technical Committee as given in clause IV above shall consider the cases referred to it for recommending grant of ex-post facto permission on a case to case basis."

16. A plain reading of the aforesaid clause reveals that though liver transplant surgery may be a planned surgery and, therefore, in the ordinary course has to be undertaken after prior permission but in case of extreme urgency to save the life of the patient, the Technical Committee may recommend for grant of ex-post facto permission.

17. In the case of the respondent, as alleged by him, liver transplant was conducted in extreme emergency to save his life and, as such, there was no time for him or his family members to have obtained prior permission of the Technical Committee. The Technical Committee has not considered and referred the matter for grant of ex-post facto permission as envisaged in Clause VI of the office

memorandum.

18. In connection with the ex-post facto permission, the respondent has only been informed that as per the Technical Committee's report medical reimbursement for the period from 11.06.2012 to 17.06.2012 for treatment at D.M.C. Ludhiana, is found payable for which, as the respondent has not raised any claim, therefore, nothing is payable to him. The very reading of the aforesaid communication dated 15.10.2015 sent to the respondent by the Dy. Director, State Medical Commissioner, J&K Region, clearly demonstrates that the Technical Committee has not applied its mind as to the MRC of the respondent for the grant of ex-post facto permission rather has mis-guided itself for the period of his treatment at D.M.C, Ludhiana despite the fact that the respondent has not claimed any medical reimbursement for the said treatment.

19. It is pertinent to mention here that there is no material or document whatsoever on record which may prove that the matter of grant of ex-post facto permission to the MRC of the respondent was specifically considered by the Technical Committee and was rejected and, if so, the reasons for such rejection. The letter of the Dy. Director, Employees State Insurance Corporation dated 29.04.2015 on record addressed to the Director General clearly states that the claim of the respondent is genuine and that he is entitled for super specialty benefit for his treatment. He has undergone liver transplant in the Medanta Hospital, Gurgaon, a private hospital but duly recognized by ESIC and that the hospital had remained empanelled by ESIC.

20. This apart, there appears to be no justification on part of the appellants for not having released or paid the sum of Rs. 19,27,491/- which was originally sanctioned by the then State Medical Commissioner, Jammu & Kashmir.

21. In view of the aforesaid facts and circumstances and keeping in mind that the respondent is a beneficiary of ESI; that he has undergone liver transplant at a recognized private hospital and had incurred an expenditure of Rs. 29,28,435.96/-, we are of the opinion that the Commission has not erred in law in awarding the same with interest and a token amount of Rs. 1 lakh as compensation for harassment and mental agony suffered by the respondent due to non-consideration of his MRC.

22. The decision of the Supreme Court in *State of Punjab & Ors. v. Ram Lubhaya Bagga* : AIR 1998 SC 1703 has no application in the present case as it only lays down that medical policy gives choice to the employees to undertake treatment in private hospitals of their choice anywhere in the Country and the State Government is liable to reimburse medical expenses fixed by the Director, Health and Family Welfare and that medical reimbursement at the rates prescribed by the AIMS is permissible and not the full expenditure incurred at the private hospital.

23. Similarly, the decision in the case of *State of Karnataka & Anr. v. R. Vivekananda Swamy* : AIR 2008 SC 2080, simply lays down that claim for

reimbursement must be made in terms of the rules and not de hors the same.

24. In the case we are dealing with, MRC of the respondent is in consonance with the office memorandum. Thus, both the decisions in no way benefit the appellants.

25. Accordingly, we find no merit in this appeal and the same is dismissed.