
(2010) 05 P&H CK 0232
In the Punjab And Haryana At Chandigarh

State of Haryana and Others

APPELLANT

Vs

Mrs. Veena Kumari

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2010) 05 P&H CK 0232

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—The dispute in the present Regular Second Appeal is in regard to the payment of medical reimbursement of the respondent-plaintiff. Respondent-plaintiff was working as J.B.T Teacher and was availing her summer vacation at Delhi during June 1998. Due to her sudden illness, she was taken to reputed Vidya Sagar Institute of Mental Neuro Sciences Hospital, Nehru Nagar, Delhi (hereinafter referred to as "Hospital"). The respondent-plaintiff was found to be having a brain tumour for which she was urgently operated upon on 16.6.1998 to save her life. She, thus, remained hospitalised from 15.6.1998 to 28.6.1998. She incurred total expenditure of Rs. 71,639/- on her treatment.

2. The pleadings would show that prior to taking the respondent-plaintiff to the hospital, she was taken to AIIMS, but was apprised by the doctors that there was long queue of the patients waiting for operations and it may take three months to operate her. In this background, she had got herself operated from the Hospital and accordingly made a claim for reimbursement of the cost, which was turned down. Ultimately, she filed a civil suit to claim the reimbursement of the cost. The Civil Court, however, decreed the amount as per AIIMS/PGI rates. The appellant-State had filed appeal against this order alleging that the judgment under decree passed by the Trial Court is contrary to the Government policy and instructions. Respondent-plaintiff filed cross objections in the appeal filed by the Government, claiming that she would be entitled to reimbursement of full

amount of medical expenditure and not at AIIMS/PGI rates.

3. It appears that the appellant-State has mainly filed the appeal on the ground that the bills were not submitted within six months of completion of the treatment. The first Appellate Court, however, took a view that the restrictions imposed by the Trial Court were not justified and accordingly directed that the full amount spent by the respondent-plaintiff be reimbursed and dismissed the appeal filed by the State and allowed the cross-objections filed by the respondent-plaintiff. The State has accordingly filed this Regular Second Appeal.

4. The Regular Second Appeal was filed with a delay of 497 days. Notice on this application of condonation of delay was issued on 11.1.2007 and the matter has been adjourned ever since that date for arguments without considering the application for condonation of delay. On 7.11.2007, the case was adjourned with a direction to the counsel to specify as to what will be the amount due to the respondent-plaintiff at PGI/AIIMS rates. This apparently was in the background that the State had placed reliance on the case of State of Punjab v. Ram Lubhaya Bagga 1998 (1) SCT 716, where it was viewed that reimbursement at PGI/AIIMS rates was only permissible. The appeal was subsequently adjourned on different dates, when on one day, the comparative chart was furnished by the State counsel alongwith demand draft of Rs. 47,239/-, which as per the State was the amount due, according to the PGI/AIIMS rates. Still, the application for condonation of delay was not considered.

5. While adjourning the appeal, the proceedings before the Executing Court were stayed on 18.12.2008. On 10.8.2009, the counsel for the appellants had taken time to ascertain as to what policy for reimbursement would be applicable at the relevant time of hospitalization of the respondent-plaintiff and also to ascertain whether the amount sanctioned was as per the said policy. No response, however, was received till 9.3.2010, when the counsel were told to sit together and sort out the issue in terms of the policies as applicable.

6. It is, thus, seen that the application seeking condonation of delay was never taken up for consideration during all this while. The policy, which was applicable at the relevant time, has also not apparently been placed on record or otherwise indicated. Accordingly, before deciding the issue on merit, the application of the State, praying for condonation of delay is to be considered.

7. The reasons for the delayed approach on the part of the State, as discerned from the application, are that Legal Remembrancer was of the view that it was not a fit case for filing Regular Second Appeal before the High Court. This was when the District Attorney, Ambala, informed him about the judgment passed on 13.7.2005. Legal Remembrancer accordingly addressed a communication to D.P.E.O., Ambala, that no further action be taken with regard to filing of the Regular Second Appeal. It is further stated that to comply with the judgment and decree, the bill submitted by the respondent-plaintiff was submitted to the Director, Primary Education, Haryana, for sanction. The Director instead accorded

sanction for amount of Rs. 17239/- out of the bill of Rs. 71,639/-. Thereafter, the respondent-plaintiff filed an execution for payment of the complete amount as ordered in the Judgment and decree. To comply with the direction of the Executing Court, Department was approached for sanctioning the complete amount. A decision was then taken to file the present appeal. The sanction to file the R.S.A was accorded on 17.11.2006 and this appeal was ultimately filed on 8.1.2007.

8. In the reply filed, the respondent-plaintiff has rightly highlighted that instead of comply with the direction issued by the Courts and the Executing Court, the Department chose to file this Regular Second Appeal just to escape the liability and this can not be considered as sufficient reason or ground to justify this delayed approach.

9. It is rather disheartening to notice that an employee has been made to approach one Court after another just to get reimbursement of a medical expenditure incurred by her to which she is entitled as per the Government policy. Further sad it would be to notice that the claim for reimbursement is of 1998 vintage. When the appellant-State had declined to make this payment, the respondent-plaintiff had to make an approach before the Court of law. Her suit was decreed on 14.3.2005, against which the first appeal was dismissed on 30.5.2005. Decision was taken not to contest the same but still the payment was not made. The respondent-plaintiff had to approach the Executing Court for realising the decretal amount. It is not understood how the Director, Primary Education, could sanction Rs. 17,239/- whereas the decree was for Rs. 71,639/-. Still, no amount was paid to the respondent-plaintiff. This is to be viewed in the background that ultimately the State itself found that the respondent-plaintiff would be entitled to a sum of Rs. 47,239/-, which was brought by way of demand draft and supplied in the Court on 3.12.2008. How would, thus, the action of Director, Primary Education in sanctioning Rs. 17,000/- odd be justified? It obviously shows that the State has not been fair in dealing with the respondent-plaintiff and has created one hurdle after another in paying the reimbursement of the medical amount spent by the respondent-plaintiff on her treatment. The appellant-State appears to have changed track in filing appeal before this Court, when it was being asked to make payment by the Executing Court.

10. Will these facts justify to condone the delay of 497 days in filing the appeal? This certainly is not a sufficient ground or cause for the State to pray for condonation of delay, which is not of any negligible period and is of 497 days. The reasons advanced can not be considered justified or concrete. Section 5 of the Limitation Act does not allow absolute exclusion and permits exclusion as a matter of discretion. No sufficient cause is made out from the reasons as disclosed to condone this delay. Rather, justification would be seen lying on the other side, which is quite clear from the facts that State had initially decided not to contest the litigation further after getting the decision by the first Appellate

Court.

11. Accordingly, without going into the merits, I would dismiss this appeal only on the ground of limitation as the delay has not been properly and sufficiently explained to call for condonation thereof.