
(2017) 05 AHC CK 0018
In the Allahabad High Court
Case No : 1338 of 2017

Virendra Kumar Kashyap

APPELLANT

Vs

Director (Medical), E.S.I.C.

RESPONDENT

Date of Decision : 02-05-2017

Acts Referred:

[Employees Insurance Act, 1948](#), Section 57

Citation : (2017) 05 AHC CK 0018

Hon'ble Judges : Ashok Kumar

Bench : Single Bench

Advocate : Satyendra Kumar Singh, Rajesh Tewari

Judgement

1. Heard Sri Satyendra Kumar Singh, learned counsel for the appellant and Sri Rajesh Tewari, counsel representing the sole respondent.
2. The parties are agreed for decision of the present appeal at the admission stage itself.
3. By means of the present appeal the appellant Virendra Kumar Kashyap has challenged the order dated 25.02.2017 passed by the Employees Insurance Court/Civil Judge (Sr. Div.), Ghaziabad, passed in ESI Appeal No. 01/2007 (Sri Virendra Kumar Kashyap v. Director (Medical), Employee's State Insurance Corporation).
4. Learned counsel for the appellant has framed following question of law for consideration and opinion of this Court:- "(i) Whether sub-section (2) of Section 57 of the Employees State Insurance Act debar the insured person under the Act to seek medicare and treatment from the other hospital, other than ESI Hospital, when such hospital has no facility for treatment required by the insured person?

(ii) Whether sub-section (2) of Section 57 of the Employees State Insurance Act debar the insured person under the Act to seek medicare and treatment from the other hospital, other than ESI Hospital, when such hospital refuses to treat the

insured person as per his requirement?

(iii) Whether sub-section (2) of Section 57 of the Employees State Insurance Act is violative of fundamental right of the insured person to get treatment from the other hospital, required to treat the disease/injury/eventuality?

(iv) Whether sub-section (2) of Section 57 of the Employees State Insurance Act is violative of fundamental right of the insured person to get treatment from the other hospital, as required and to get reimbursement from the co-operation?"

5. The Employees Insurance Court has rejected the claim of the appellant amounting to Rs. 41,157.50/- being medical expenses.

6. The claim of the appellant, who was working in one M/s Hanug Toys India, Pvt. Ltd. Noida, Gautam Budh Nagar that he is duly insured within the aforesaid company vide Insurance No. 7621072. The allegation in the claim petition filed by the appellant before the Employees Insurance Court was that on 18.03.2003 the leg of the appellant was fractured and he was taken to E.S.I. Hospital, Sector 24, Noida, District-Gautam Budh Nagar for the treatment of his fractured leg.

7. It is submitted by the counsel for the appellant that the appellant was remained in the said E.S.I. hospital Sector 24, Noida, in the emergency ward for about the 45 minutes in a serious condition and despite his repeated requests made for the treatment no treatment was provided to the appellant. Further, submission of the appellant's counsel is that the excuses of the E.S.I. Hospital was that since there was no specialist available for the treatment of bone ailment when the appellant was admitted, therefore, the attendant, who was present at the hospital, has advised the appellant to leave the hospital and to take the treatment from some other hospital or the treatment will be provided to him on the next morning.

8. The contention of the counsel for the appellant is that since the condition of the appellant was serious and the appellant was not in a condition to leave the hospital without the treatment, hence, on the advise of the hospital staff the appellant has been admitted in a private hospital, namely, Satya Medical Centre, Sector- 34, Noida, District-Gautam Budh Nagar, where he was treated and for the treatment he has paid a sum of Rs. 41,157.50/-.

9. On the basis of the alleged payment for the treatment and the expenditure incurred amounting to Rs. 41,157.50/- the bills of expenses incurred in medical treatment have been placed.

10. The contention of the learned counsel for the appellant is that the respondent authorities failed to clear the bills towards the expenses despite repeated requests and therefore the appellant has filed E.S.I. Appeal No. 01/2007.

11. The Court below, namely, Employees Insurance Court/Civil Judge (Sr. Div.), Ghaziabad in E.S.I. Appeal No. 01/2007 has considered all the issues and has concluded by recording the finding that the appellant was insured so as claimed

as such has been allotted the insurance number and further, that the appellant went to the E.S.I. Hospital on 18.03.2003 for the treatment of his broken leg, but, the allegation of the appellant is not correct that he was not treated properly, hence, he has left the E.S.I. hospital for the treatment in another private hospital. The Court below has recorded its finding, which is based on paper No. 21-C which is the comment of the C.M.O. which clearly indicates that the appellant did not went to nursing counter for the treatment and disappeared for city department. The C.M.O. has also mentioned in its report that on account of the aforesaid reasons the claim made by the appellant cannot be considered for reimbursement of the amount.

12. The Court below has gone through the entire material and has recorded a categorical finding that in the present case the appellant has not produced any certificate indicating that the appellant has been referred for the treatment to another hospital, issued by the E.S.I. Hospital.

13. The Court below has also considered the provisions of Section 57 of the Employees State Insurance Act, 1948, which provides that any insured workmen/ person or his family members shall be entitled to receive the medical benefit only of such kind and on such scale as may be provided by the [State] Government or by the Corporation. Further, Section 57 provides that an insured person or, where such medical benefit is extended to his family, his family shall not have a right to claim any medical treatment except such as is provided by the dispensary, hospital, clinic or other institutions to which he or his family is allotted, or as may be provided by the regulations.

14. Sub clause (2) of Section 57 of Employees State Insurance Act, 1948 provides that nothing in this act shall entitle an insured person and (where such medical benefit is extended to his family) his family to claim reimbursement from the corporation of any expenses incurred in respect of any medical treatment, except as may be provided by the regulations.

15. The Court below has noticed that in the present case the appellant has been treated in a private hospital since the appellant admittedly approached the private hospital for the treatment and since the Director (Medical) Employees State Insurance Corporation provides that medical facility to the insured persons, hence, the claim of the expenses/expenditure for treatment is allowable when the person entitled is being treated at the hospital of the corporation and not otherwise. The Court below has also considered this aspect of the matter that the appellant has not even produced any material or evidence by which he can show the genuineness of his claim, further, it is not a case where treatment facility is not available to the insured person and the matter is referred to some other hospital.

16. The Court below has also noticed and examined the paper 21-C and the comments of the C.M.O. certifying therein that the appellant did not went to the nursing counter for the treatment and as such disappeared for city department of

E.S.I. Hospital.

17. It is further noticed by the Court below that the appellant went to a private hospital on its own and for that purposes no reference letter has been issued.

18. In view of the aforesaid reasons, the claim petition filed by the appellant has been dismissed by the Court below.

19. As indicated here-in-above, the case of the appellant is not covered under the provisions of sub Section 2 of Section 57 of the Employees Insurance Act, 1948. Admittedly, the appellant has approached the private hospital for the treatment without any reference for the same and the comment of the C.M.O. clearly indicates that the appellant never went to the nursing counter for the treatment as such disappeared. Once the Court below arrived to the aforesaid findings, after due consideration of the evidence, and admittedly, no material has been adduced by the appellant in support of his case, the order impugned is fully justified and there is no error in rejecting the claim of the appellant by the Court below.

20. The question referred are answered accordingly.

21. In view of the aforesaid, this appeal is dismissed.