

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH

OA No. 55 of 2017

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Shri Shridhar Samal.

(The applicant died during the pendency of the case and was substituted by his legal heirs named below vide order dated 16.08.2019)

2. SmtShantilataSamal, aged about 60 years, W/o Late Sridhar Samal.
3. Shri Sangram KesariSamal, aged about 49 years, S/o Lae Sridhar Samal.
4. Ms. Snigdharani Pradhan, aged about 45 years, D/o Late Sridhar Samal.
5. MugdharaniSamal, aged about 42 years.

All are resident of At Deulbandh (Near Railway Line) PO Modipara, PS – Sambalpur Town, Dist- Sambalpur, PIN – 768002, Odisha.

.....Applicant.

VERSUS

1. Union of India, Ministry of Communication & IT,
Department of Post represented through its
Secretary, Dak Bhawan, Sansad Marg, New Delhi
– 110001.
2. Chief Post Master General, Odisha Circle,
Bhubaneswar, Dist – Khurda, Pin – 751001.
3. Post Master General, Sambalpur Region,
Sambalpur At/P.O./Dist – Sambalpur.
4. Superintendent, RMS-K Division, Jharsuguda,
At/P.O./P.S./Dist – Jharsuguda.

.....Respondents.

For the applicant : Mr. T. K. Mishra, Advocate.

For the respondents: Mr. B. Swain, advocate.

Heard & reserved on :23.03.2021 Order on: 17.06.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant no. 1 who was employee of the respondent department had filed this OA challenging the order dated 15.09.2016 in not granting the total claim amount as per the bill issued by Apollo Hospital and for refund the amount

recovered from him. During the pendency of the OA, applicant no 1 expired and was substituted vide order dated 16.08.2019 by his legal heirs i.e. applicant nos. 2-5. The applicant has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) To quash the order dated 15.09.2016 in not granting the total claim amount as per the bill issued by Apollo Hospital.
- (ii) To direct the respondents No. 2 to disburse the rest claim of Rs. 1,76,218 out of Rs. 4,49,468/- and
- (iii) To direct the respondents to refund sum of Rs. 87,000/- which has been recovered from the salary of the applicant;
- (iv) And any relief/reliefs be passed in favour of the applicant as this Hon'ble Court deem fit and proper.

2. The brief of the case as inter alia averred by the applicants is that the while applicant no. 2 was suffering from Osteo Arthritis-B/L Knee was referred to Apollo Hospital for treatment. Before treatment the consultant doctor of the hospital had estimated a sum of Rs. 5,30,000/- approximately for treatment and on 18.06.2012 a sum of Rs. 1,97,000/- was given as advance to the deceased husband of applicant no. 1 and the amount was issued in favour of Apollo Hospital. After applicant no. 1 was discharged from the hospital her husband submitted the bill totalling Rs. 4,49,468/- for reimbursement, but the respondents directed to recover a sum of Rs. 87,000/- out of the advance of Rs. 1,97,000/- on the ground that as per CGHC package the

rate for the cost of B/L knee replacement is Rs. 1,10,000/-. The said amount of Rs. 87,000/- was recovered from the salary of deceased husband of applicant no.1. The deceased husband of the applicant no. 1 had made series of representations which when remained unanswered, he had preferred OA No. 967/2015 which was disposed of by this tribunal vide order dated 27.01.2016 directing respondent No. 2 to consider and dispose of the representation of the deceased husband of applicant no. 1 in accordance with rules. The applicant submitted that the respondents then sanctioned total amount of Rs. 2,73,250/- and after deducting Rs. 1,10,000/- given as advance, an amount of Rs. 1,63,250/- was paid to the deceased husband of applicant no.1. The applicant submits that Respondent No. 2 has not at all shown any cause or reason of non sanction of other charges shown in the bill by the hospital concerned.

3. The respondents in their counter inter alia averred that after receipt of order of this Tribunal in OA No. 967/2015 dated 27.01.2016, the respondents examined the matter and sanctioned the medical reimbursement in the following manner:
 - a) The CGHS package rate for bilateral total knee replacement amounting to Rs. 1,10,000/- only and cost of medicine vide ward pharmacy amounting to Rs. 36,367/- be reimbursed.
 - b) In addition cost of knee implant for two knees limited to Rs. 1,20,000/- (limited to Rs. 60,000/- per knee X 2) and cost of Bone cement of Rs. 6574/- as claimed

also be reimbursed vide GID-19 under Rule 8 of Swamys MA Rules and orders accordingly.

And accordingly an amount of Rs. 2,73,250/- was sanctioned out of the claimed amount of Rs. 4,49,468/- The respondent further submitted that package rate shall means and include lumpsum cost of in-patient treatment/day care/diagnostic procedure for which a CS (MA) beneficiary has been permitted by the Competent Authority or for treatment under emergency from time of admission to time of discharge including (but not limited to) (i) admission charge (ii) registration charges (iii) accommodation charges including patient's diet (iv) operation charges (v) injection charges (vi) dressing charges (vii) doctor/consultant visit charges (viii) ICU/ICCU charges (ix) monitoring charges (x) transfusion charges (xi) anaesthesia chares (xii) operation theatre charges (xiii) procedural charges/surgeons fee (xiv) cost of surgical disposales and all sundries used during hospitalization (xv) cost of medicine (xvi) related routine and essential investigations (xvii) physiotherapy charges et (xviii) nursing care and charges of its services. Further cost of implants is reimbursable in addition to package rates as per ceiling rates for implants. As such ward charges are not reimbursed separately and cost of implants claimed by the applicants ae limited to ceiling rates as applicable.

4. The applicants in the rejoinder inter alia submitted that their case was coming under CS (MA) Rules 1944 and CGHS rates are not applicable to the claim made by the deceased employee. Hence the department passing the claim under CGHS rate is not correct.
5. Heard the learned counsel for both the sides and have carefully gone through their pleadings and materials on record.
6. Learned counsel for the applicants submitted that the GID 19 under Rule 8 of Swamy Rules by which the ceiling for amount reimbursable was calculated was effective from 01.04.1995 and will remain in operation for a period of 5 years and the wife of the deceased employee was admitted in 2012, hence the rates are not applicable in this case. Hence the applicants should get the full amount.
7. It is seen from the records that the deceased employee (husband of applicant No. 1) had taken approval of the competent authority before getting treated at Apollo Hospital and had submitted an estimate of Rs. 5,30,000/- for taking advance. Based on the estimate the advance amount of Rs. 1,97,000/- was sanctioned. The respondents had first restricted the amount to Rs. 1,10,000/- and had recovered Rs. 87,000/- from the salary of deceased employee i.e. husband of applicant no. 1. Thereafter in compliance of order of this Tribunal dated 27.01.2016, the respondents re-examined his case and total claim was restricted to Rs. 2,73,250/- and released

Rs. 1,63,250/- to the applicant. The respondents have remained silent on the issue if the order dated 07.03.1995 by which maximum ceiling was fixed for cost of knee implant which was fixed initially for 5 years was extended or not from time to time.

8. Bangalore Bench of this Tribunal in the case of C. K. Nagendra Prasad vs. Regional Provident Fund Commissioner and Union of India (OA No. 65/2012) in para 18 of the judgment had held that “EPFO cannot apply any ceiling/package rates of CGHS to the beneficiaries of CS (MA) Rules 1944 to that effect”. In this case the applicants have argued that he is entitled to full reimbursement since there were no order as regards to ceiling prescribed. In the case of Shiv Kant Jha vs Union of India, the Hon’ble Supreme Court in its order dated 13.04.2018 held that “13... Real test must be the factum of treatment.... Once, it is established, the claim cannot be denied on technical grounds....”
9. In view of the aforementioned facts and circumstances, there appears to be justification for reconsideration of the applicant’s claim for full reimbursement of Rs.4,49,468/-. Accordingly, the respondents are directed to reconsider the claim of the applicants in accordance with rules and the guiding principle laid down by the Hon’ble Supreme Court in the case of Shiv Kant Jha (supra) and pass a reasoned and speaking order, as regards to disposal of the claim of the applicant, to be communicated to the

applicant within a period of two months from the date of receipt of copy of this order.

10. The OA is accordingly allowed with above observation but in the circumstances without any order to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)