

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 714 OF 1998.

Date of Decision : 07.01.1999.

Prabhakar Dhondiba Kawade, Petitioner.

In Person. Advocate for the Petitioner.

VERSUS

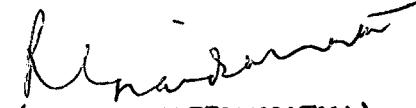
Union Of India & Others, Respondents.

Shri R. R. Shetty for
Shri R. K. Shetty, Advocate for the Respondents.

CORAM :

HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

- (i) To be referred to the Reporter or not ~~2~~ ND ~~ND~~
- (ii) Whether it needs to be circulated to ~~2~~ ND ~~ND~~ other Benches of the Tribunal ?


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 714 OF 1998.

Dated the 7th day of January, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

Prabhakar Dhondiba Kawade,
Stenographer Grade-III,
Department of Anatomy Armed
Forces Medical College.

Residential Address :

Survey No. 283,
Shirke Nagar,
Mundhawa A.V. Pune - 411 040.
(Applicant in Person).

... Applicant

VERSUS

1. Union Of India through
Defence Secretary,
Ministry of Defence,
New Delhi - 110 011.

2. Commandant,
Armed Forces Medical College,
Pune - 411 040.

3. Director General,
Armed Forces Medical Services,
Ministry of Defence,
New Delhi.

... Respondents.

4. Controller of Defence Accounts,
(Southern Command),
Near G.P.O.,
Pune - 411 001.

(By Advocate Shri R. R. Shetty for
Shri R. K. Shetty).

: OPEN COURT ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application filed for reimbursement of medical expenses. The respondents have filed reply opposing the application. I have heard the applicant who appeared in person and the Learned Counsel for the respondents.

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2. The applicant who is working as a Stenographer in the Armed Force, Medical College at Pune, was going on his scooter on 27.08.1990. It appears that his wife was sitting on the pillion seat. It appears that he fell down from the scooter alongwith his wife. Though the applicant sustained some minor injuries, his wife sustained serious injuries and she was admitted to a nearest hospital called Sharda Clinic at Pune. She underwent an operation in that hospital. The applicant spent Rs. 8,533.00 for treatment of his wife. Then the applicant preferred a claim for medical reimbursement as per rules. The respondents declined to grant the medical reimbursement. Hence, he has approached this Tribunal for a direction to the respondents to sanction Rs. 8,533.00, being the medical claim preferred by the applicant together with interest.

3. The respondents have filed reply opposing the application. Their case is that, the clinic in question is not recognised by the C.S. (Medical Attendant) Rules, 1944 and, therefore, the applicant is not entitled to reimbursement for medical expenses incurred in anunrecognised private hospital. It is also further stated that the operation in question is not an emergency operation and even on this ground the applicant is not entitled for reimbursement of a treatment given in an unrecognised private hospital. It is, therefore, prayed that the application may be dismissed with cost.

4. The short point for consideration is, whether the applicant is entitled for reimbursement of medical expenses as claimed or not ?

5. There is no dispute that Sharda Clinic at Pune is a private hospital. But it is admitted that it is recognised by the Government of India under the C.G.H.S. Rules. But the respondents' contention is, that the applicant is not covered by C.G.H.S. Rules but he is covered by C.S. (M.A.) Rules, 1944 and this particular hospital is not recognized under these rules.

The object of taking treatment in a recognized hospital is to see that the Government has examined the hospital and the facilities available and the rates, and therefore, it should be recognized by the Government. Here, Sharda Clinic is not altogether an unrecognized private hospital. Admittedly, it is recognized by the Government of India under the C.G.H.S. Rules but there is no separate or formal recognition under the C.S. (M.A.) Rules.

Taking into consideration that the hospital has been recognized by the Government of India under C.G.H.S. Rules, it is not a case of taking treatment by a wholly unrecognized hospital.

6. Even in case of treatment taken in private hospital, there is no blanket prohibition for not giving medical reimbursement. The applicant brought to my notice Swamy's Compilation of the Medical Attendance Rules, 1994 Edition, Appendix VIII, which pertains to reimbursement in relaxation of rules in emergent cases. Therefore, there is a power to the Government to relax

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the rules and grant reimbursement for treatment taken in private hospitals also, provided they are emergent cases.

The relevant rule for our purpose is at page 213 of the said book, which reads as follows :

"In emergent case involving accidents, serious nature of disease, etc. the person/persons on the spot may use their discretion for taking the patient for treatment in a private hospital in case no Government or recognized hospital is available nearer than the private hospital.
...."
(underlining is ours).

Therefore, I find that the rules provide that in case of certain circumstances, treatment in private hospital is permissible. One condition is that, it must be a case involving accident or a serious nature of disease, etc. Here admittedly, it is a case of an accident. The person or persons who are nearby, have a discretion to admit the patient, in such a case, in a private hospital, provided that there is no other hospital nearer than the private hospital.

In this case, the private hospital in question is very near to the spot and according to the applicant, it is about 200 or 300 metres from the spot. The Learned Counsel for the respondents, on instructions, submits that Government hospital or recognized hospital are available at a distance of 2 or 3 kilometers from the spot. Therefore, admittedly, there is no Government

hospital or recognized hospital nearer than the private hospital in question, namely - Sharda Clinic.

7. We must also take into consideration the circumstances under which the applicant was placed. He was riding on a scooter with his wife on the pillion seat and due to the accident, both of them fell from the scooter. Though the applicant sustained minor injuries, his wife sustained serious injuries. In such a case, he has rushed his wife to the nearest hospital available. We cannot expect a person in such a situation to remember the Government Medical Attendance Rules and then think of taking his wife to a recognized hospital. In such a situation, the most important thing for a person is to give immediate medical aid and not to think of reimbursement. The applicant was naturally very anxious about the condition of his wife and rushed her to the nearest hospital available.

The Learned Counsel for the respondents submits that even though the applicant might have admitted his wife to the nearest hospital, it was not a case of emergency operation. This is again a question which cannot be decided academically. The patient is admitted to a private hospital. The Doctor's Certificate which is available in the Government file produced before us shows that the patient was admitted for severe low back-ache following an accidental fall from the scooter. The pain was quite agonising and the patient was not able to move at all. In such a situation, the applicant cannot take the risk of moving or shifting his wife to some other hospital, unless ofcourse, the Doctor himself advises treatment in a

better hospital. When a patient is admitted to the hospital, it is for the Doctor to decide about the course of treatment. It may be, if the person admitting the patient insists to take the patient to some other hospital, the Doctor may discharge with a note that it is a case of discharge against medical advise. We cannot expect the applicant to take risk in such a situation and shift his wife to some other hospital. Infact, the applicant stated at the time of argument that there was a delay in operation by one day because he could not deposit the amount immediately for the surgery.

Taking the facts and circumstances of the case into consideration, I am satisfied that this is a case of applicant admitting his wife to the nearest hospital available and undergoing operation due to agonizing pain and being unable to move about on the advise of the Doctor. Whether it is an emergency operation or not, cannot be decided academically but it has to be decided in the circumstances in which the patient was placed. If the pain was unbearable and agonizing, as mentioned by the Doctor, it cannot be said that it was not an emergency operation. Each case depends on its own facts and circumstances. In case of accidental injuries, one cannot take things leisurely. Further, there is mental anxiety on the part of the applicant to give the best possible treatment to his wife and at that time, his concern is about protecting his wife and not about claiming medical reimbursement. In these circumstances, I am satisfied that the applicant's

claim comes within the rules mentioned above, about taking treatment in a private hospital in emergent cases involving accident, etc.

8. As already stated, this is not strictly a case of wholly unrecognized hospital, since the hospital is recognized by the Government of India, though under the C.G.H.S. Rules and not under the C.S.(M.A) Rules. It is a case of technical non-recognition under a particular rule. The circumstances show that it was a case of emergency treatment and therefore, the applicant had no choice except admitting his wife to the nearest hospital.

On perusal of the file, I find that the department was not prepared to consider the claim of the applicant and one of the grounds was that, he is in the habit of preferring false claim and on an earlier occasion, he had preferred a false claim regarding L.T.C. But the applicant has brought to my notice that on rejection of the L.T.C. claim, he approached this Tribunal and this Tribunal, by order dated 28.08.1992 in O.A. No. 306/1987 allowed the application and directed the administration to grant the L.T.C. claim in full. Therefore, the applicant's L.T.C. claim has been vindicated by the order passed by this Tribunal. I am passing this order in the peculiar facts and circumstances of this case and the circumstances under which the applicant was placed immediately after the accident and the nature of injuries sustained by the applicant's wife and the medical certificate issued by the Doctor showing that her condition was very serious,

since she was suffering from agonizing pain and was unable to move about. Therefore, in the facts and circumstances of the case, the applicant is entitled to get reimbursement of medical claim to the extent as mentioned in C.S.(M.A.) Rules, 1944.

The applicant has also claimed interest. In this case, the respondents have denied the claim ^{their own} due to misinterpretation of rules and not due to any malafide intention and the rejection is not unreasonable. It may be, on the interpretation of the rules, the Tribunal has come to the conclusion that it is a case of emergency treatment and therefore, accepting the case of the applicant. Hence, in the circumstances, the applicant's claim for interest cannot be granted.

9. In the result, the application is allowed. The respondents are directed to grant reimbursement of medical expenses incurred by the applicant for treatment of his wife to the extent as is admissible under the C.S.(M.A.) Rules, 1944. In the circumstances, the respondents are directed to pass appropriate orders and pay whatever amount that is legally permissible to the applicant within a period of two months from the date of receipt of a copy of this order. The applicant's claim for interest is rejected. In the circumstances of the case, there will be no order as to costs.


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

M.P. No. 228/99
Filed by respondent
for extension
of time to
implement the
judgment dated 7.7.99
fixed on 14.99

2) 14.1999

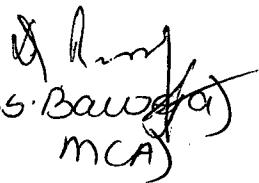
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The applicant appears in person
but not present today. Shri R.R. Shetty
for the Respondents.

The respondent's counsel submit
that the copy of the M.P. No. 228/99
through which the prayer has been made
for extending the time of implementation,
has been already served on the
applicant. However, since the applicant
may not be aware of the date of
listing today, an opportunity is
given to him.

The counsel for the
respondents is directed that the
applicant may be informed of the
next date of hearing.

List for orders on
15/11/1999.


(D.S. Bawali)
MCA

OB