

Reserved

Central Administrative Tribunal, Allahabad Bench,
Allahabad

Original Application No.330/00073/2011

Pronounced on 21st October, 2019

Hon'ble Mr. Justice Bharat Bhushan , Member (J)

Ram Narayan Lal Srivastava son of Jagarnath Prasad,
r/o H.No. S-2/56, Dithory Mahal, Ardali Bazar,
Varanasi.

Applicant

By Advocate: Sri Sudhanshu Srivastava

Versus

1. Union of India through its General Manager, DLW, Varanasi.
2. Chief Personal Officer, DLW, Varanasi.
3. Chief Medical Superintendent, Diesel Locomotive Works, Varanasi.

Respondents.

By Advocate: Sri Santosh Kumar Rai

ORDER

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

The applicant, Ram Narayan Lal Srivastava, former Senior Section Engineer, Plant Maintenance Shop (SSE/PMS), retired on 31.5.2002, seeks medical reimbursement of expenses incurred in surgery of Asymptomatic Aortic Stenosis conducted in Bombay Hospital Institute of Medical Sciences, Mumbai.

2. The applicant is a member of Retired Employees Liberalized Health Scheme (RELHS) and therefore,

eligible for indoor treatment as well as reimbursement of medical expenses incurred on himself and his wife.

3. After the retirement of the applicant, two major medical ailment requiring surgery were discovered, first Hydrocele was conducted in the year 2002 and second Heart Valve Defect (Asymptomatic Aortic Stenosis). The applicant was operated for removal of Hydrocele at Varanasi on 11.10.2002 but this surgery was not relevant for the purpose of this O.A. for the simple reason that the applicant is not claiming any medical reimbursement for surgery of Hydrocele. But during the post surgery of hydrocele, some tests were conducted and it indicated defect in Aortic valve of applicant.

4. Applicant got himself checked at Diesel Locomotive Works (DLW), Central Hospital for Cardiac Treatment and he was referred to Southern Railway Hospital, Perambur. This referral is available on record as Annexure A-4. The Southern Railway Hospital, Perambur vide letter dated 3.4.2003 confirmed the apprehension of doctors of private hospital as well as DLW, Central Hospital, Varanasi and advised surgery. This is also available on record as Annexure A-5 which indicates that applicant was to attend Cardiac Clinic immediately on development of symptom i.e. Chest Pain, fatigue and other indicators or after six months

for early surgery. Meaning thereby, the applicant was advised that he should attend Cardiac Clinic as soon as some symptoms were visible or after six months for early surgery. The report of Department of Cardiology , Southern Hospital, Perambur in detail is available on record.

5. It appears that applicant visited his son at Pune who was in employment there and during this visit, he suffered chest pain in the first week of July, 2003 and thereafter he immediately got himself checked at Bombay Hospital, Mumbai on 5.7.2003 where Dr. Devendra S. Saxena of Bombay Hospital advised him for earlier valve replacement and fixed the date on 28.7.2003 for operation as the case of emergency.

6. The applicant then first approached the Railway Headquarter, Hospital, Mumbai but there he was advised to go back to DLW, Varanasi for reference and thereafter, to go Southern Railway Hospital, Perambur for further treatment.

7. Unfortunately, the applicant was suffering from Asymptomatic Aortic Valve Stenosis. Therefore, it was not possible for him to travel first to Banaras and then to Perambur, Chennai for the simple reason that Aortic Valve problems can arise without necessarily indicating any specific symptom.

8. Applicant therefore, underwent Heart surgery in Bombay Hospital, Mumbai (which is an empanelled hospital for Coronary surgery) as scheduled.

9. Applicant submitted medical bill of Rs.2,82,901/- for medical reimbursement. Unfortunately, the department did not reimburse the amount. Therefore, the applicant was constrained to file the present O.A.

10. Respondents have filed their counter reply wherein they have claimed that applicant did not need emergency surgery and he got himself treated in Bombay Hospital, Mumbai in a planned manner. This argument is based on the fact that the Bombay Hospital conducted angiography on 11.7.2003 and thereafter fixed the date of operation on 28.7.2003 i.e. after 17 days of angiography which in the opinion of the department indicates that there was no emergency. Apart from this there are several usual objections to the claim of applicant.

11. Heard Sri Sudhanshu Srivastava advocate for applicant and Sri Santosh Kumar Rai, advocate for respondents.

12. It is surprising that a old retiree of 2002 vintage is contesting this case for last 17 years. The bare perusal of records would show that department has behaved in insensitive manner. There is no doubt that heart surgery was indeed conducted upon applicant in

Bombay Hospital, Mumbai. It is pertinent to note that Bombay Hospital, Mumbai is an empanelled hospital for the purpose of Coronary surgery as mentioned in Medical Attendance and Treatment Rules issued by Railway itself. There is no dispute about this. The record further reveals that the Dr. M.A. Khan, Chief Medical Superintendent, Central Hospital, DLW, Varanasi himself had referred the applicant to Southern Railway Hospital, Perambur, Chennai on 13.3.2003.

13. Thereafter, another document annexed as Annexure A-5 spanning several pages also indicates that surgery was required and applicant was suffering from Asymptomatic Aortic Valve disease. The certificate of Bombay Hospital, Mumbai is also very clear. This certificate reads as under:-

"Mr. R.N. Lal Shrivastava came to us with severe symptom of aortic valve disease. He was admitted as an emergency. He underwent angiography and emergency aortic valve replacement on 28.7.2003."

14. In view of the medical opinion given by Bombay Hospital, Mumbai, Central Hospital, DLW, Varanasi and Southern Railway Hospital, Perambur, Chennai, it is difficult to understand why the respondents have denied the reimbursement to the applicant on technical grounds. There is no doubt that surgery indeed was conducted upon the applicant. The claim of respondents that there was no emergency is not

born out on the facts of the case and available documents. In any case, it is for the medical experts to decide whether a patient requires an emergent surgery or not. The administrators do not have this expertise to decide whether a particular employee needs immediate treatment or not. The question of ascertaining the emergency has to be left to the experts. In this case, doctors are expert.

15. A desk bound administrators cannot determine the emergency of a patient. All he is required to do whether the medical claim is based on actual treatment or not. Once it is established that claimant has indeed taken treatment and his claim is supported by record duly certified by doctors/hospitals, then his claim cannot be denied on minor technical grounds.

16. The Hon'ble Apex Court in the case of **Shiv Kant Jha Versus Union of India (Writ Petition (Civil) No. 694/2015 decided on 13.4.2018)** reported in **(2018) 5 MLJ 317 (SC)**, has described this approach as inhuman. The relevant portion of the judgment is reproduced as below:-

"Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/ hospitals concerned. Once it is established, the claim cannot be denied on technical grounds."

17. Similarly, Madurai Bench of Madras High Court in the case of **S. Marimuthu Vs. The Government of Tamil Nadu and others in Writ Petition (MD) No. 13429 of 2013 decided on 28.5.2019** has taken the same approach regarding medical reimbursement of employee. The relevant portion of the judgment is reproduced as below:-

"44. In this context, this court wants to remind once again that Courts have taken the view that, it is for the medical expert to decide as to which case is an emergency one to be attended immediately and which case is not an emergency one. Neither the administrators nor this Court has got any expertise to decide as to whether a particular case was to be treated immediately at the given point of time or could have been postponed for sometime enabling the patient to approach the network hospital and it is the matter to be solely decided only by the medical experts.

45. This position has been reiterated in number of decisions cited above and therefore, when the employee or pensioner availed a treatment in a not network hospital whether the said treatment was taken out of emergency or not cannot be decided easily sitting in the Administrative desk by perusing the papers. It is at the movement where the patient comes to the hospitals with whatever health complaint, not only the patient but also the family members and kith and kin will be in the confused state of affairs and at that golden hours, whatever advice given by the Doctors available in the hospital where the employee/pensioner immediately approached or taken to, that advice would be taken and accordingly they would have acted upon.

46. Therefore, this Courts is of the view that, the administrative machinery cannot subscribe its view as to a particular medical case was emergent or not at the given point of time and based on which, medical reimbursement claim cannot be rejected by driving them to approach Court of law.

47. As has been held in the judgment of **Shiva Kant Jha Vs. Union of India** reported in **(2018) 5 MLJ 317 (SC)** by the Hon'ble Apex Court, the right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/hospitals concerned. Once it is established, the claim cannot be denied on technical grounds."

18. It is pertinent to point out that applicant had earlier filed an O.A. No. 364/2008 (Ram Narayan Lal Srivastava Vs. Union of India and others) which was decided on 14.9.2010 whereby the respondents were directed to decide the claim of applicant afresh. The relevant portion of the order is reproduced as below:-

"The entire matter hinges upon whether the surgery conducted in the case of the applicant was under medical emergency or not?

Mr. R.N.Lal Srivastava came to us with severe symptoms of aortic valve disease. He was admitted as an emergency. He underwent angiography and emergency aortic valve replacement on 28.07.2003.

4. It is difficult to understand why this certificate of recognized medical hospital, who is also Head of Cardiovascular Surgery, Bombay Hospital Institute of Medical Science and Consultant Cardiac Surgeon has not been accepted by the Railways. I am, therefore, directing the respondents to look at the documents again and then examine the matter of the applicant afresh. It is also being stated again and again by the applicant that he had undergone Hydrocele Surgery in the year 2002 but that matter is not connected in any way with heart surgery for which he is claiming reimbursement. In the appellate order, reference has been made to

hydrocele surgery, which was planned surgery and conclusion has been drawn that the surgery was not done as an emergency.

5. In view of the Rules, which provide for emergency in such cases, the respondents are directed to look in to the matter afresh in the light of medical opinion given by Head of Department of Bombay Hospital and pass a reasoned and speaking order in accordance with Rules and law within a period of 02 months from the date of receipt of a certified copy of this order.

6. With the above observations/directions, the O.A. is disposed of. No costs"

19. The aforesaid judgment indicates the thinking of this Tribunal in this case and yet the department merely reiterated the old submissions in the impugned order dated 30.11.2010. This Tribunal is also concerned that the impugned order was passed beyond the period of two months as directed by this Tribunal. This attitude and insensitivity of respondents is surprising and painful.

20. Considering all facts and circumstances, impugned order dated 30.11.2010 is not legally sustainable and is liable to be quashed. It is pertinent to point out that in case of **S. Marimuthu Vs. The Govt. of Tamil Nadu(supra)**, Madurai Bench of Madras High Court has also held that if payment is not made within a period of 30 days, then claimant is also entitled for interest @ 6% per annum.

21. In view of the observations made above, O.A. is allowed with cost, which is quantified as Rs. 5000/-.

Impugned order dated 30.11.2010 is quashed This Tribunal directs that applicant be paid the claim of Rs. 2,82,901/- as medical reimbursement within a period of 4 months. The applicant shall also be entitled for simple interest of 6% per annum on the aforesaid amount from the due date till the date of payment. Due date would be 30 days after the date of submission of medical bills.

(Justice Bharat Bhushan)
Member (J)

HLS/-

