

Surjit Singh

Vs

State of Punjab and Others

Civil Appeal No. 2489 of 1996

M. M. Punchhi, K. Venkataswami JJ)

31.01.1996

JUDGEMENT

PUNCHHI, J. :-

1. Leave granted.

2. Is the hypothetical claim of the appellant for medical reimbursement valid in the facts and circumstances of this case is the straight question which falls for determination in this appeal.

3. The appellant, Surjit Singh (now retired) while posted as a Deputy Superintendent of Police, Anandpur Sahib, Distt. Ropar, Punjab, developed a heart-condition on 22-12-1987 and that very day went on a short leave extending it up till 10-1-1988, on medical grounds. It remains unclarified on the record of this case as to what steps the appellant took thereafter to meet his ailment. However, six months later he obtained leave from his superiors from 15-6-1988 to 8-9-1988 and went to England to visit his son. It is the case of the appellant that while in England, he fell ill due to his heart problem and as an emergency case, was admitted in Dudley Road Hospital, Birmingham. After diagnosis he was suggested treatment at a named alternate place. Thus to save himself the appellant got himself admitted and operated upon in Human Hospital, Wellington, London for a Bye-Pass Surgery. He claims to have been hospitalised from 25-7-88 to 4-8-88. A sum of Rs.3 lacs allegedly was spent on his treatment in London, borne by his son.

4. On return to India, the appellant on 6-11-1988 submitted a Bill for medical reimbursement claiming that very sum, in the office of the senior Superintendent of Police, Ropar which was forwarded to the Director General of Police, Punjab, Chandigarh and the Home Department of the State of Punjab. Some correspondence took place between the appellant and the department. As per office requirements some more certificates were sent by the appellant in support of his case. Vide letter dated 21-1-93, the Department however expressed its inability to sanction the bill for medical reimbursement. This led to the appellant moving the High Court of Punjab and Haryana at Chandigarh in writ jurisdiction. As required by the High Court, the State responded by filing its counter affidavit. At the time of hearing the Assistant Advocate General for the State of Punjab made a Statement to the effect that the State was ready to pay to the appellant the expenses incurred for Bye-pass Surgery and Angiography on the rates prevalent in the All India Institute of Medical Sciences, New Delhi (for short 'AIIMS'). Applying that yardstick, as suggested, a sum of Rs. 30,000/- on account of Bye-pass Surgery and a sum of Rupees 10,000/- for Angiography was thus ordered by the High Court to be paid to the appellant within six weeks. The writ petition on 18-4-

1995 was disposed of on such terms. The said sum, as claimed by the State stands paid to the appellant.

5. The appellant challenging the orders of the High Court disposing of the writ petition in such manner now pitches before us his claim to payment on the basis of rates prevalent in the Escorts Heart Institute and Research Centre (for short 'Escorts'), reducing his high claim to the expenses incurred for medical treatment in London. There is an inkling to that effect in the appellant's rejoinder affidavit in the High Court but it appears that this aspect of the matter was not dilated upon. The claim for such adoption of rates is now made in reiteration.

6. The parties counsel agree that there is a policy regarding reimbursement of medical expenses framed by the State on 25-1-1991, which has duly been circulated in all the wings/offices of the State. It's operative portion, so far relevant, is reproduced below.

"Subject: Re-imbusement of medical expenses - Policy regarding

Sir/Madam,

In supersession of Punjab Government letter No. 7-7-85-3HBV/13855 dated 27-5-1987, the President of India is pleased to lay down the following policy for reimbursement of medical expenses incurred on medical treatment taken abroad and in hospitals other than the hospitals of the Govt. of Punjab (Both outside and in the State of Punjab) :

i) All categories of employees whether retired or serving of All India Service/State Govt. Judges of Punjab and Haryana High Court/M.L.As/Ex M.L.As will be governed by this policy.

ii) The person who is in need of medical treatment outside India or in any hospital other than the Govt. of Punjab (both outside and in the State of Punjab) as the case may be may make an application for getting treatment in these hospitals directly to the Director, Health and Family welfare 2 months advance, duly recommended by the C.M.O./Medical Supdt. indicating that the treatment for the disease mentioned is not available in the Hospital of the Govt. of Punjab. In case of emergency duly authenticated by C.M.O./Medical Supdt. the application can be made 15 days in advance.

iii) Director, Health and Family Welfare, Punjab will place the application of the concerned employee before the Medical Board within 15 days on the receipt of application. In case of emergency, if immediate meeting of Medical Board cannot be convened, such application may be circulated to all the members of the Medical Board and decision taken thereof.

iv) The Medical Board shall consist of the following officers :

i) Director, Health and Family Welfare, Punjab Chairman.

ii) Director, Research and Medical Education, Punjab - Member

iii) Specialist of the desired line of treatment from PGI Chandigarh or AIIMS, New

Delhi -- Member.

iv) Senior most specialist from Medical Colleges, Patiala, Amritsar and Faridkot - Member

v) Dy. Director/Asstt. Director, I/c of P.M.H. Branches office of the Director Health and Family Welfare - Member Secy".

vi) to xi) xxxx

xii) The Health Deptt. in consultation with Director Research & Medical Education will prepare a list of diseases for which specialised treatment is not available in Punjab Govt. Hospital and indicate the Institutions/Hospitals/Clinics of repute where necessary treatment is available. This list will, however, be subject to variation in future.

On 8-10-1991, the above policy has further been explained in so far as the choice of the hospitals is concerned :

"Policy for reimbursement of medical expenses incurred on medical treatment taken abroad and in hospitals other than those of the Government of Punjab, both within and outside the State was laid down. However, as per the 12th item of these instructions, a list of those diseases for which specialised treatment was not available in the Government hospitals was to be prepared in addition to identifying medical institutions/hospitals/clinics of repute where such specialised treatment was available.

The Government has now prepared a list of those diseases for which the specialised treatment is not available in Punjab Government hospitals but is available in certain identified private hospitals, both within and outside the State. It has, therefore, been decided to recognise these hospitals for the treatment of the disease mentioned against them in the enclosed list for Punjab Government employees/pensioners and their dependents. The terms and conditions contained in letter under reference will remain applicable, Government can, however, revise the list, in future.

Therefore, it has been decided to recognise those hospitals for the treatment of diseases mentioned against them in the enclosed list issued with the concurrence of the Finance Department dated 11-9-1991 which is as under :

Open Heart Surgery : Escorts Heart Institute, New Delhi ; Christian Medical College, Ludhiana ; Apollo Hospital, Madras.

The purport of the above policy is that the Escort stands duly recognised by the State for treatment of its employees for open heart surgery, apart from the other two institutions i.e. Christian Medical College, Ludhiana and Apollo Hospital, Madras. The Finance Deptt's concurrence signifies its willingness to entertain reimbursement bills in variables depending on where treatment is received.

7. There has been a factual dispute as to whether the appellant went to the Dudley Road Hospital, Birmingham as an emergency case and whether he was operated upon in Human Hospital, Wellington, London in that condition. Except for the bare word of the appellant, no documentary

evidence in support of such plea had been tendered by him before the High Court, or even before us, to show that his was a case of emergency requiring instant operation and treatment. The State of Punjab on the other hand has countered before the High Court, as also here, that the case of the appellant was not that of an emergency but a planned visit to England to have himself medically treated under the care of his son, without submitting himself as per policy, for examination before the Medical board. This plea of the appellant may have been required to be examined in thorough detail had he stuck to his original claim for medical expenses incurred in England. Since he has now brought down his claim to the rates prevalent in the Escorts in place of that of AIIMS, further reference to emergency treatment etc. would not be necessary. It would hypothetically have to be assumed the appellant was in India, had not subjected himself to Medical Board examination, and had gone on his own to the Escorts and got himself operated upon for Bye-pass Surgery. The point to be considered is whether his claim is admissible under the policy keeping in view the string of judgments of the High Court in that regard, as well as on the factum that the State has already conceded re-embarrassment to the appellant on hypothetical basis as if treated in AIIMS.

8. The policy, providing recognition for treatment of open heart surgery in the Escorts, specifically came to be examined by a Division Bench of the Punjab and Haryana High Court at Chandigarh in C.W.P. NO. 13493 of 1992 titled as Sadhu R. Pall v. State of Punjab through Secretary Health and Family Welfare Punjab, Civil Secretariat, Chandigarh and others decided on 6-10-1993, wherein the claim of the then writ petitioner to medical reimbursement was accepted when in order to save his life he had got himself operated upon in the Escorts, and the plea of the State that he could be paid rates as prevalent in the AIIMS was rejected. Special Leave Petition No. 22024 of 1995 against the said decision was dismissed by this Court on 2-2-1994. The other judgments of the High Court following the decision in Sadhu R. Pall's case are :

(1) C.W.P. No. 18562 of 1992 decided on 10-5-95 titled K. L. Kohli v. State of Punjab and others (DB) :

(2) C.W.P. No. 260 of 1995, decided on 30-5-1995 titled avi Mohan Duggal v. State of Punjab and others (DB) :

(3) C.W.P. No. 5669 of 1994 decided on 4-9-94 titled Prem Singh Gill v. State of Punjab and Others.

(4) 1995 (III) Punjab Law Reporter 529 titled Tarlok Chander v. The State of Punjab etc. (SB); and

(5) 1995 (III), Punjab Law Reporter 682 titled Mrs. Surya Pandit v. State of Punjab and others (SB)

9. All the aforementioned judgments of the High Court have a common factual basis, i.e. each recipient of the relief from the High Court had in fact been treated in the Escorts and had borne expenses. The other common factor is that the High Court believed each writ petitioner pleading emergency to go to Escorts in the given fact situation. But this factor by itself is not the core of the views of the High Court, Hypothetically, the appellant says, he too may be considered to have been treated in the Escorts, more so, when he is being treated to have been operated upon in AIIMS without actually having been so, and had a choice to go either to the AIIMS or Escorts or Christian Medical College, Ludhiana or Appollo Hospital, Madras. The appellant in these circumstances cannot be said to be far too wrong in choosing the Escorts amongst the three recognised hospitals

for open heart surgery available in the North. The AIIMS being governmental and the other two being private hospitals. The Division Bench in Sadhu R. Pall's case observed as follows ;

"The respondents appear to have patently used excuses in refusing full reimbursement, when the factum of treatment and the urgency for the same has been accepted by the respondents by reimbursing the petitioner the expenses incurred by him, which he would have incurred in the AIIMS New Delhi. We cannot loose sight of factual situation in the AIIMS New Delhi, i.e. with respect to the number of patients received there for heart problems. In such an urgency one cannot sit at home and think in a cool and calm atmosphere for getting medical treatment at a particular hospital or wait for admission in some Government medical institute. In such a situation, decision has to be taken forthwith by the person or his attendants if precious life has to be saved." We share the views afore-expressed.

10. It is otherwise important to bear in mind that self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self defence in criminal law. Centuries ago thinkers of this Great Land conceived of such right had recognised it. Attention can usefully be drawn to versus 17,18,20 and 22 in Chapter 16 of the Garuda Purana (A Dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine :

(See Table below)

17 Vinna dehena kasyaapi canpurushartho na vidyate tasmaaddeham dhanam rakshetpunyakarmaani saadhayet. Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18 Rakshayetsarvadaatmaanamaatmaa sarvasya bhaajanam Rakshane yatnamaatishthejee vandhaadraani pashyati One should project his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasion sin life.

20 Sharirarakshanopaayaa kriyante sarvadaa budhaiah neechanti cha punastyaagamapi kushthaadiroginah The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.

22 Aatmaiva yadi naatmaanamahitebhyo nivaarayet Konsya hitakarastasmaa-daatmaanam taarayishyati. If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself.

11. The appellant therefore had the right to take steps in self preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, bare-facedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternate hospital as per policy. When the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to the Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in

India, he could have gone to the Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs. 40,000/- already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs. Appeal allowed.