

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.569 OF 2021

**DISTRICT: Mumbai
SUBJECT : Medical
Reimbursement**

Shri Manjula Arun Salve)
Age:- 68 yrs, Occ. Housewife,)
R/at Gulmohar Park, Plot No.6, Room No.A1,)
Sector 15A, opp. CKT High School, New Panvel.)... **Applicant**

Versus

1. The Secretary, Finance Department,)
Hutatma Rajguru Chowk, Madam Cama)
Road, Mantralaya, Mumbai 32.)
2. The Special Commissioner of Sales Tax,)
MS, Goods & Service Tax Bhavan, Mazgaon)
Mumbai 10.)
3. The Joint Commissioner Sales Tax, Sales)
Tax, Sales Tax Act, Mumbai, Goods &)
Service Tax Bhavan, 'A' Building, 3rd floor,)
BKC, Bandra (E), Mumbai 51.)
4. Director - Medical Services/Medical Supt.)
Global Hospitals, 6.1.1070/ 1to 4, Lakdi)
Ka Pul, Hyderabad 500004.)
5. The Paramount Health Services & Insurance)
TPA Pvt. Ltd., Elite Auto house, 1st floor,)
54(A), M. Vasanji Road, Andheri 93.) **..Respondents**

Shri K. R. Jagdale, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 17.03.2023.

ORDER

1. The Applicant (the widow of Government servant) has challenged the communication dated 11.03.2020 issued by the Respondent No.1 thereby declining remaining reimbursement of medical expenditure on the ground that Government servant has not furnished original bills and secondly if some amount of the medical expenditure is reimbursed by insurance company in that event, there is no provision to sanction remaining reimbursement of medical expenditure.

2. Shortly stated facts giving rise to the O.A. are as under:-

While the Applicant's husband namely Arun Salvi serving as Deputy Commissioner, State Excise Department, he was diagnosed with liver cancer. He had medical insurance of Rs.10 Lacs in terms of insurance policy availed from Paramount Health Services and Insurance TPA Pvt. Ltd., Elite Autoouse, 1st floor, 54(A), Vasanji Road, Andheri (W). He undergone surgery for liver transplant in Global Hospital, Hyderabad, State of Telangana. He spent total expenditure of Rs.20,35,925/- for liver transplant and out of it he got reimbursement of Rs.10 lacks from insurance company. He, therefore, submitted claim in his office (Respondent No.2) for reimbursement of remaining amount. It was forwarded to Respondent No.1 - Secretary, Finance Department for approval. However, the Respondent No.1 by order dated 11.03.2020 rejected the claim on the ground that original bill was not submitted and secondly, once part amount is reimbursed from insurance company, there is no provision for reimbursement of remaining amount to the Government servant. The Applicant's Husband retired on 30.06.2011 and thereafter died on 10.04.2018. The Applicant (widow of deceased Government servant) is, therefore, perusing the present claim for medical reimbursement.

3. Heard Shri K. R. Jagdale, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondent.

4. The Respondents in their Affidavit in Reply, resisted the claim on the ground as mentioned in the impugned order reiterating that in absence of original bills and in absence of provision of reimbursement of remaining amount once part of amount is reimbursed or paid by insurance company.

5. At this juncture, before going ahead, it would be useful to reproduce the contents of impugned order dated 11.03.2020 which is at page no. 97 of O.A.

"यासंदर्भात कळविण्यात येते की, महाराष्ट्र कोषागार नियम, १९६८ मधील नियम २७६, अन्वये वैद्यकीय खर्चाच्या प्रतिपूर्तीच्या मागणी सोबत मूळ प्रमाणपत्रे सादर करणे आवश्यक आहे. कै.श्री.साळवे यांचा वैद्यकीय खर्च प्रतिपूर्तीचा प्रस्ताव देयकाच्या दुय्यम प्रतीच्या आधारे सादर करण्यात आला आहे.

एखादया वैद्यकीय खर्च प्रतिपूर्तीच्या प्रस्तावासंदर्भातील रकमेचा काही भाग अन्य मार्गाने स्विकारल्यानंतर ती वजा केल्यानंतर उर्वरित राहिलेली वैद्यकीय खर्च प्रतिपूर्तीची रक्कम संबंधित शासकीय अधिका-यांना/कर्मचा-यांना प्रदान करण्यासंदर्भात कोणतीही तरतूद नसल्याने कै.श्री.साळवे यांच्या वैद्यकीय खर्च प्रतिपूर्तीच्या सदर प्रस्ताव मान्य करता येत नाही. त्याप्रमाणे कै.श्री.साळवे यांचे पुत्र श्री.अभिजीत अरुण साळवे यांना आपल्या स्तरावरून कळविण्यात यावे."

6. It is thus explicit that on above two grounds, the claim of the Applicant is rejected by the Respondents.

7. After filing of O.A., on suggestion given by the Tribunal, Paramount Health Services & Insurance TPA Pvt. Ltd., company (referred as insurance company) has been impleaded as Respondent No.5 to explore the possibility of production of original bills which was submitted to the insurance company. Despite, service of notice, the Respondent No.5 did not appear. However, insurance company by its letter dated 12.09.2022 addressed to Advocate for the Applicant informed that the claim belongs to year 2010 and, therefore, as per NIC Circular dated 02.03.2021, the original file is destroyed and not in possession of original bills so as to produce the same in the Tribunal. As such, the Applicant cannot be blamed for non-production of original bills since it was required to be submitted to the insurance company for reimbursement. Indeed, by availing reimbursement of Rs.10 lacs from

insurance company, the Government is relieved of paying full reimbursement and ought to have been considered this aspect in proper prospective. However, the Respondent No.1 is taking very hyper technical and rigid approach which cannot be countenanced. Suffice to say, non-production of original bills could not be the ground to reject the claim in fact and circumstances of the present matter.

8. Second ground that once a Government servant availed reimbursement of part payment, in that event, he cannot claim remaining reimbursement from Government, is totally absurd. Only, because there is no provision in the G.R. issued by the Government from time to time in this behalf it should not work against the Government servant. It was for Government to contemplate such situation and to make appropriate provision but for their failure, a Government servant cannot be blamed. Indeed, by getting reimbursement of Rs.10 lacs from insurance company, a Government servant has saved Rs.10 lacks of the Government and this aspect has been completely forgotten by the Respondents.

9. There is no denying that Applicant's husband had liver cancer and he undergone liver transplant in Global Hospital, Hyderabad. It is for the patient to take decision as to where he needs to be treated and if there is not dispute about the quantum of medical expenditure and decease, in that event, medical claim of medical reimbursement deserves to be considered sympathetically. It appears that specialized treatment was available at Global Hospital only and, therefore, Applicant's husband undergone surgery there.

10. Notably, the perusal of G.R. dated 10.02.2006 reveals that initially by G.R. dated 04.07.2000, Blood Cancer was included in serious disease for the claim of medical reimbursement. However, later the word 'Blood Cancer' is deleted and substituted by 'Cancer Disease' by G.R. dated

10.02.2006. Thus, all types of cancers are covered for purpose of reimbursement.

11. Notably, the Superintendent, Saint George Hospital, Mumbai also certified by his communication dated 23.11.2011 (page 65) that Applicant's husband was suffering from Hepatoma (Liver Malignance) यकृतचा कर्करोग. He also certified that the deceased is covered under Circular dated 10.02.2006.

12. Learned P.O. however, submits that for reimbursement of medical expenditure, it requires details of the expenditure done by Government servant to show how much amount was spent on surgery, medical equipment, medicine, room accommodation etc. and in absence of it, the rejection cannot be faulted with.

13. In present case, the perusal of record clearly reveals that Applicant's husband had availed packages of liver transplant under which hospital charged Rs. 19 lacs. The hospital bill which is at page no.51 of O.A. shows following breakup in additional to 19 lacs under package.

Bill No.IPBCA2010100002935	IP No. IP29091004975
Name : Mr.Arun Shridhar Salve	Age : 57 years
Add : Flat IA, New Panvel, Sector 15A, Gulmohar Park, Mumbai 410206	Admission Date : 29/9/2010 12:34:37
Room : II Floor-LICU/ICCU	Discharge Date : 16.10.2020 14:23:04
Consulting Dr. Dr. Mohamed Rela	Tin No. : 28550210375

SR. No.	Particulars	Amount (in Rs.)
1	Liver Transplant Package	19,00,000.00
2	Laboratory Investigations	29,974.00
3	Blood Bank	80,825.00
4	Medical Records	200.00
5	Drugs & Disposables	22,500.00
6	Dietician Fee	150.00
7	Food & Beverages	2,275.00
	Gross Amount	2,035,925.00
	Advance	2,200,000.00
	Refund	-164,075.00
	Balance	0.00

14. True, detail breakup of bill about medical reimbursement is not forthcoming but the fact remains that Applicant had spent Rs.20,35,925/- on total medical expenditure and got sum of Rs.10 lacs from the insurance company. As stated above, in fact and circumstances of the case, the Respondent No.1 should not have taken such a rigid stand for insistence to produce original reimbursement bill since it was with the insurance company and later destroyed. In such situation, it was incumbent on the part of Respondent No.1 to satisfy about genuineness of the claim and ought to have granted some reasonable additional reimbursement.

15. Learned Counsel for the Applicant referred to the decision of the Hon'ble **Supreme Court AIR 2018 SC 1975 (Shiva Kant Jha V/s Union of India)** wherein claim of the medical reimbursement was rejected because of the name of Hospital was not included in the Government order. The Hon'ble Supreme Court came down heavily upon the Central Government and directed for disbursement of the medical expenditure. para nos.13 and 14 of the judgment are important which is as under :

"13) It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. 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. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

14) This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a

purpose of providing health facility scheme to the central government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals."

16. Learned Counsel for the Applicant orally submits that as per his instructions at one point of time, when Special Commissioner of Sales Tax (Respondent No.2) sought opinion of Public Health Department that time the Committee of Secretary recommended for reimbursement of Rs.5 lacs but forwarded the matter to Respondent No.1 - Finance Department which ultimately rejected the claim on aforesaid two grounds which is totally unsustainable.

17. Learned P.O. at this juncture fairly tendered Minutes of Secretary Committee of Public Health Department held on 04.12.2019 which shows that the Committee had recommended for reimbursement of additional 5 lacs amount considering that Applicant's husband has already availed insurance of Rs.10 lacs. The Minutes are taken on record and marked by letter 'X', paginated at page no.150 of O.A.

18. True, in view of details of breakup of medical expenditure, there may be some technical difficulty in ascertaining exact reimbursement amount with precision. However, when disease is covered by the Government policy and factum of expenditure is not in dispute, the Respondents ought to have granted some additional reasonable amount by way of reimbursement.

19. In this view of the matter, in my considered opinion, the Respondent No.1 ought to have granted reimbursement of Rs.5 lacs as recommended by the Public Health Department and which appears to be reasonable in the fact and circumstances of the present case. Even in absence of recommendation of Public Health Department otherwise also Applicant is entitled for reimbursement of Rs.5 lakh being very reasonable just and equitable.

20. The totality of the aforesaid discussion leads me to sum up that rejection of reimbursement by impugned order dated 11.03.2020 is totally arbitrary and unsustainable in law and liable to be quashed and set aside. Hence, the following order :-

ORDER

- (A) The Original Application is allowed partly.
- (B) Communication dated 11.03.2020 rejecting the claim of medical reimbursement is quashed and set aside.
- (C) The Respondent Nos.1 to 3 are jointly and severally liable and directed to pay Rs.5 lakh to the Applicant by way of remaining medical reimbursement of the medical expenditure of her husband and it be paid within two months from today failing to which, the amount shall carry interest at the rate 9% from the date of default till the date of actual payment.
- (D) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai

Date: 17.03.2023

Dictation taken by: Vaishali Santosh Mane