

Union of India Vs. Lalit Kumar

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Court : Delhi

Decided On : Apr-26-2013

Judge : Pradeep Nandrajog

Appellant : Union of India

Respondent : Lalit Kumar

Judgement :

\$~13 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: April 26,, 2013 + W.P.(C) 1911/2013 UNION OF INDIA Petitioner Represented by: Mr. D.S.Mahendru, Advocate versus LALIT KUMAR Respondent Represented by: Mr.A.K.Trivedi, Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE V. KAMESWAR RAO PRADEEP NANDRAJOG, J.

(Oral) 1. We are constrained to write a slightly long opinion. The reason is the manner in which the Tribunal has disposed of proceedings out of which impugned order dated November 03, 2012 has been passed.

2. The respondent met with a traumatic accident on February 15, 2010. A PCR van rushed him to Jai Prakash Narayan Apex Trauma Centre, AIIMS at 9.30 P.M. Given primary and emergency treatment, the respondent was rushed immediately to Mata Chanan Devi Hospital, Janakpuri, probably for the reason requisite medical facilities were not available at the Trauma Centre. At Mata Chanan W P (C) 1911/2013 1 of 6 Devi Hospital, Janakpuri, due to non availability of a bed the

respondent was rushed to Sir Ganga Ram Hospital, New Delhi where he could not be admitted inasmuch as a bed was not available even at said hospital. The respondent was ultimately taken to B.L.Kapoor Memorial Hospital, Pusa Road where he was admitted at 12:08 hours i.e. mid night. He remained under treatment for a week.

3. On being discharged further treatment was taken by the respondent from RML Hospital.

4. Pertaining to the medical expenses incurred at B.L.Kapoor Memorial Hospital, the respondent submitted two bills in sum of `2,310/- and `41,447/- for reimbursement. Bill in sum of `2,310/- was cleared and payment was made. The second bill was cleared only in sum of `19,274/-. Said sum was released. For the balance amount the respondent filed an original application praying that full medical claim in sum of `40,473/- be released.

5. Now, wherefrom a sum of `40,473/- was claimed is not known and regrettably learned counsel who drafted the original application is unable to explain the same to us. As we understand from the claim petition before the Tribunal, bill in sum of `41,447/- being cleared only in sum of `19,274/-; which amount was paid, the claim made was for the balance amount i.e. `22,173/-.

6. Without putting respondents to notice, OA No.4321/2010 filed by the respondent was disposed of by the Tribunal noting that `19,274/- has been cleared for payment. The Tribunal did not address itself as to why sum of `22,173/- was being denied reimbursement of. W P (C) 1911/2013 2 o

7. The Tribunal simply noted that probably reimbursement allowed was as per CGHS rates. The Tribunal opined that it being a case of emergent circumstances, allowing claim as per CGHS rates were not justified. Without opining whether entire sum claimed was payable, the Tribunal held that the amount could be brought down to a reasonable level and, so observing, passed an order on December 23, 2010 requiring the respondents to take a fresh decision.

8. With respect to the order dated December 23, 2010, suffice would it be to state that the Tribunal never held that the bill claimed is payable in total. The observations of the Tribunal that the amount claimed could be brought down to a reasonable level is sufficient indication that the discretion in the respondent was retained i.e. as to what could be the reasonable level without which the payment had to be made.

9. We have repeatedly been passing orders requiring members of the Tribunal not to dispose of original applications without notice to the other side. We have repeatedly passed directions that such kind of inchoate orders should not be passed. Seized of the original application filed by the respondent the Tribunal had the requisite pleadings and the orders passed by the authorities. The orders passed by the authorities were with respect to why claim in sum of `41,447/- was reduced to `19,274/-. To consider a challenge to the decision, the Tribunal had before it the pleadings in the original application. It would have been better if the Tribunal would have called for the pleadings from the other side and decided the matter.

10. The result of the inchoate orders passed by the Tribunal ends W P (C) 1911/2013 3 of 6 with a finding that the bill submitted could be brought down to a reasonable level. It being brought down to `19,274/- was held to be a non reasonable level. Meaning thereby, that the amount had to be somewhere between the sum of `41,447/- and `19,274/-.

11. At the remanded stage, the department recommended payment in sum of `31,174/-, meaning thereby, the department took the view that the reasonable sum required to be paid would not be `19,274/- but `31,174/-.

12. The respondent filed a miscellaneous application registered as MA No.3271/2011. The same stands disposed of by the Tribunal vide impugned order November 03, 2012, opining that once the Tribunal took the view that `40,447/- was payable the competent authority was nobody to bring it down.

13. The impugned order dated November 03, 2012, is to say in the least, a perverse order. It ignores the fact that as per the order dated December 03, 2010,

the Tribunal had left it to the discretion of the competent authority to bring the bill to a reasonable level. Thus, the view taken as per the impugned order dated November 03, 2012, that the authority could not take a decision to bring down the claim amount is patently wrong. Accordingly, we set aside the impugned order dated November 03, 2012.

14. But, left with a petty sum which is under dispute we choose to decide the matter ourselves.

15. Learned counsel for the petitioner has produced before us a chart which would evidence that the major amount in dispute pertains to bed charges. As against bed charges in sum of `14,000/- the W P (C) 1911/2013 4 of 6 department has sanctioned only `3,500/-. Meaning thereby `10,500/has been held not payable.

16. Most of the amounts as claimed have been cleared for payment with petty deductions here not there; total less than `1,000/-.

17. We do not burden ourselves with such petty deductions.

18. What has happened is obvious. Keeping in view the rank held by the respondent at CGHS rates entitlement of the respondent is only to `3,500/-.

19. Now, under ordinary circumstances when medical treatment is being availed, on being diagnosed with a problem i.e. not under emergent circumstances, it would reasonably be expected that the patient avails such kind of room or a bed facility to which he would be entitled to. If he claims luxury in a super-speciality hospital he would not be paid for the same. Public exchequer would not be burdened for the luxury availed of. But when it is a case of emergency, whatever room or whatever bed is available, has to be accepted. From the facts noted above it is apparent that keeping in view the Neurosurgery problem which the respondent faced as a result of the traumatic accident he was rushed first to AIIMS then to Mata Chanan Devi Hospital and therefrom to Sir Ganga Ram Hospital and finally to B.L.Kapoor Memorial Hospital. He had to be shifted on account of either facility not being available at one of the three hospitals to which he was taken earlier on non availability of bed. It highlights that there was a shortage of beds

available. It highlights that in an emergent condition whatever bed was made available to the respondent at B.L.Kapoor Memorial Hospital was W P (C) 1911/2013 5 of 6 accepted to be taken by his attendants. The decision of the attendants has to be understood with respect to the condition of the patient at that time. Such decisions cannot be informed decisions.

20. Accordingly, on the peculiar facts and circumstances of this case we do not interfere with the conclusion arrived at by the Tribunal, though the reasoning of the Tribunal is perverse.

21. We dispose of the writ petition directing the petitioner to pay in full the entire medical reimbursement claim made by the respondent. Adjusting the amount already paid the balance amount be paid within two months failing which it shall be paid with interest @ 9% per annum.

22. No costs. PRADEEP NANDRAJOG, J.

V. KAMESWAR RAO, J.

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