

COL RETD. VIJANDER BHANDARI v. REGIONAL DIRECTOR, EX- SRVICEMAN

COL RETD. VIJANDER BHANDARI

...Appellant

REGIONAL DIRECTOR, EX-SRVICEMAN

...Respondent

Case No: REVISION PETITION NO. 1543 OF 2022

Date of Judgement: 01 November 2023

Judges:

DR.INDER JIT SINGH

PRESIDING MEMBER

For Appellant: MS. MANISHA BHOSALE, ADVOCATE

For Respondent: MR. VIJAY JOSHI AND MR. SHUBHAM
CHATURVEDI, ADVOCATES

Facts:

Col Retd. Vijander Bhandari (Complainant) is a member of Ex-Servicemen Contributory Health Scheme (ECHS) since 2004. On 02.02.2016, Complainant suffered chest pain and was hospitalized. He underwent open heart surgery by Dr. Sudhansu Bhattacharyya on 03.02.2016. Final hospital bill dated 14.02.2016 was Rs. 10,53,033 including surgeon fee of Rs. 6 lakhs charged by Dr. Bhattacharyya. Complainant had private insurance of Rs. 2 lakhs which was reimbursed. He submitted remaining bill of Rs. 8,53,033 to ECHS. ECHS approved and paid Rs. 73,133 on 16.04.2016 but denied remainder citing CGHS rates. Complainant wrote multiple emails and letters to ECHS for reconsideration but was partially approved for additional Rs. 1,75,506. Aggrieved by denial of surgeon fee reimbursement of Rs. 6 lakhs, Complainant filed consumer

complaint before District Forum.

District Forum Order:

Allowed reimbursement of surgeon fee relying on Bombay HC judgment in Makhija case directing ECHS to reimburse expenses beyond CGHS rates. Directed ECHS to pay surgeon fee of Rs. 6 lakhs to Complainant along with interest @ 6% on delayed payment of Rs. 1,75,506.

State Commission Order:

Set aside District Forum order regarding reimbursement of surgeon fee of Rs. 6 lakhs. Held that Complainant opted for CABG package of Rs. 2,04,300 including doctors fees of Rs. 1,05,800 as per hospital bill. Hospital bill dated 14.02.2016 was for Rs. 4,53,033 after discount. Complainant paid additional Rs. 6 lakhs surgeon fee to Dr. Bhattacharyya evidenced by separate receipt. Being ECHS member, Complainant is entitled reimbursement only as per CGHS rates. Relied on Supreme Court decision in Shiva Kant Jha case that reimbursement beyond CGHS rates is restricted to facts of that case. Upheld District Forum order regarding interest payment on delayed settlement of Rs. 1,75,506.

Revision Petition Grounds:

Hospital bill was inclusive of surgeon fee of Rs. 6 lakhs, admitted by ECHS in appeal before State Commission. ECHS never denied reimbursement claim for surgeon fee at any stage. CABG package cannot include surgeon charges. State Commission failed to apply ratio of Bombay HC judgment in Makhija case directing reimbursement beyond CGHS rates. Supreme Court decision in Shiva Kant Jha case already implemented in rules for ECHS and CGHS.

ECHS Arguments:

Complainant opted for CABG package as per hospital bill dated 14.02.2016 which included doctors fees of Rs. 1,05,800. Separate receipt of Rs. 6 lakhs towards surgeon fee was not part of hospital bill. As ECHS member, Complainant entitled only for reimbursement as per CGHS rates. Judgment in Shiva Kant Jha case restricted to facts of that case.

Court's Opinions:

Scope of revision petition is limited for examining prima facie jurisdictional errors. No failure of jurisdiction or material irregularity found in State Commission order. State Commission has given well reasoned order rightly denying reimbursement of surgeon fee based on CGHS rate applicability. Order of State Commission upholding interest payment and costs also proper.

Sections:

Filed under Section 21(b) of Consumer Protection Act 1986.

Cases Referred/Cited:

B.N. Makhija and Ors. Vs. Union of India (Bombay HC)

Shiva Kant Jha Vs. Union of India (Supreme Court)

Rubi Chandra Dutta Vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269]

Sunil Kumar Maity Vs. State Bank of India & Ors. [AIR (2022) SC 577]

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Court

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Full Text of Judgment:

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondentas detailed above, under section 21 (b) of Consumer Protection Act 1986, against the order dated 20.07.2022 of the State Consumer Disputes Redressal Commission Maharashtra(hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. A/19/235 inwhich order dated 11.09.018 of South Mumbai District Consumer Disputes Redressal Forum(hereinafter referred to as District Forum) in Consumer Complaint (CC) No. 197 of 2017 was challenged, inter alia praying for setting aside the Order dated 20.07.2022 of the State Commission and uphold the order of the District Forum dated 11.09.2018.

2. While the Revision Petitioner (hereinafter also referred to as Complainant) was Respondent and the Respondents (hereinafter also referred to as OPs) were Appellants in the said FA No. A/19/235 before the State Commission, the Revision Petitioner was Complainantand

Respondents were OPs before the District Forum in the CC no. 197 of 2017.

3. Notice was issued to the Respondents on 02.12.2022. Parties filed Written Arguments/Synopsis on 31.07.2023 and 22.08.2023 respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that Complainant is member of OP(s) since October, 2004. On 02.02.2016, the complainant suffered acute chest pain and was admitted in Sir H.N.Reliance Foundation Hospital at Girgaon, Mumbai. On 03.02.2016, he had open heart surgery under the treatment and supervision of Dr. Sudhansu Bhattacharyya. He was discharged on 14.02.2016. The hospital had issued final invoice dated 14.02.2006 for Rs.10,53,033 inclusive of Dr. Sudhansu Bhattacharyya's fees of Rs.6,00,000/-. The complainant had private medical insurance for sum of Rs.2.00 lakhs with ICICI Lombard Insurance Co. He received reimbursement of Rs.2 lakhs from ICICI Lombard Insurance Co.on 16.03.2016. The Complainant submitted remaining bill of Rs.8,53,033/- to OP No.1. On16.04.2016, OP No.1 approved and reimbursed a sum of Rs.73,133/- to the complainant. The remaining amount of medical expenses was refused by the OPs. The complainant sentemails to Regional Director of OP No.2 on 01.09.2016 and 19.09.2016 but no action was taken. Complainant requested that on the basis of order passed by Hon'ble High Court ofMumbai in identical case, his claim be considered. Accordingly, complainant wrote letter toLt Gen. Rakesh Sharma, to whom MD of OPs report but no positive response was received from the OPs. The Secretary, Ex-Servicemen Welfare Department instructed OP No.1 to takeaction on top priority but after multiple follow-ups and several emails, head Quarter, ECHS took up the matter and reviewed and approved further claim of complainant to the extent of Rs.1,75,506/- but OPs failed and neglected to reimburse the amount of surgeon fees to the extent of Rs.6.00 lacs. Being aggrieved of the said refusal, the Petitioner filed a Complaint before the District Forum.

5. Vide Order dated 11.09.2018 in CC no. 197 of 2017, the District Commission partly allowed the Complaint. Being aggrieved by the said

order of the District Forum dated 11.09.2018, the Respondents appealed in State Commission and the State Commission vide order dated 20.07.2022 in Appeal No. 19 of 235, partly allowed the Appeal. Hence, the Petitioner herein is before this Commission in Revision Petition.

6. Petitioner has challenged the said Order dated 20.07.2022 of the State Commission mainly/inter alia on following grounds:

i.All the bills were produced by the Petitioner for reimbursement before the respondents which included surgeon fees of Rs.6 lacs and same is admitted by the respondents intheir appeal before the State Commission.

ii.The State Commission ought to have appreciated that respondents never refused any part of the claim of the Petitioner at any point of time.

iii.The Hospital bill issued to the Petitioner was inclusive of the surgeon's fees. The State Commission ought to have appreciated that CABG package was opted for the Petitioner at the time of his admission in the said hospital which is usually offered to any heart patient and, therefore, CABG package cannot be inclusive of surgeon fees.

iv.The State Commission ought to have appreciated that both the parties have specifically and categorically admitted that said surgery of the petitioner was performed by Dr.Sudhanshu Bhattacharya and said doctor fees was not included in the hospital bill.

v.Respondents never denied either before filing the appeal in any of the documents or even in the pleadings of the entire appeal before the State Commission that Dr.Sudhanshu Bhattacharya did not operate the Petitioner and also about the fact that Petitioner has paid the entire surgeon fees of Rs.6.00 lacs.

vi.State Commission erred in holding that petitioner is not entitled for the rates beyond the rate list of CGHS scheme. State Commission ought to have appreciated that respondent have complied with the directions issued in the year 2010 by High Court of Bombay incase of B.N. Makhija and Ors. Vs. Union of India.

vii.State Commission erred in holding that the ratio laid down in the case of Shiva Kant Jha Vs. Union of India was confined to said case only and it cannot be used as aprecedent to other cases and judgment in the said case was passed in personam and,therefore, the ratio

cannot be made applicable to the facts of the present case. The State Commission ought to have appreciated that District Forum has rightly passed the judgment relying upon the said case.

viii.State Commission ought to have appreciated that Govt. of India, Ministry of Health and Welfare have already implemented the rules and regulations confirmed by Apex Court in Shiva Kant Jha case and have issued instructions to CGHS and ECHS that if such cases are to be reimbursed for more than authorized amount, those cases shall be considered by the technical board and the reason for disallowing any part of such claim, if any, shall be indicated by the board.

ix.State Commission observed that it cannot be said that receipt regarding surgeon's fees produced by the Petitioner is false and bogus.

7. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

7.1. Counsel for the Petitioner repeated the points which are stated in para 6, grounds for challenging the order of the State Commission, hence the same are not being repeated here.

8. We have carefully gone through the orders of the State Commission, District Forum, other relevant records and rival contentions of the parties. The only dispute is with respect to the surgeon's fee of Rs.6.00 lacs, claim of which has been declined by the respondent. The State Commission stated that the bill issued by the hospital dated 14.02.2016 is amounting to Rs.4,83,033.11/-. The hospital has given a discount of Rs.29,000/-, so the net bill was Rs.4,53,033.11. The said bill was inclusive of surgeon's fee. It is not in dispute that the petitioner herein has chosen CABG package for his surgery. The details of the said package given by the hospital included doctor's fee of Rs.1,05,800/- In this regard, relevant para of the State Commission order is reproduced below :

"9. It is mentioned in the said letter that Hospital purchases all consumable/medicine/implants in bulk, hence individual invoice or breakup of diagnostics, pharmacy material and stent/implant is not possible, however, the charges of the same were mentioned in the

hospital final bill. It is observed that total package was of Rs.2,04,300/-, wherein doctor's fees, surgeon's and anesthetist's fees were included. which is shown as Rs.1,05,800/-, Hospital and facility charges were Rs.96,000/-. It appears that the respondent had selected CABG Package worth Rs.2,04,300/- The hospital charged him total amount of Rs.4,53,033.11. Out of the said amount, Rs.2 lakhs were reimbursed by the Insurance Company and remaining amount was reimbursed by the appellant. So dispute was in respect of the payment of surgeon fees of Rs.6 lakhs. It is admitted fact that the appellant was member of ECHS, which is covered under CGHS Scheme. According to CGHS Scheme, rate list was published on 09/07/2002. Said list being updated from time to time. In the said rate list, limit for coronary bypass surgery was given as Rs.1,48,500/-. According to the appellant, the respondent is not entitled for the charges beyond the rate list mentioned in CGHS scheme. Respondent herein was member of CGHS and is covered by CGHS scheme, wherein rate list is given. He is not entitled for the rates beyond the rate list of CGHS scheme."

9. The State Commission has duly considered the case law of Shiva Kant Jha (supra) and observed that Hon'ble Supreme Court has specifically mentioned that decision in the said case was confined to the said case only, so, it cannot be used as precedent to other case. Judgment in the said case was passed in personam. Therefore, the said ratio cannot be made applicable to the facts of the present case. In this regard, following paras of the State Commission are also reproduced below:

"11. We must mention here that the respondent came with a story that hospital had issued him bill of Rs.10,53,033/-. But in fact, said bill is not produced on record. The bills produced on record shows that the respondent was asked to pay bill of Rs.4,53,033/-. Respondent has submitted separate receipt of surgeon's fees to the tune of Rs.6 lakhs. No doubt, respondent has paid the said amount to Dr.Bhattacharyya. Therefore, it cannot be said that the receipt regarding surgeon's fees produced by respondent is false and bogus. But at the same time, it must be noted that in hospital bill, doctor's fees of Rs.2,04,300/- is inclusive of surgeon and anesthetist fee. So the hospital has charged the respondent for surgeon's fees and over and above, respondent paid Rs.6 lakhs to Dr.Bhattacharyya but said

amount of Rs.6 lakhs is not shown in the hospital bill issued on 14/02/2016. Therefore, it can be said that the hospital has issued bill as per CABG package. The amount of said bill was Rs.4,53,033/- and the said amount is reimbursed to the respondent as per rules and IES E guidelines given by the Hon'ble High Court of India in the matter of B.N.Makheja & Ors. vs.Union of India.

12. The amount of surgeon fees was not included in the hospital bill. Surgeon has issued separate receipt for Rs.6 lakhs to the respondent, which was over and above the package opted by the appellant. In view of the CGHS rules, respondent is not entitled for the said amount. District Commission has completely relied on the ratio relied in the case of Shiva Kant Jha v/s. Union of India

and allowed the claim of respondent regarding the surgeon's fees of Rs.6 lakhs. But the ratio laid down in the case of Shiva Kant Jha vs. Union of India was restricted to the facts of said case. District Commission ought not to have relied upon the same to grant the surgeon's fees to the respondent. Therefore, finding of the District Commission regarding the surgeon's fees is not proper and correct. The said finding is required to be set aside. District Commission has rightly directed opponents to pay interest @ 6% p.a. on delayed payment of Rs.1,75,506/- from 16/04/2016 till 20/02/2018. District Commission has also granted costs and compensation. The said findings are proper and correct. Therefore, appeal is required to be allowed partly. Hence, we pass the following order:-“

10. In view of the foregoing, we are of the view that State Commission has given a well reasoned order. As was held by the Hon'ble Supreme Court in Rubi Chandra Dutta Vs.United India Insurance Co. Ltd.

[(2011) 11 SCC 269] that the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In Sunil Kumar Maity Vs. State Bank of India & Ors. [AIR (2022) SC 577] held that “the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by

law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity." We find no illegality or material irregularity or jurisdictional error in the order of the State Commission, hence the same is upheld. Accordingly, Revision Petition is dismissed.

11. The pending IAs in the case, if any, also stand disposed off.