



## K.K. Kharbanda v. Union of India and Ors

[2009] INDLHC 940

**Country:** India

**Region:** Asia

**Year:** 2009

**Court:** High Court - Delhi

**Health Topics:** Chronic and noncommunicable diseases, Health care and health services, Health systems and financing, Hospitals

**Human Rights:** Right to health, Right to life

### Facts

Petitioner, a government employee, submitted claims for (a) reimbursement for his wife's cancer treatment prior to the 2003 date on which the Export Inspection Council (the "Council") determined that certain Special Diseases, including cancer, would be exempted from a 3,600 rupee ceiling on reimbursement. The Council had not revised the rates since 1989; (b) certain follow-up medical treatments of his wife as an outdoor patient and (c) a CT scan of petitioner's abdomen from a Delhi hospital after he had been transferred to Chennai on papers.

The respondents refused to reimburse the above claims because (i) the claim for reimbursement regarding cancer was submitted prior to the 2003 date on which the Council exempted cancer from the medical reimbursement ceiling; (ii) respondents believed the outdoor claims were ineligible for reimbursement, and (iii) respondents believed the Chennai rates for the CT scan of petitioners abdomen should apply rather than the Delhi rates.

### Decision and Reasoning

The court emphasized that it was the State's duty to bear the expenditure incurred by a Government servant suffering from ailments which required treatment at approved specialty hospitals. Noting that health insurance while in service or after retirement was held to be a fundamental right, the court confirmed that the right of a citizen to live under Article 21 of the Indian constitution casts obligation on the State. The court further noted that, the costs of medical treatment had been rising since the reimbursement ceiling was set in 1989 and that the Council had failed in its obligation to revise the rates from time to time accordingly.

The court also reasoned that it was irrational to allow medical reimbursement for the patient as an indoor patient but to restrict that same patient's access to medical reimbursement when seeking treatment as an outdoor patient.

Ultimately, the court held that (a) the Council's decision to remove the ceiling limit in cases pertaining to medical reimbursement for treatment of certain diseases should apply retroactively; (b) the respondent could not deny reimbursement of medical expenses, restricting the payment of medical claims only to the extent of indoor expenses while rejecting the expenses incurred as an outdoor patient because the outdoor treatment was an integral part of and connected with the indoor treatment; and (c) the fact that the petitioner was transferred to Chennai doesn't mean that Chennai medical rates should apply, rather the Delhi rates should be applicable for the CT scan since treatment was taken in Delhi.

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Ultimately, the court held that (a) the Council's decision to remove the ceiling limit in cases pertaining to medical reimbursement for treatment of certain diseases should apply retroactively; (b) the respondent could not deny reimbursement of medical expenses, restricting the payment of medical claims only to the extent of indoor expenses while rejecting the expenses incurred as an outdoor patient because the outdoor treatment was an integral part of and connected with the indoor treatment; and (c) the fact that the petitioner was transferred to Chennai doesn't mean that Chennai medical rates should apply, rather the Delhi rates should be applicable for the CT scan since treatment was taken in Delhi.

Can the respondent deny reimbursement of medical expenses, restricting the payment of medical claims only to the extent of indoor expenses while rejecting the expenses incurred as an outdoor patient? NO, if an integral part and connected with the indoor treatment

Can the decision of the Export Inspection Council removing the ceiling limit in cases pertaining to medical reimbursement for treatment of certain diseases be made applicable retroactively? YES

Can the Chennai rates for the CT scan apply instead of the Delhi rates? Delhi rates applicable since treatment was taken in Delhi. Just because petitioner was transferred to Chennai doesn't mean Chennai rates should apply.

Clear from that the government doesn't impose a ceiling limit in CA MA Rules. (13) For ODP treatment the EIC does prescribe annual ceiling for reimbursement,

Health service is a very important part of individual existence and government servants are proceed the benefit of medical aid.

Cost of medical treatment has been rising and respondents cannot deny the actual reimbursement from a hospital recognized by them based on the 1989 rates. Government must bear the expenses incurred by the gov't servant as the gov't servant cannot bear his own treatment expenses.

Council had an obligation to revise the rates between 1989 and 2003. It was an arbitrary act of the council not to revise the rates to keep balance between rates charged by hospitals and reimbursement offered to beneficiaries.

With changing scenario, political, social and financial the policy of reimbursement cannot remain static. Respondents should have been more responsive and not to mechanically deprive an employee of his legitimate reimbursement, especially on account of their own failure in not revising the rates.

Holding: Ceiling limit not applicable and the petitioner is entitled to complete expenditure.

## **Decision Excerpts**

"10 Time and again the Apex Court has emphasized to the Government and other authorities for focusing and giving priority to the health of its citizens, which not only makes one's life meaningful, improves one's efficiency, but in turns give optimum output. It is now settled law that the right to health is an integral part of the right to life and that it is the duty of the State to bear the expenditure incurred by a Government servant suffering from ailments which required treatment at approved specialty hospitals."

"11 The expression 'life' ingrained in Article 21 [of the Indian constitution] does not connote mere animal existence or continued drudgery throughout life. It as a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure facilities and opportunities to eliminate sickness and physical disability of the workmen. Health of the workman enables

him to enjoy the fruits of his labour and, therefore it is necessary to keep him physically fit and protect his health. In that case health insurance, while in service or after retirement was held to be a fundamental right and even private industries are enjoined to provide health insurance to the workmen. When we speak about a right it correlates to a duty upon an individual employer, Government or any other authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. The obligation includes improvement of public health as its primary duty.”

“15 The cost of medical treatment has been rising over a period of time and respondents cannot deny the actual reimbursement from a Hospital recognised by them for treatment on the basis of the rates as per the previous decision of 1989 herein, which cannot remain static and should be revised regularly. When the policy was adopted in 1989, the rates fixed had nexus with the actual treatment cost charged by the hospitals. When the treatment was taken by the petitioner and his wife in 2001-2002, the hospitals had revised/raised their rates but still the respondents reimbursed the petitioner as per its 1989 policy. The hospitals cannot be blamed for raising the cost of treatment due to the components of treatment becoming costlier. But the Government has to bear the expenses incurred by the Government Servant as the Government servant cannot within his limited earning bear the expenses for the treatment of his ailments.”

“16 But, the entire blame shifts on the Council, for the sole reason that it did not revise the rates, for the year 1989 till 2003 which it was under an obligation to do. . . . it was arbitrary on the part of the council not to revise the rates from time to time to keep the balance between the rates charged by the hospitals and the reimbursements offered to the beneficiaries . . .With the changing scenario, political, social and financial, the policy of reimbursement cannot remain static. Respondents were required to be more responsive and could not in a mechanical manner deprive an employee of his legitimate reimbursement, especially on account of their own failure in not revising the rates. The respondent cannot be permitted to wash its hands and leave the petitioner employee to face the vagaries of the demands made from him over and above the ceiling rates. The stand of the respondent is that the medical reimbursement for OPD patients was to be governed as per the ceiling limit laid down by the Council, which was periodically being revised, does not appear to have any rational or logic as once the patient suffering from any of the aforesaid serious diseases was allowed medical reimbursement under the CS (MA) Rules as an indoor patient then how the same patient could be deprived or restricted to some limit for the medical expenses incurred by him/her as an outdoor patient. There cannot be any two opinions that for such serious disease the medical expenses to be incurred by the patients are comparatively very high as cost of medicines that too from reputed pharmaceutical companies for such disease is comparatively very high and therefore, if the patients are deprived of the medical reimbursement as an outdoor patient then in such a situation either patients would be deprived to get further proper medical treatment as an outdoor patient or they would be left in the lurch to meet their ultimate fate. I therefore do not find that denial of actual medical reimbursement as an outdoor patient or restricting the them to any limit could have any sound reason or rational”

“17 The law is therefore, well-settled that right to health is an integral part of life and the Government has constitutional obligation to provide the health facilities to its employees or retired employees and in case an employee requires a specialized treatment in an approved hospital it is the duty of the Government to bear or reimburse the expenses.”

“19 As regards the third issue of the reimbursement of the expenses incurred upon the wife of the petitioner as an outdoor patient, the law is well settled, that no distinction can be made between the expenses incurred on outdoor treatment and indoor treatment. If the outdoor treatment is an integral part and connected with the indoor treatment, the expenses incurred in the former are reasonable.”

“22 When a Government employee puts forth a bona fide claim for reimbursement of his medical bill, it should not be taken lightly and the approach of the Government in such matters should be justice oriented. Such claims should be treated in a humanitarian matter keeping in mind the totality of the circumstances.”