

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 15416 of 2015 (B)

PETITIONER(S):

**SURESH BABU K.V,
KOVATT HOUSE, KARUMALLOOR PO,
ERNAKULAM -683511.**

**BY ADVS.SRI.A.JAYASANKAR
SRI.C.V.MANUVILSAN
SRI.MANU GOVIND**

RESPONDENT(S):

- 1. THE DIRECTOR OF INSURANCE MEDICAL SERVICES,
THIRUVANANTHAPURAM -695001.**
- 2. THE EMPLOYEES STATE INSURANCE CORPORATION,
REPRESENTED BY ITS REGIONAL DIRECTOR,
THRISSUR - 20.**
- 3. THE KERALA INSTITUTE OF MEDICAL SCIENCES,
REPRESENTED BY ITS DIRECTOR, THIRUVANANTHAPURAM - 29.**

**R1 & 3 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN
R2 BY ADV. SRI.P.SANKARANKUTTY NAIR, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

WP(C).No. 15416 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE REFERRED FORM DATED NIL FROM NSIC
HOSPITAL, UDYODAMANDAL**

**EXHIBIT P2: A COPY OF THE ENTITLEMENT CERTIFICATE DATED 5.1.2015 FROM
EMPLOYEES STATE INSURANCE CORPORATION , ANGAMALY BRANCH**

**EXHIBIT P3: A COPY OF THE LETTER DATED 15.5.2015 FROM KERALA INSTITUTE
OF MEDICAL SCIENCES**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 15416 of 2015

Dated this the 9th day of November, 2015

J U D G M E N T

The petitioner, who is an insured employee under the ESI Scheme, alleges that he is suffering from liver cirrhosis and is referred for transplantation as per Ext.P1. The 3rd respondent intimated as per Ext.P3 that no matching organ is available at present. His grievance is that as per Ext.P2, the super specialty treatment is available till 29.05.2015 and he would be put to loss and injury in case the cut-off date is not extended. Hence, this writ petition.

2. In the counter affidavit filed by the 2nd respondent, it is contended as follows;

The petitioner is an employee of the canteen attached to M/s.TELK Ltd., Angamaly and an insured person under the ESI Act having Ins.No.4701684137. According to them, the plea of the petitioner to get a direction to respondents 1 & 2 to extend the medical benefits till the liver

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transplantation is completed is not maintainable in law. The petitioner submitted a regulation certificate dated 06.06.2012 before the branch office of the 2nd respondent with certified sickness for the diagnosis "Cirrhosis with Ascites". He was referred to the respondent corporation's medical referee's examination for confirmation of his diagnosis. The medical referee confirmed the petitioner's disease as "Cirrhosis with Ascites" with date of onset on 30.05.2012, for which, he is entitled to avail extended sickness benefit payable for the long term diseases listed in Regulation 98(iii) of the ESI Act.

3. Arguments have been heard.

4. In the case of the petitioner, the ESB/EMB period is from 30.05.2012 to 29.05.2015, i.e., his medical benefit with respect to the disease expires on 29.05.2015. That means, he would be entitled for medical benefit up

..3..

to 29.05.2015; and accordingly, Ext.P3 was issued by the Branch Office Manager of the respondent corporation. According to the 2nd respondent, there is no other provision in the EST Act/Rules/Regulations to extend the medical benefits to the petitioner. In other words, there exists no saving clause in the EST Act to protect the petitioner in this regard.

5. The fact that the petitioner is suffering from acute liver cirrhosis is not in dispute. He is an insured employee. The liver transplantation was delayed for the reason not attributable to the petitioner. It is evident from Ext.P2 that the petitioner was waiting for a matching organ. Respondents 1 & 2 are not justified in sticking to a hyper technical stand that no benefit be extended after 29.05.2015. The petitioner points out that he belongs to a poor family and is availing medical leave since 05.06.2012. Presumably, he is not in a position to meet the huge expenditure necessary for liver transplantation in case respondents 1 & 2 decline

reimbursement.

6. It is crucial to note that Ext.R1 contains a relaxation clause, which states that in case, enforcement of any particular provision of Corporation's resolution is likely to cause substantial hardship to an insured person, the Director General/Insurance Commissioner may on humanitarian grounds relax the same.

7. The Standing Committee Resolution dated 23.06.2003 was issued with a view to prevent misuse of medical facilities under the ESI Scheme. However, the Standing committee stated in the resolution that genuine cases should not be allowed to suffer and the restrictions being imposed may be relaxed in deserving cases by the Director General. The powers for relaxation have been further delegated to the Senior State Medical Commissioner/State Medical Commissioner. Undoubtedly, the petitioner's case warrants a relaxation; and therefore, this Court is of the view that the matter requires a re-look by the respondent corporation as a special case.

In the result, the writ petition is allowed. The Director General or the Senior State Medical Commissioner or the State Medical Commissioner, as the case may be, shall consider the case of the petitioner on sympathetic grounds and extend the medical benefits to the petitioner till the liver transplantation and all other consequential treatment are completed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-