

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 18445 of 2015 (E)

PETITIONER(S):

- 1. ANSEN JOSEPH THOMAS, AGED 24 YEARS,
S/O. E.J.THOMAS, RESIDING AT ELAVANAL HOUSE,
POOTHRIKKA P.O., ERNALULAM - 682 308.**
- 2. E.J.THOMAS, AGED 55 YEARS,
ADVOCATE, RESIDING AT ELAVANAL HOUSE,
POOTHRIKKA P.O., ERNAKULAM - 682 308.**

**BY ADVS.SRI.REJI GEORGE
SRI.BINOY DAVIS**

RESPONDENT(S):

- 1. THE E.S.I CORPORATION,
REPRESENTED BY THE BRANCH MANAGER,
THRIPUNITHURA BRANCH - 695 002.**
- 2. THE SUPERINTENDENT,
E.S.I HOSPITAL, ERNAKULAM, KOCHI - 682 018.**

**R1 BY ADV. SRI.P.SANKARANKUTTY NAIR, SC, ESI CORPN
R2 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-06-2015 THE COURT ON 10-07-2015, DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF IDENTITY CARD ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- P2 - A TRUE COPY OF THE ENTITLEMENT CERTIFICATE DT. 09.5.14 ISSUED BY THE INSURANCE MEDICAL OFFICER, ESI DISPENSARY, TRIPUNITHURA, EVIDENCING THE FACT THAT THE 2ND PETITIONER IS ENTITLED FOR MEDICAL BENEFITS UNDER THE ESI ACT.
- P3 - THE ENTITLEMENT CERTIFICATE DT. 30.12.14 ISSUED BY THE INSURANCE MEDICAL OFFICER, ESI DISPENSARY, TRIPUNITHURA CERTIFYING THAT THE 2ND PETITIONER IS ENTITLED FOR MEDICAL BENEFITS FOR THE PERIOD UP TO 30.6.15.
- P4 - A TRUE COPY OF THE REFERRAL LETTER DR 13.5.14 ISSUED BY THE 2ND RESPONDENT FOR THE TREATMENT OF THE 2ND PETITIONER UNDER THE DEPARTMENT OF NEPHROLOGY, MOSC MEDICAL COLLEGE HOSPITAL.
- P5 - THE LAST REFERRAL LETTER ISSUED BY THE 2ND RESPONDENT DT. 12.5.15 REFERRING THE 2ND PETITIONER TO MOSC MEDICAL COLLEGE HOSPITAL, KOLENCHERY FOR HAEMODIALYSIS.
- P6 - A TRUE COPY OF THE LETTER DT. 26.5.15 ISSUED BY THE CONSULTANT NEPHROLOGIST OF THE MOSC MEDICAL COLLEGE HOSPITAL TO THE 2ND RESPONDENT.
- P7 - A TRUE COPY OF THE PRESCRIPTION DT. 10.6.15 ISSUED TO THE 2ND PETITIONER FROM THE ESI HOSPITAL, ERNAKULAM.
- P8 - THE TRUE COPIES OF THE DOCUMENTS SUBMITTED BY THE 2ND PETITIONER BEFORE THE 2ND RESPONDENT DULY COUNTERSIGNED BY THE INSURANCE MEDICAL OFFICER, ESI DISPENSARY, THIRUPUNITHURA FOR REFERENCE TO THE LOURDES' HOSPITAL, ERNAKULAM.
- P9 - THE TRUE COPIES OF THE DOCUMENTS SUBMITTED BY THE 2ND PETITIONER BEFORE THE 2ND RESPONDENT DULY COUNTERSIGNED BY THE INSURANCE MEDICAL OFFICER, ESI DISPENSARY, THIRUPUNITHURA FOR REFERENCE TO THE MOSC MEDICAL COLLEGE HOSPITAL, KOLENCHERY.

RESPONDENT(S)' EXHIBITS:

EXT.R2(a): TRUE COPY OF THE DECISION DTD.29.8.2014.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 18445 of 2015

Dated this the 10th day of July, 2015.

JUDGMENT

Aggrieved by the denial of medical benefits of the petitioners under the provisions of the Employees State Insurance Act, 1948, petitioners have come up before this Court.

2. The first petitioner is duly insured under the ESI Act since 6.11.2013 and the second petitioner is his father, who is a dependent parent and therefore a member of his family as defined under Section 2 (11) of the ESI Act. Petitioners allege that the second petitioner is on treatment under the Department of Nephrology at the MOSC Medical College, Kolenchery since the year 2013 for Chronic Kidney disease, diabetes mellitus, hypertension, ischaemic heart disease etc. The second petitioner is granted medical benefits under the ESI Act for his treatment since 2014 on the recommendation of the second respondent. Subsequently, the second petitioner

was examined at the ESI Hospital, Ernakulam on 10.6.2015, and he was diagnosed to have steal syndrome and he was advised to bring eligibility documents for reference to Lourdes' Hospital, Ernakulam for Doppler evaluation and also for hemodialysis at the MOSC Medical College Hospital, Kolenchery. The petitioners further allege that even though, the second petitioner has produced all the eligibility documents to claim medical benefits from the first respondent Corporation as a dependent parent of the first petitioner, without assigning any reason, the second respondent declined to refer the second petitioner for treatment at the Lourdes' Hospital, Ernakulam and MOSC Medical College Hospital, Kolenchery. As a dependent parent of the first petitioner, the second petitioner is entitled to avail of the medical benefit under the ESI Act for his treatment, it is alleged.

3. The second respondent who is the Superintendent of ESI Hospital, Ernakulam submitted a statement wherein it is admitted that the second petitioner Sri. E.J. Thomas is the father of the first petitioner. He had been referred from ESI

Dispensary, Thripunithura to the ESI Hospital, Ernakulam for Super Speciality treatment and he had been referred from ESI Hospital, Ernakulam to MOSC Medical College, Kolenchery. Whenever, he comes ESI Hospital, Ernakulam, the Superintendent, ESI Hospital, Ernakulam had asked him to produce the previous documents regarding his treatment to know whether the disease was pre-existing or not. But he never produced the documents. Meanwhile, he was referred to MOSC Medical College, Kolenchery for heamodialysis. It is further alleged that the Insurance Medical Officer, ESI Dispensary, Thripunithura was contacted to know the details of his disease. The records kept at ESI Dispensary, Thripunithura reveals that Sri. E.J. Thomas was undergoing heamodialysis for 1 ½ years as on 28.4.2014. Since his son, Sri. Ansen Joseph Thomas was registered as an insured person only on 6.11.2013, it is evident that the haemodialysis started even before Sri. Ansen Joseph Thomas becoming an insured person. It is alleged that ESI decisions taken by the ESI Corporation at its 162nd Meeting held on 31.7.2014 on Medical Services,

Clause 5(4) clearly states that, "in case of malignancy and chronic renal failure, pre-existing disease shall not be eligible for coverage, so as to prevent potential misuse of super specialty treatment. In case during the course of treatment it is found that the disease was existing prior to person becoming an insured person, the treatment shall be discontinued". That was why, Sri. E.J. Thomas could not be referred for super specialty treatment; it was contended.

4. Though ESI Corporation entered appearance, no counter affidavit has been filed.

5. Arguments have been heard.

6. The fact that the first petitioner is an employee working in an establishment to which the ESI Act is applicable and that he is duly insured by the first respondent corporation stand practically admitted that there is no specific denial against the said averment in the writ petition. This is evidenced by Ext.P1 Identity Card issued to the first petitioner.

7. The learned counsel for the petitioners would argue that being a family member of the first petitioner, the second

petitioner is entitled to claim the benefit provided under the ESI Act as Clause 95 (a) of the Employees State Insurance (General) Regulation, 1950 provides for an assurance from medical facilities to a family members of a person to which the ESI Act is applicable.

8. It is clear from Ext.P3 entitlement certificate dated 30.12.2014 issued by the first respondent Corporation that the first petitioner is entitled for medical benefits during the period from 1.1.2015 to 30.6.2015 for referral to the super specialty treatment of the second petitioner. The learned counsel for the petitioners further pointed out that in fact the medical benefits under the ESI Act, were being extended to the first petitioner for the treatment of the second petitioner since May 2014. Ext.P5 is the referral letter for haemodialysis at MOSC College Hospital, Kolenchery was issued by the second respondent on 12.5.2015 for a period of 30 days ending on 12.6.2015. However, the second respondent declined to refer the second petitioner for treatment in the Lourdes' Hospital, Ernakulam and MOSC Medical College Hospital, Kolenchery.

During the course of argument, the learned counsel for the petitioners made available for my perusal a copy of entitlement certificate issued by the Deputy Director of ESI Corporation dated 29.6.2015 which certifies that the first petitioner is entitled for the medical benefits during the benefit period from 1.7.2015 to 31.12.2015 as per the office record and he is entitled to medical benefit and super-specialty treatment upto 31.12.2015, if otherwise eligible. The said certificate is issued for the treatment of the dependent father Sri. E.J.Thomas, who is none other than the second petitioner in this case.

9. As per the statement now filed by the second respondent, the claim was rejected as per Clause 5 (4) in Annexure R2(a). It states that malignancy and chronic renal failure, pre-existing disease shall not be eligible for coverage, so as to prevent potential misuse of SST.

10. The first petitioner was registered as insured person on 6.11.2013. The decision of the ESI Corporation to exclude coverage as above was taken only on 31.7.2014. It has no retrospective operation. The respondents do not have a case

that the entry of the first petitioner in the scheme was to misuse the scheme. It is crucial to note that a person would approach a hospital only when the symptoms of any ailment develops. Renal failure and malignancy may not show any outward symptoms at initial stages. This Court is of the view that the clause 5 (4) of Annexure R2(a) was enacted without taking into account these realities.

In the result, the writ petition is allowed. It is hereby declared that the first petitioner is entitled to the medical benefits under the ESI Act for the treatment of the second petitioner. The second respondent is directed to issue Exts.P8 and P9 referral letters, referring the second petitioner for treatment at the Lourdes's Hospital, Ernakulam and at the MOSC Medical College Hospital, Kolenchery on the production of the copy of this judgment, without fail.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

W.P.(C) No. 18445 of 2015

-8-

Scl.