

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23.02.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3687 of 2016 &
W.M.P.No.3036 of 2016

S.Suresh

.. Petitioner

Versus

1.The Employees' State Insurance
Corporation, Sterling Road, Chennai,
Rep. by its Regional Manager.

2.The Director,
Employees' State Insurance Hospital,
Ayanavaram, Chennai.

3.Sodecia India Pvt. Ltd. Rep by its
Manager (Human Resources),
Tapalmedu, Pukkathurai,
Maduranthakam Taluk,
Kancheepuram District.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, directing the respondents 1 and 2 to accord petitioner the benefit of health care by treating the petitioner herein and his wife in accordance with the Rules and Regulations framed under the Employees State Insurance Act.

For Petitioner : Mr.V.Prakash, Senior Counsel
For Mr.K.Sudalaikannu

For Respondents : Mr.K.Prabakaran for R1 and R2

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O R D E R

Heard Mr.V.Prakash, learned Senior Counsel for the petitioner, Mr.K.Prabakaran, learned Standing Counsel appearing for the respondent Corporation and with their consent, the Writ Petition is taken up for final disposal.

2. Petitioner seeks for issuance of a writ of mandamus, to direct the respondents 1 and 2 to accord him the benefit of health care by treating him and his wife in accordance with the Rules and Regulations framed under the Employees State Insurance Act.

3. Since the petitioner's wife has to undergo urgent treatment, an interim order was passed on 02.02.2016. Pursuant to which, she has been given treatment. The only issue that now remains to be considered is whether the respondent Corporation can refuse to accord the benefits of Health Care Scheme for the petitioner and his spouse.

4. The learned Standing Counsel for the respondent Corporation has produced a written instruction given to him by the Deputy Director (Legal) of the respondent-Corporation, dated 19.02.2016 and the operative portion of the said communication reads as follows:-

"Further, I am to inform the following facts about the case for submission to the Hon'ble Court.

- The insured Person, Shri.S.Suresh, has been assessed with permanent disablement of 50%. So far, the Insured Person has been paid permanent disablement benefit of:
 - Rs.14,063/- for the period from 29.03.2015 to 31.07.2015 and
 - Rs.20,700/- for the period from 01.08.2015 to 31.01.2016.
- Permanent disablement benefit will be paid at 50% for future periods, also.
- As per Rule 60 of ESI (Central) Rules, 1950, an Insured Person who ceases to be in insurable employment on account of permanent disablement arising out of Employment injury is eligible to avail medical benefits for himself and his spouse at the scale prescribed under the Act and Regulations made thereunder till the date on which he would have vacated the Employment on attaining the superannuation, had he not sustained such permanent disablement provided.
 - The Insured Person has to produce proof of him not in insurable employment on account of permanent disablement due to employment injury to the satisfaction of such officer as may be authorised by the Corporation, and
 - the payment of contribution at the rate of ten rupees per month in lumpsum for one year at a time in advance to the concerned office of the Corporation.

- Hence, from the aforesaid provisions, the Insured Person Shri.S.Suresh and his spouse will be eligible for medical benefits to the extent aforementioned on his production of proof that he ceased to be in insurable employment on account of permanent disablement, payment of Rs.120/- (for one year at a time) and on his submitting an application in writing along with a certificate from the Employer to ESI Corporation's Branch Manager, Villivakkam."

5. In the light of the above stand taken by the respondent Corporation, it is seen that the petitioner and his wife will be eligible for medical benefits to the extent provided on their production of proof that the petitioner ceased to be in insurable employment on account of permanent disablement, payment of Rs.120/- (for one year at a time) and on his submitting an application along with a certificate from the Employer to ESI Corporation's Branch Manager, Villivakkam.

6. The fact that the petitioner has suffered a permanent disability is not in dispute and cannot be disputed by the respondent Corporation. However, since there is a procedure to be followed for enrollment, there will be a direction to the petitioner to submit necessary application along with fee of Rs.120/-. It is made clear that the respondent Corporation cannot insist upon any certificate from the employer, because, the petitioner has been terminated from service, after he suffered the disablement. Further more, there can never be a dispute as regards nature of injury suffered nor can it be stated that it is not in the course of employment. In fact, the medical records clearly prove that the petitioner had suffered the injury on account of the accident, which occurred in the factory. Further, instead of rehabilitating the petitioner, the third respondent Management has taken a very arbitrary stand in terminating the petitioner from service.

7. Therefore, the petitioner is directed to submit his Application together with a fee of Rs.120/-, along with the copy of this order to the Branch Manager, ESI Corporation, Villivakkam of the respondent-Corporation. On receipt of the said Application, the respondent Corporation is directed to enroll the petitioner under the Scheme and extend the admissible medical benefits to him and his spouse, without insisting upon him any certificate from the third respondent Management.

Accordingly, the writ petition is disposed of. No Costs.
Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

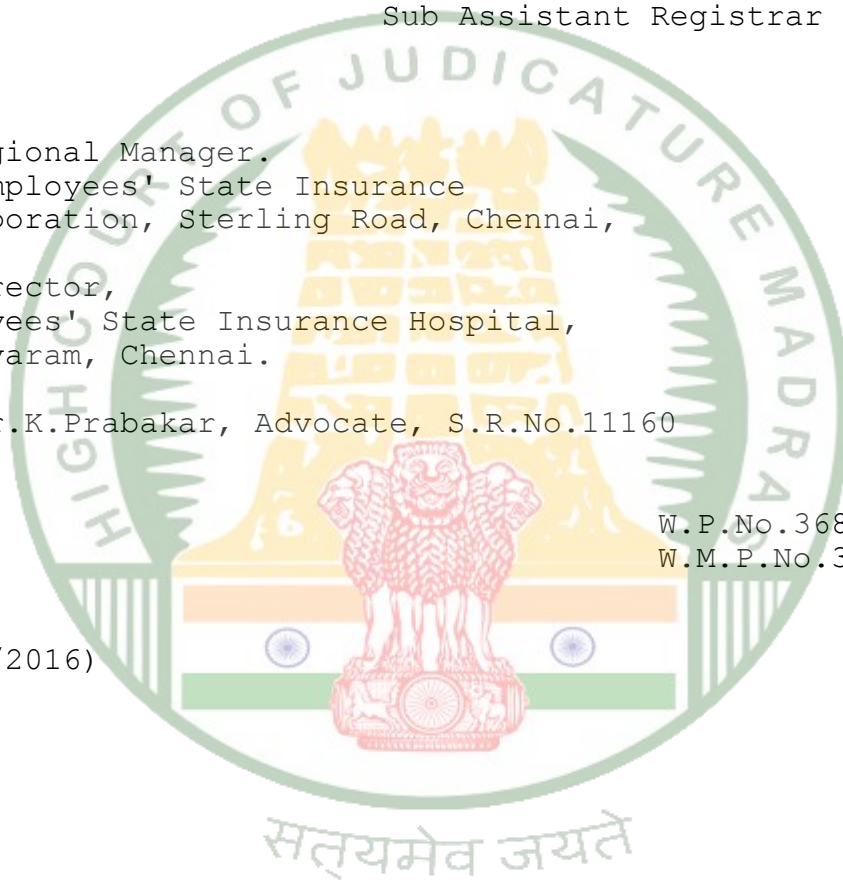
To

1. The Regional Manager.
The Employees' State Insurance
Corporation, Sterling Road, Chennai,
2. The Director,
Employees' State Insurance Hospital,
Ayanavaram, Chennai.

+1cc to Mr.K.Prabakar, Advocate, S.R.No.11160

W.P.No.3687 of 2016 &
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kk(CO)
srg(01/03/2016)



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