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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 16.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A.(MD)No.1579 of 2016

and

C.M.P.(MD).No.11685 of 2016

MD India Healthcare Services (TPA) Ltd.,
rep. by the Branch Manager, Chennai,
Guna Complex,
New Door No.443 and 445,
Old Door No.304 and 305,
Anna Salai,
Teynampettai,
Chennai -18.

..Appellant/3rd respondent
vs.

1.K.Parameshwari

..1st Respondent/Writ Petitioner

2.The District Collector,
Madurai District,
Madurai.

3.The Joint Director,
Medical and Rural Health Services
Departemnt, Madurai District
Headquarters, Usilampatti,
Madurai District.

..Respondents 2 & 3/
Respondents 1 & 2

Writ Appeal has been filed under Clause 15 of the Letters Patent Act, against the order dated 21.07.2015, made in W.P.(MD). No.5219 of 2015 by a learned Single Judge of this Court.

Prayer in WP(MD). 5219/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the Respondnets herein to consider the request dated 04.02.2015 for reimburse the amount of Rs. 2,76,866.00 (Rupees two lakhs seventy six thousand and eight hundred and sixty six only) to the petitioner which was paid by her toward medical expenses under the Health Insurance Scheme, 2012 for the petitioner s husband S. Selvam working as Assistant Section Offier, Madurai Bench of Madras High Court, for the surgery conducted for him for "Right Frontal Craniotomy" (Brain Tumour) within a stipulated time fixed by this Honourable Court.



For appellant
For 1st respondent

: Mr.A.Shajahan
: Mr.AL.Kannan

For respondents 2 & 3

: Mr.N.S.Karthikeyan,
Addl. Government Pleader

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JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.)

This writ appeal has been filed by the appellant / third respondent in the writ petition viz., MD India Health Care Service (TPA) Pvt. Ltd., Chennai, against the order passed by the learned Single Judge of this Court in W.P.(MD).No.5219 of 2015, in which the learned Single Judge directed the appellant and the 2nd and 3rd respondents herein to reimburse the medical expenses pertaining to the first respondent / writ petitioner's husband within a period of eight weeks from the date of receipt of the order.

2.The case of the first respondent before the Court below is that due to ill-health, on 30.01.2015 her husband, who is working as Assistant Section Officer, Madurai Bench of Madras High Court, Madurai, had initially admitted as inpatient in Vadamalaiyan Hospital, wherein it is found out that the petitioner is suffering small tumor in brain. Then, she discharged her husband from Vadamalaiyan Hospital and took him to "Hannah Joseph Hospital" Madurai, wherein she spent Rs.2,76,866 lakhs towards surgery charge and medical expenses of her husband. As the treatment relating to the said disease is covered under G.O.Ms.No.243, Finance (Salaries) Department, dated 29.06.2012, the first respondent made a claim for reimbursement before the appellant. The third respondent herein sent an e-mail letter dated 14.04.2015 rejecting the request of the first respondent on the ground that the treatment was taken in a non-network hospital. Therefore, the first respondent was constrained to file a writ petition seeking a direction to the appellant and the 2nd and 3rd respondents herein to reimburse Rs.2,76,866.00 by considering her request dated 04.02.2015.

3. The learned Single Judge of this Court, after hearing both sides, based on the order passed by this Court in similar matters, directed the appellant and the 2nd and 3rd respondents to reimburse the medical expenses pertaining to the first respondent's husband. Aggrieved by the same, the appellant/third respondent has come up with this Writ Appeal.

4.The contention of the appellant is that the first respondent's husband viz., Selvam had initially got admitted in Vadamalayan Hospital, Madurai and subsequently, he was discharged by the first respondent as against medical advise on 03.01.2015 and thereafter, he took treatment in a non-network hospital. Since the husband of the first respondent took treatment in the

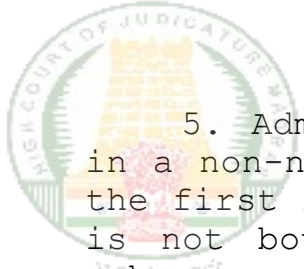


non-network hospital, the appellant is not liable to pay the compensation. Hence, the direction given by the learned Single Judge is liable to be modified. In this regard, the learned counsel for the appellant relied on a unreported decision of this Court in W.P.(MD).No.20327 of 2016 dated 07.11.2016, wherein in paragraph No.4 this Court has held as follows;

"4.The learned counsel for the third respondent would submit that when a treatment has been taken in a non-network hospital, the Insurance Company has been exonerated as per the decision of this Court in Star Health and Allied Insurance Co. Ltd., rep. by its Project Officer, Tamil Nadu Government Employees New Health Insurance Scheme, Chennai v. A.Chokkar and another reported in 2010-2-L.W.90, under which, the Government has been directed to consider the claim of the petitioner over medical reimbursement and it shall not be declined merely because of the employee is a member of the Insurance Scheme. The relevant paragraph is extracted here-under:

"28.Therefore, if the claimants have made payments whether for a procedure not covered or whether at a non-network hospital or they have paid when they have been treated for a covered procedure in a network hospital, their only remedy is to approach the Government under the Rules. If, however, before they take treatment they are informed that a particular procedure is not covered, then at that stage, they may approach the Redressal Committee where the medical expert can decide whether that procedure is covered or not. The Redressal Committee may also go into the complaint regarding non-availability of facility at a network hospital, which may be available in favour of the claimant when he applies under the Rules. Otherwise, we do not think that the Redressal Committee can do much in any one of these case, since all the petitioners/claimants before us would have made payments. But, if there is a petitioner who has not settled the claim and has come before us, then, in the event, that it is for a procedure that is not covered, he may approach the Redressal Committee. In view of the fact that there are the above lacunae in the Scheme, the Government shall not deny any claim validly made under the Rules only because the claimant is a member of the Scheme".

As per the said Judgment, it is clear that the Insurance Company is exonerated from the payment of the claim, as it is an admitted fact that the treatment was given in a non-network hospital.



5. Admittedly, the first respondent's husband took treatment in a non-network hospital. The relationship of the appellant with the first respondent's husband is purely a contract. The appellant is not bound to satisfy any claim that is not covered by the scheme or contract. The appellant is strictly bound to satisfy the claims arising out of the procedures/treatments that are listed. According to the appellant, the first respondent's husband took treatment in a non network hospital, that is the hospital which is not covered under the contract and hence, the appellant / Insurance company is not liable to pay the compensation. We find force in the submission of the appellant.

6. At this juncture, the learned Additional Government Pleader appearing for the respondents 2 and 3 submitted that as per G.O.Ms.No.241, Finance (Salaries) Department, dated 24.08.2016, the matter may be referred to the District Level Empowered Committee. The said G.O. came into effect only on 24.08.2016, whereas the first respondent made claim prior to the issuance of the said G.O. Therefore, we are of the view that the said G.O. is not applicable to the present case.

7. In view of the above, this Writ Appeal is allowed and the order passed by the learned Single Judge directing the appellant to reimburse the amount claimed by the first respondent alone is set aside. In other respects, the order of the learned Single Judge holds good. The 2nd and 3rd respondents herein are directed to comply with the order of the learned Single Judge within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

1.The District Collector, Madurai District, Madurai.

2.The Joint Director,Medical and Rural Health Services Department,
Madurai District Headquarters, Usilampatti,
Madurai District.

+1cc to M/s.AL.Kannan, Advocate in SR.810888

+1cc to the Special Government Pleader, in SR.81585

Writ Appeal (MD) No.1579 of 2016
16.12.2016