IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.08.2017

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22906 of 2017

D.Arunachalam .. Petitioner

vs

1.The Director of Medical and Rural Health Services
DMS Compound,
Chennai-600 006.

2.The Treasury Officer,
District Treasury Office,
Thiruvannamalai.

3.The Divisional Manager,
United India Health Insurance Company Ltd.,
5th Floor, Anna Salai,
Chennai-600 006.

` .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus directing the 1st respondent herein in his proceedings OMU NO:60599/KAP1/3/2016 and quash his order dated 08.06.2017 and direct the respondents to pay and make good to me the sum of Rs.1,88,000/- towards the medical expenses incurred by me for the treatment for myself and to my wife undergone at Spot Hospital, No.36, Dr.Ambedkar road, Kodambakkam, Chennai-600 024 as per the New Health Insurance Scheme 2014 for pensioners including spouses / family pensioners.

For Petitioner : Mr.S.Balasubramanian

For RR 1 & 2 : Mr.M.Perumal, Government Advocate

O R D E R

The order of rejection passed by the first respondent in proceedings dated 08.06.2017, in relation to the medical claim of the writ petitioner, is under challenge in this writ petition.

2. The writ petitioner is a member of the medical scheme and the monthly contribution is being deducted from the pension of the writ petitioner every month. Accordingly, the writ petitioner is eligible to get medical reimbursement claim under the scheme in force. The petitioner is the State pensioner and his wife fell down and got fracture in her left leg and immediately the writ petitioner admitted his wife in the Spot Hospital on 12.01.2015 and she underwent an operation on her left leg and disease was diagnosed as Right Comminuted Intertrochanteric Frature Femur. The writ petitioner sustained the medical expenses of Rs.1,70,604/- (Rupees One Lakhs Seventy Thousand Six Hundred four Only) and after the discharge of his wife, the writ petitioner submitted an application seeking medical reimbursement. Though, the claim was recommended initially by the authorities, the same was rejected in proceedings dated 08.06.2017, on the ground that the hospital in which the treatment was taken is not a listed hospital under the scheme and accordingly, the claim cannot be entertained.

3. The United India Health Insurance Company Limited will settle the medical reimbursement claims based on the terms and conditions of the contract. If the claims are not in accordance with the terms and conditions, it is stated that the Government has to settle the medical claim, since, the writ petitioner is a State Government Pensioner and the liability of the Insurance Company is also limited to the extent of honouring the terms and conditions of the contract.

4. The nature of medical claim is bipartite. In view of the fact that the writ petitioner has served for several years in the State Government and the State Government issued orders to provide the medical facilities to its servants and retired employees, the task of settling the medical claim are entrusted with the insurance company. The insurance company is receiving the monthly subscription / premium from the members of the medical claim Scheme. Thus, the liability attached to the scheme cannot be disagreed nor the insurance company can contend by merely stating that they will go only by the terms accepted in this regard with the Government. In view of certain procedural difficulties between the Government and the insurance company, the right of medical reimbursement cannot be delayed or denied to the eligible victims.

5. Right to life is a fundamental right enshrined in Article 21 of the Constitution of India. The Hon'ble Supreme Court of India, time and again reiterated and emphasized that the right to life cannot be interpreted as a mere animal life and it is decent life which has to be ensured. Enlarging the scope of Article 21 of the Constitution of India, the Hon'ble Supreme Court went one step ahead and held that, providing medical facilities by the State is also to be included under right to

life. Thus, the medical facility to be extended to all the citizens of this great nation is also a right to life enshrined under the Constitution.

6. When the Courts have repeatedly held that the medical reimbursement is also included under Article 21 of the Constitution of India, denial of the same is to be construed as violation of fundamental rights. Therefore, the Constitutional Courts cannot deal with the violation of the fundamental right of a citizen in a routine manner. Infringement of the statutory right is to be distinguished from the violation of the fundamental rights of the citizens.

7.The State in this regard should be a model employer and the insurance companies, as a State, also have a duty to deliver the schemes promptly. They cannot escape from the clutches of law on mere technicalities. This Court is aware that many countries in this world are settling the accident claims and medical insurance in advance soon after the persons are treated or met with an accident. Such a practice is not prevailing in our country for various reasons. But the constitutional goal is to achieve such a result and we should thrive towards achieving the same. This Court is of the opinion that any accident victim / medical victim has to be provided with immediate assistance by the State as well as by the insurance company who have undertaken to honour the medical claim.

8.Contrarily, it is painful to observe that the insurance company and the Government are frequently attempting to evade from the liability of settling the medical claim. However, huge amount of premium / monthly subscription are collected and millions of rupees are lying in the account of the Insurance Company. When the Insurance Companies are not ready to settle the claim to such victims, this Court has a doubt in what manner they are going to utilise this huge amount for the betterment and welfare of this great Nation. This court is anxious to express its concern in this regard and it is for the authorities to think over and act promptly in such cases of medical reimbursement / accident victims.

9. No doubt, it is the duty of the respondent to find out the genuinity of the treatments undergone by the petitioner in this regard and undoubtedly, it is the duty of the writ petitioner to establish that his wife had undergone the medical treatment and sustained medical expenditure. Once the genuinity of the medical treatments are established, then, it is the duty of the respondents to settle the claim without any further delay.

10.In this writ petition, this Court is able to see that the writ petitioner is aged about 83 years old and driving such an aged person to the Court by the respondents ought to be deprecated. It is for the Government and the Insurance Company to settle the dispute in this regard between them and in this pretext, the medical claim cannot be denied to the State pensioner. This Court is of the firm opinion that the denial of medical reimbursement to the State pensioner is certainly a Constitutional violation and the attitude of the respondents, both the Government and the Insurance Company, are to be deprecated.

11.The respondents and the officials concerned have got a public duty to see that such medical claim are settled in time and without any further delay. The Courts have time and again repeatedly delivered judgments, to settle the claims immediately. However, the authorities concerned are portraying insensitiveness in settling the medical reimbursement claims of the petitioner. Thus, the order of rejection issued in this writ petition is erroneous and not in accord with law. Accordingly, the order impugned issued by the 1st respondent in proceedingsO.Mu.No:6599/KAP1/2016 dated 08.06.2017 is quashed and the writ petition stands allowed. The respondents are directed to settle the medical reimbursement claim to the writ petitioner as per the rules within a period of four weeks from the date of receipt of copy of this order. However, no order as to costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Director of Medical and Rural Health Services
   DMS Compound,
   Chennai-600 006.

2. The Treasury Officer,
   District Treasury Office,
   Thiruvannamalai.

3. The Divisional Manager,
   United India Health Insurance Company Ltd.,
   5th Floor, Anna Salai,
   Chennai-600 006.

+ 1 cc to Mr.S.Balasubramanian, Advocate,SR.61369
+ 1 cc to The Govt.Pleader, SR.63030

W.P.No.22906 of 2017

NR 13/09/2017