

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM

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

W.P.No.25822 of 2014  
and  
MP.No.1 of 2014  
and  
W.M.P.No.14047 of 2017

T.Usha Kumari

..Petitioners

Vs

1.Government of Tamilnadu,  
Rep.by its Secretary to Government,  
Finance Department,  
Fort St.George,  
Chennai - 600 009.

2.The United India Insurance Company Ltd.,  
Rep.by its Divisional Manager,  
5<sup>th</sup> Floor, PLA Rathna Tower,  
212, Anna Salai,  
Chennai - 600 006.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to direct the respondents especially the 2<sup>nd</sup> respondent relating to his proceedings made in Ref:NIL, dated 18.2.2014 and quash the same as null and void, illegal and invalid and consequently directing the 2<sup>nd</sup> respondent to pay forthwith to the petitioner Rs.4,00,000/- the maximum amount assured for under 'New Health Insurance Scheme - 2012', pursuant to G.O.Ms.No.139, Finance (Salaries) Department, dated 27.4.2012 as against the actual amount to the tune of Rs.4,92,696.67 spent for by the petitioner for the kidney transplantation performed at Kerala Institute of Medical Sciences (KIMS), Thiruvananthapuram on 27.9.2013 and the preliminary and post treatments took from November 2011 to October 2013 spending to the tune of Rs.4,92,695.67.

For Petitioner : Mr.A.Amal Raj

For Respondents : Mr.R.Vijayakumar

Additional Government Pleader, for R1  
Mr.S.K.Krishnamurthy, for R2

## O R D E R

The relief sought for in this writ petition is to quash the order of rejection in relation to the claim of the writ petitioner for medical reimbursement.

2.The learned counsel appearing for the writ petitioner states that the writ petitioner is working as B.T.Assistant (History) in Government Higher Secondary School, Munchirai, Kanniyakumari District. The writ petitioner suffered from stomach pain and both of his legs started to swollen suddenly in November 2011, thereafter he was advised by the doctors to undergo a specialized treatment from Kerala Institute of Medical Sciences (KIMS) at Tiruvananthapuram. The writ petitioner was admitted in the said hospital as inpatient for diagnosis and for treatment from 04.12.2011 to 10.12.2011. During the course of treatment the doctors found that both the Kidneys of the writ petitioner are not functioning and the same is in deteriorated condition. However, the writ petitioner was discharged from the said hospital on 11.12.2011. Thereafter, medical advise was provided to undergo periodical dialysis treatment with prescriptions for taking regular medicines. Accordingly, the writ petitioner underwent periodical dialysis and finally the doctors advised him to undergo Kidney Transplantation at the earliest possible to avoid any other serious medical complications.

3.The learned counsel appearing for the writ petitioner states that as per the medical advise the writ petitioner had undergone the surgery of Kidney Transplantation and now under continuous treatment. The writ petitioner states that total medical expenditure incurred by the writ petitioner was Rs.4,92,695.67/-. Under these circumstances the writ petitioner submitted an application seeking medical reimbursement on 13.11.2013. The application was submitted by enclosing all the receipts and discharge summary and other medical documents. However, the respondents rejected the claim of the writ petitioner in proceedings dated 18.2.2014. The reasons stated in the order impugned is that the writ petitioner has taken treatment at Kerala Institute of Medical Sciences, Tiruvananthapuram, which is a non network hospital. In other words the hospital in which the writ petitioner has taken treatment is not listed in the Government orders issued in this regard. Thus, the claim was rejected.

4. The learned Additional Government Pleader appearing for the first respondent opposed the contentions by stating that now as per the new medical reimbursement scheme the Government issued orders and the members of the medical schemes are bound to take treatment only in the listed hospital as per the Government Orders. If the treatment has been taken in any other non listed hospitals, then the Government is not bound by the terms and conditions of the order to disburse the medical claim. Thus, the case of the writ petitioner is an admitted one where the writ petitioner taken treatment in the hospital which is not listed in the Government Orders. Thus, the order of rejection is in accordance with the terms and conditions of the medical reimbursement policy issued by the Government. Therefore, the writ petition deserves to be rejected.

5. As per the medical reimbursement scheme the United India Insurance Company will settle the medical reimbursement claims only based on the terms and conditions of the contract and not otherwise. The Government has to settle the medical claims, since the writ petitioner is a State Government employee and it is further stated that the liability of the Insurance Company is limited to the extent of honouring the terms and conditions of the contract.

6. The nature of the medical scheme is bipartite, in view of the fact that the writ petitioner is already serving as a Government employee with the State Government and the Government issued orders and provided certain medical facilities to the serving and retired employees. In turn, the task of settling the medical claims are entrusted with the Insurance Companies. Thus, the nature of transaction is to be considered as per the welfare and beneficial scheme to the serving and retired employees. It is not disputed that the Insurance Company is receiving the monthly subscription / premium from the members of the medical scheme. Thus, the liability attached to the scheme cannot be disputed nor the contentions of the Insurance Company be accepted by merely saying that they will not settle the claims considering certain special circumstances and the facts of the cases.

7. This Court is of the view that the medical benefits in normal circumstances ought to be settled in favour of the employees and the Insurance Companies cannot waive its liability from settling the medical claims on certain hyper-technical grounds.

8. Right to life is a Fundamental Right enshrined in Article 21 of the Constitution of India. The Supreme Court of India, time and again, reiterated and emphasised that the right to life is not mere human life and it is a decent life with all reasonable medical facilities ought to be ensured by the State. Enlarging the scope of Article 21 of the Constitution of India, the Supreme Court of India, went one step ahead and held that, providing medical facilities by the State / Union are also to be interpreted as right to life, thus, the medical facilities ought to be extended to all the citizens of the great nation and right to life is now a Fundamental right including medical facilities under Article 21 of the Constitution of India.

9. When the Courts repeatedly held that the medical facilities and right for medical treatment is also a Fundamental Right under Article 21 of the Constitution of India, denial of the same is in violation of the constitution. Thus, this Court has to take note of such a valuable Fundamental Right and the Court should ensure that the medical reimbursement claims are settled in accordance with the Rules in force.

10. The State in this regard should act as a model employer and the Insurance Companies, as a State, also have a duty to deliver the Government schemes entrusted to them promptly and without causing any unreasonable delay. The Insurance Companies cannot hesitate to extend the benefit of the scheme on mere technical grounds. This Court has to take note of the fact that in number of countries in this globe the accident claims and medical insurance claims are being settled in advance soon after the persons are treated or met with an accident. However, 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.

11. This Court is of the opinion that the accidents/ medical victims are to be provided with immediate assistance by the State as well by the Insurance Companies. Contrarily, it is painful to observe that Insurance Companies and the Government are of the opinion that they are not liable or they are liable to a limited extent, despite the fact that the huge amount of premium are collected under the scheme and millions of Rupees are lying in the accounts of such Insurance Companies. When the Insurance Companies are not ready to settle the claim in favour of such victims, this Court is wondering in what manner, they are going to utilize the money for the betterment 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 / accidents

victims.

12. No doubt, it is the duty of the respondents to find out the genuinity of the treatment undergone by the petitioner and undoubtedly it is the duty of the writ petitioner to establish that he had undergone the medical treatment and sustained monetary loss. Once the genuinity of the medical treatment undergone by the petitioner is established, then it is purely mandated on the part of both Insurance Companies as well as the Government to see that the claims are settled in time without any further delay.

13. In the writ petition on hand, this Court is able to find that the writ petitioner has suffered seriously in respect of the non functioning of his two Kidneys and by way of urgent measures he had undergone Kidney Transplantation. It is for the authorities to verify the genuinity of the medical records produced by the writ petitioner and if the treatment undergone by the writ petitioner is genuine, then, no option except to settle the medical reimbursement in time without causing much delay in this regard.

14. This Court is of the opinion that the competent authority concerned have got a public duty to see that such medical claims are settled in time without causing any further delay. The Courts time and again repeatedly rendered judgments to settle all such claims without waiting for the Court orders. However, the authorities concerned are portraying insensitiveness in settling the medical reimbursement / accidents claims. Thus the order of rejection cannot be sustained and Insurance Company cannot plead that they are not liable and it is the joint liability of the Government as well as the Insurance Company and the internal differences or controversy in relation to the terms and conditions ought to be sorted out by the Government and the Insurance Company. The above said internal controversy in respect of terms and conditions of the medical scheme cannot be a ground for rejecting the medical claim to the victims.

15. Thus, this Court is of the opinion that the order impugned is in violation of the constitutional principles in the matter of providing decent medical facilities to the Government employee, who is a member of the medical scheme and paying his monthly subscription in accordance with the scheme. In this case, in view of the urgency, the writ petitioner was advised to undergo treatment in a specialized hospital namely Kerala Institute of Medical Sciences and accordingly he was admitted and underwent a treatment of Kidney Transplantation. This Court finds that the urgency required in respect of the medical

treatment also is a criteria to be considered by the competent authorities and under those circumstances the authorities cannot expect the medical victim to find out the list of specialized hospitals and get admitted in the same hospital. Some times it may not be possible for a patient to travel such a long distance for taking specialized treatment. In the case on hand, the writ petitioner is residing few kilometers away from Kerala Institute of Medical Sciences and it would be easy for him to travel and take treatment there quickly.

16. Under these circumstances, the impugned order passed by the second respondent in proceedings dated 18.02.2014, is quashed and the respondents are directed to settle the medical reimbursement claim of the writ petitioner as per the admissible limits as per the Rules within a period of twelve weeks from the date of receipt of a copy of this order.

17. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,  
Government of Tamilnadu,  
Finance Department,  
Fort St. George,  
Chennai - 600 009.
2. The Divisional Manager,  
The United India Insurance Company Ltd.,  
5<sup>th</sup> Floor, PLA Rathna Tower,  
212, Anna Salai,  
Chennai - 600 006.

+1 CC to Mr.A. Amalraj, Advocate sr 80021.  
+1 CC to Govt. Pleader sr 80981.

W.P.No.25822 of 2014

SP(08/12/2017)



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