BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. (MD) No. 1617 of 2018
and
C.M.P. (MD) No. 11736 of 2018

1. The State Level Empowered Committee,
   Represented by its Commissioner,
   Medical and Rural Health Services,
   DMS Compound, Chennai – 600 006.

2. The Director of Treasuries and Accounts,
   Panagal Building, Saidapet, Chennai – 15,
   (Now the Principal Secretary/Commissioner
   of Treasuries and Accounts
   Integrated Complex for Finance Department,
   Veterinary Hospital Campus, Nandadam,
   Chennai – 35.)

3. The Director of Medical and Rural Health Services,
   DMS Compound, Chennai – 600 006.

4. The Director of Pension,
   259, Anna Salai,
   DMS Compound, Chennai – 600 006.

5. The Treasury Officer,
   District Treasury,
   Dindigul – 624 002.

6. The District Collector,
   Dindigul. ... Appellants/Respondents

-vs-

1. S. Paramasivam ... Respondent/Writ Petitioner

2. United India Insurance Co. Ltd.,
   Rep. by its Divisional Manager,
   Divisional Office IV,
   PLA Rathna Towers, 5th Floor,
   212, Anna Salai,
   Chennai – 600 006. ...Respondent/SeventhRespondent

PRAYER : Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order passed in W.P. (MD) No. 23912 of 2016 dated 27.02.2017 and allow this Writ Appeal.

Prayer in WP(MD). 23912/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records in connection the impugned order passed by the 3rd respondent in O.Mu.No.51885/Kape1/3/2016 dated 16.06.2016 and quash the same and consequently to direct the respondents to sanction and reimburse the Medical expenses of Rs.2,00,000/- as recommended by the District Level Empowered committee headed by the 6th respondent in Rc.No.9376/2015/S1 dated 23.12.2015 towards the Open Heart Surgery under gone by the petitioner, with interest

For Appellants :Mr. D. Muruganantham,
Additional Government Pleader
For Respondents :Mr. K.K. Senthil (for R1)
Mr. A. Shajahan (for R2)

J U D G M E N T

(Judgment of the Court was delivered by **P.D. AUDIKESAVALU, J.**)

The intra-Court Appeal arises out of the order dated 27.02.2017 passed by Learned Judge of this Court in W.P. (MD) No. 23912 of 2016. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2.The Petitioner, who retired as Headmaster, had availed the benefits of the Health Insurance Scheme of the Government of Tamil Nadu by making his contributions towards insurance premia from his pension. As the Petitioner suffered a sudden chest pain on 10.05.2015, he was admitted in G. Kuppusamy Naidu Memorial Hospital at Coimbatore and was diagnosed with cornoary heart disease and advised to undergo open heart surgery for coronoary artery bypass. According to the Petitioner, as there was imminent threat to his life, his family members on the advice of the doctors, consented for the surgery to be performed on 13.05.2015 and after treatment, he was discharged from hospital on 20.05.2015 and has been taking post operative care. The sum of Rs.2,02,086/- charged by the hospital was paid by him apart from additional costs incurred for pre-surgical and post-surgical care. When the Petitioner made a claim for the benefits under the Health Insurance Scheme with the Fifth Respondent, viz., the Treasury Officer, Dindigul, and sought for reimbursement, his case was referred to the Medical Board, which by proceedings in Ref. No. 8198/MB/2015 dated 09.10.2015, had certified the treatment to be genuine and based on the same, the Sixth Respondent, viz., the District Collector, Dindigul, as the head of

the District Level Empowered Committee constituted under New Health Insurance Scheme by proceedings in Rc. No. 9376/2015/51 dated 25.12.2015 recommended the claim of the Petitioner for reimbursement with the Seventh Respondent, viz., United India Insurance Company Limited. At that stage, the Fifth Respondent, viz., the Treasury Officer, Dindigul, by communication dated 27.02.2016, enclosed a letter dated 24.02.2016 received from the Seventh Respondent, viz., United India Insurance Company Limited, stating that the Petitioner was not entitled to medical reimbursement as he was treated in a non-network hospital. The Appeal preferred by the Petitioner on 30.03.2016 before the Second Respondent, viz., the Director of Treasuries and Accounts, Chennai, was placed before the First Respondent, viz., the State Level Empowered Committee, Chennai, which by a cryptic order bearing O. Mu. No. 51885/Kape1/3/2016 dated 16.06.2016, reiterated the rejection of the claim as the treatment was taken in a non-network hospital.

3. The rejection of the claim of the Petitioner for the medical reimbursement was impugned by the Petitioner in W.P. (MD) No. 23912 of 2016. The Writ Court by order dated 27.02.2017 in that Writ Petition, after referring to the decisions of the Division Benches of this Court in India Healthcare Services (TPA) Limited -vs- K. Parameshwari, reported in CDJ 2017 MHC 2213 and N. Raja -vs- Government of Tamil Nadu [2016 (3) CTC 394], held that in cases where the Insurance Company could not be held liable to reimburse the medical expenses incurred for having taken treatment in a non-network hospital, the Pensioner was entitled to his claim to be settled by the State Government under the Tamil Nadu Medical Attendance Rules. Accordingly, the order impugned in the Writ Petition was set aside and direction was issued to the Government of Tamil Nadu to sanction the medical expenses incurred by the Petitioner as per the eligibility criteria in terms of amount under the Scheme along with interest at the rate of 9% per annum without standing on technicalities and release the eligible amount within a period of two months from the date of receipt of copy of this order.

4. We have heard Mr. K.K. Senthil, Learned Counsel for the Petitioner,Mr. D. Muruganantham, Learned Additional Government Pleader for the First to Sixth Respondents and Mr. A. Shajahan, Learned Counsel for the Seventh Respondent in this Appeal and perused the materials placed on record apart from the pleadings of the parties.

5. It is strenuously urged by the Learned Additional Government Pleader appearing on behalf of the First to Sixth Respondents that the Writ Court ought not to have fastened any liability on the State Government when the Insurance Company was not held to be liable under Health Insurance Scheme and the direction to the Government of Tamil Nadu to reimburse the medical expenses incurred by the Petitioner would lead to downfall in the implementation of that Scheme itself.

6. We are unable to countenance any of the submissions made on behalf of the First to Sixth Respondents, particularly in view of the decision of the Division Bench of this Court in Star Health and Allied Insurance Company Limited -vs- A. Chokkar [(2010) 2 LW 90], which has been followed by other Division Benches of this Court in India Healthcare Services (TPA) Limited -vs- K. Parameshwari, reported in CDJ 2017 MHC 2213 and Director of Pension -vs- B. Sarada, reported in CDJ 2017 MHC 7488. In the aforesaid decisions, the earlier Judgments of the Hon'ble Supreme Court of India and this Court on the subject have been extensively referred, and suffice here to refer to para nos. 24 and 25 of the decision in Star Health and Allied Insurance Company Limited -vs- A. Chokkar [(2010) 2 LW 90], which reads as follows:-

> "24. In the present case, what we have to decide is whether the State is bound to reimburse the claim, whether the insurance company is bound to indemnify the beneficiary for the claim made by him. As held in the decisions referred to above, the insurance company is strictly bound to strictly by the terms of contract and cannot be asked to settle a claim which does not fall within the terms of the contract and therefore the claim made by the beneficiaries in respect of treatments that were taken in a non-network hospital or for reimbursement of the claim made the insurance company is not liable. For this reason, the insurance company had made it clear that only if the beneficiary took treatment in a network hospital they would settle the claim and more importantly the facility itself is a cashless facility. The insurance company cannot pay cash and if we issue direction to the insurance company to reimburse the claim, we would be virtually re-writing the contract which we are not entitled to.
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> 25. The Tamil Nadu Medical Attendance Rules ("the Rules" in short) clearly lay down the rules regarding dependents and who is entitled to medical concessions under the Rules. It also defines who is a well to do person. The Rules lay down the manner in which claims can be made. According to the learned Advocate General, these Rules are still in force and therefore when it is a claim not covered by the present Insurance Scheme, the Government Servants have the right to make their claims under the Rules. Therefore, as regards Category-A, where treatment has been taken in a non-network hospital, the insurance company cannot be asked to cover the expenses, since the scheme itself make the network hospitals as intrinsic. However, the Petitioner/Claimants were also not no remediless and that is why we will issue directions to the claimants to make an application under the Rules or go before the Redressal Committee."

7. The Hon'ble Supreme Court of India in Shiva Kant Jha -vs- Union of India [2018 (5) MLJ 317], dealing with unfair treatment meted out to several retired Government servants in their old age for medical reimbursement under similar provisions of the Central Government Health Scheme, held in para nos. 13, 14 and 15 as follows:-

> "13. With a view to provide the medical facility to the retired/serving CGHS beneficiaries, the Government has empanelled a large number of hospitals on CGHS panel, however, the rates charged for such facility shall be only at the CGHS rates and, hence, the same are paid as per the procedure. Though the Respondent-State has pleaded that the CGHS has to deal with large number of such retired beneficiaries and if the Petitioner is compensated beyond the policy, it would have large ramification as none would follow the procedure to approach the empanelled hospitals and would rather choose private hospital as per their own free will. It cannot be ignored that such private hospitals raise exorbitant bills subjecting the patient to various tests, procedures and treatment which may not be necessary at all times.
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> 14. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the Claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the Petitioner forcing him to approach this Court.
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> 15. This is hardly a satisfactory state of affairs. The

relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the Central Government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the Writ Petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implemented CRT-D device and have done so as one essential and timely. Though it is the claim of the Respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the Petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals."

8.In this context, it would also be useful to refer to clause 14(4) of the Guidelines for Implementation of New Health Insurance Scheme, 2018, for Pensioners (including Spouse)/Family Pensioners in the Appendix to G.O. Ms. No. 222, Finance (Pension) Department, dated 30.06.2018 issued by the Government of Tamil Nadu, which is extracted below:-

"14.(4) In case, a Pensioner/Family Pensioner undergoes emergency treatments/surgeries not covered under this Scheme in either Network Hospital or Non-Network Hospital, no claim can be filed under the Health Insurance Scheme. However, they shall be eligible for claim to the extent permissible under the Tamil Nadu Medical Attendance Rules and the G.O. Ms. No. 1023, Health and Family Welfare Department, dated 17.06.1980. It may be noted that the Tamil Nadu Medical Attendance Rules requires that treatment in private hospitals should not be resorted to except in case of emergencies. Clause 2(3) of the aforesaid Government Order states that in genuine cases of emergency, the claims will be restricted to the expenditure that would have been incurred had the patient taken treatment in a Government hospital excepting diet charges. For claims under Tamil Nadu Medical Attendance Rules, the Beneficiaries may apply to the authority in the department in which the Government employee last served who is competent to process and forward pension proposal

to the Accountant General, Tamil Nadu. The Head of Office shall process the claims and pay the eligible claims under the Tamil Nadu Medical Attendance Rules."

Though that Governmental Order has been issued after the claim has been made in this case, the aforesaid guidelines, which are based upon the instructions provided in the earlier Government orders and the Tamil Nadu Medical Attendance Rules, are obviously clarificatory in nature and would apply to past cases as well.

9.In the light of this incontrovertible legal position coupled with the facts of this case, we confirm the findings of the Writ Court. However, we are of the considered view that it would suffice to award interest at the rate of 7.5% per annum instead of 9% per annum that had been granted for the delay in medical reimbursement to the Petitioner.

10. In the result, the Writ Appeal is allowed in part and the order dated 27.02.2017 in W.P. (MD) No. 23912 of 2016 is modified to the effect that the competent authority of the Government of Tamil Nadu shall examine the claim made by the Petitioner for medical reimbursement under the Tamil Nadu Medical Attendance Rules and sanction and disburse the eligible amount towards the same along with interest thereon at the rate of 7.5% per annum and file a report of such compliance before Registrar (Judicial) of this Court by 31.01.2019. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. Commissioner,
   The State Level Empowered Committee,
   Medical and Rural Health Services,
   DMS Compound, Chennai - 600 006.

2. The Director of Treasuries and Accounts,
   Panagal Building, Saidapet, Chennai - 15,
   (Now the Principal Secretary/Commissioner
   of Treasuries and Accounts
   Integrated Complex for Finance Department,
   Veterinary Hospital Campus, Nandadam,
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5. The Treasury Officer,
   District Treasury,
   Dindigul - 624 002.

6. The District Collector,
   Dindigul.

7. United India Insurance Co. Ltd.,
   Rep. by its Divisional Manager,
   Divisional Office IV,
   PLA Rathna Towers, 5th Floor,
   212, Anna Salai, Chennai - 600 006.

Copy to

Registrar (Judicial),
Madurai Bench of Madras High Court.

+1cc to Mr.A. Shajahan Advocate in SR.No.98473
+1cc to Mr.K.K. Senthil Advocate in SR.No.99005

W.A. (MD) No. 1617 of 2018
04.12.2018

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