

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.04.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.5273 of 2018

R.Pandiyan

..Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Additional Chief Secretary
to the Government,
Finance Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The District Collector,
Coimbatore District.
3. The Joint Director of Medicine &
Rural Welfare Service,
Coimbatore.
4. The United India Insurance Co. Ltd.,
Rep. by its Divisional Manager,
Divisional Manager VI,
PLA Rathna Towers,
5th Floor, No.212,
Anna Salai,
Chennai - 600 006.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent in Letter No.3566/K1/2016, dated 02.05.2016 and quash the same and consequently direct the respondents to settle the claim of the petitioner.

For Petitioner : Mr.A.Ganesan

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader,
for R1 to R3
Mr.P.Sankara Narayanan,
for R4

O R D E R

The order of rejection dated 02.05.2016, rejecting the claim of the writ petitioner for medical reimbursement is under challenge in the present writ petition.

2. The petitioner was working in Transport Department and undergone treatment for a sudden heart attack. He was admitted in KG Hospital at Coimbatore for urgent treatment as advised by the Doctors and underwent Angiogram treatment at KG Hospital. He was suffering from severe heart pain and underwent treatment in the said Hospital.

3. The claim of the writ petitioner for medical reimbursement was returned on the ground that the petitioner had not taken treatment in the approved Hospital as per the Government Orders. Challenging the said order, the present writ petition is filed.

4. The Courts have repeatedly held that the respondents/competent authorities are bound to verify the genuinity of the treatment and the medical reimbursement claim cannot be rejected, merely, on the ground that the treatment was taken in an unapproved Hospital. It cannot be possible for the person who is suffering from heart attack to get himself admitted in an approved Hospital. Spontaneously, such persons suffering from heart attack will be admitted only in nearby Hospital for urgent treatment.

5. This being the genuine circumstances, the claim of the writ petitioner cannot be returned, merely, because he has not taken treatment in the Hospital that is listed in the Government Orders. The right of the medical facility is an integral part of Article 21 of the Constitution of India and the writ petitioner being the member of Health Fund Scheme, must be provided with the benefit of medical reimbursement.

6. The issues regarding the settlement of medical reimbursement claim was adjudicated in many number of cases by the High Courts as well as the Hon'ble Supreme Courts.

7. Some of the relevant paragraphs of the order of the Division Bench, dated 04.02.2019, passed in WA.No.2749 of 2018 are extracted hereunder:

"4. The Writ Court by order dated 13.02.2018 in W.P. No. 22270 of 2017 noticed that Sudha Hospital at Erode, where the Petitioner had undergone treatment, though had not been included in the list of Network Hospitals at the time of treatment, it was subsequently added in that list by G.O. (Rt) No. 199,

Finance (Salaries) Department dated 21.03.2017. However, in view of the settled legal position as reiterated in the judgments in S. Dhanalakshmi -vs- Government of Tamil Nadu (Order dated 12.10.2015 in W.P. (MD) No. 13159 of 2015) and N. Raja -vs- Government of Tamil Nadu [2016 (3) CTC 394] passed by this Court, the Writ Court held that in cases where the Insurance Company cannot be held liable for having treatment in a Non-Network Hospital, the Government Servant was entitled to his claim settled by the State Government under the Tamil Nadu Medical Attendance Rules. Accordingly, a direction was issued to the First Respondent to consider the case of the Petitioner and reimburse the medical expenses incurred by him along with interest at the rate of 9% per annum from 16.03.2017 till reimbursement within a period of four weeks from the date of receipt of copy of that order. Aggrieved thereby, the First, Second and Fourth Respondents have preferred this Appeal.

7. We are unable to countenance the submissions made on behalf of the First, Second and Fourth Respondents, particularly in view of the ruling 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 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. It would suffice here to refer to paragraphs 24 and 25 of the decision in Star Health and Allied Insurance Company Limited -vs- A. Chokkar [(2010) 2 LW 90], which read 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.

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."

8. 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 Government servants for medical reimbursement under similar provisions of the Central Government Health Scheme, held in paragraphs 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.

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.

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 view of the legal principles enunciated, this Court is of the considered opinion that the impugned order is not in consonance with the settled principles of law. Accordingly, the impugned order passed by the third respondent in letter no.3566/K1/2016, dated 02.05.2016 is quashed. The respondents are directed to settle the medical reimbursement claim of the writ petitioner as per his eligibility within a period of twelve weeks from the date of receipt of a copy of this order.

9. With these directions, the Writ Petition is allowed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mbi/mp

To

1. The Additional Chief Secretary to the Govt.,
Finance Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The District Collector,
Coimbatore District.

3. The Joint Director of Medicine &
Rural Welfare Service,
Coimbatore.

4. The Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Manager VI,
PLA Rathna Towers,
5th Floor, No.212,
Anna Salai,
Chennai - 600 006.

+1 cc to Mr.P.Sankaranarayanan, Advocate, S.R.No.39584

+1 cc to the Government Pleader, S.R.No.40652

W.P.No.5273 of 2018

NMI (CO)
SSM(28/05/2019).



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