IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2019

CORAM:

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

W.A. No. 1902 of 2018
and
C.M.P. Nos. 15327 of 2018 and 5644 of 2019

M/s. United India Insurance Co. Ltd.
Rep. by its Divisional Manager,
5th Floor, PLA Rathina Towers,
212, Anna Salai,
Chennai - 600 006. ... Appellant/Second Respondent

-vs-

1. T. Usha Kumari ... First Respondent/Petitioner

2. Government of Tamil Nadu,
Rep. by its Secretary to Government,
Finance Department,
Secretariat,
Fort St. George,
Chennai - 600 009. ... Second Respondent/First Respondent

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order dated 13.11.2017 made in W.P. No. 25822 of 2014.

Prayer in W.P. No. 25822 of 2014:
Direct the Respondents especially the 2nd respondent relating to his proceedings made in Ref: NIL dated 18.2.2014 and quash the same as null and void illegal and invalide and consequently directing the 2nd 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.4,92,695.67 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 Appellant : R. Bharanidharan
For Respondents: Mr. A. Amalraj (for R1)
Mrs. A. Sri Jayanthi,
Special Government Pleader (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 13.11.2017 in W.P. No. 25822 of 2014 passed by the Learned Judge of this Court. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. The Petitioner, who is employed as B.T. Assistant Teacher (History) in Government Higher Secondary School, Munchirai, Kanyakumari District had opted to avail the benefits of the New Health Insurance Scheme, as per G.O. Ms. No. 430, Finance (Salaries) Department dated 10.09.2007 by making her contributions towards insurance premia from her salary. The Petitioner suddenly fell ill in November 2011 and on diagnosing her, she was advised to undergo kidney transplant at Kerala Institute of Medical Sciences (KIMS), Thiruvananthapuram and she was discharged from the Hospital on 11.10.2013 after incurring a total medical expenses of Rs.4,92,695.67/-, which she had to bear by raising loans from third parties and close relatives as she was not able to get the necessary assistance from the Respondents. When the Petitioner made a representation dated 14.01.2014 to the First Respondent, it was forwarded to the Second Respondent by letter No. 5785/(Salaries)/2014-1 dated 11.02.2014 for taking necessary further action in the matter. However, the Second Respondent by letter dated 18.02.2014 informed the First Respondent with a copy to the Petitioner that since the Petitioner had taken treatment at a Non-Network Hospital, which is not approved under the New Health Insurance Scheme, her claim for reimbursement cannot be made by the Second Respondent/Insurance Company.

3. In that factual backdrop, the Petitioner had filed W.P. No. 25822 of 2014 before this Court challenging the order dated 18.02.2014 passed by the Second Respondent rejecting her application for medical reimbursement and had sought for consequential direction to the Second Respondent to reimburse the medical expenses of Rs.4,92,695.67 incurred at the Kerala Institute of Medical Sciences (KIMS), Thiruvananthapuram. The Writ Court by order dated 13.11.2017 allowed the Writ Petition by quashing the order dated 18.02.2014 passed by the Second Respondent and directed the Respondents to settle the claim for medical reimbursement made by the Petitioner as per the admissible limits as per the Rules within a period of twelve

weeks from the date of receipt of copy of that order. Aggrieved thereby, the Second Respondent has preferred this appeal.

4. We have heard Mr. R. Bharanidharan, Learned Counsel for the Second Respondent, Mr. A. Amalraj, Learned Counsel for the Petitioner, Mrs. A. Sri Jayanthi, Learned Special Government Pleader appearing on behalf of the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

5. It is strenuously urged by the Learned Counsel for the Second Respondent that the Writ Court ought not to have fastened any liability on the Second Respondent/Insurance Company when it was not liable under the New Health Insurance Scheme in view of the decision the Division Bench of this Court in Star Health and Allied Insurance Company -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.

6. In the aforesaid decisions cited by the Learned Counsel for the Second Respondent, 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.

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 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, since the Petitioner had taken treatment at a Non-Network Hospital, the Second Respondent cannot be held liable for medical reimbursement under the New Health Insurance Scheme and the conclusion of the Writ Court to that extent cannot be sustained. However, the First Respondent as the employer of the Petitioner is liable to settle the claim of the Petitioner under the Tamil Nadu Medical Attendance Rules, with interest at the rate prescribed under those Rules, and if no such rate of interest has been prescribed, at the rate of 7.5% per annum, from 14.01.2014 when she made her representation for medical reimbursement to the First Respondent. Since it is represented by the Learned Counsel for both sides that the Petitioner has received part of the amount from the Second Respondent, the First Respondent is entitled to deduct the same

while making payment to the Petitioner. The Second Respondent shall not claim the return of that amount already paid pursuant to the order dated 13.11.2017 in W.P. No.25822 of 2014, from the Petitioner and is at liberty to work out its rights in that regard as against the First Respondent, who is primarily liable as the employer of the Petitioner. Accordingly, it is directed that the competent authority of the Government of Tamil Nadu shall examine the claim made by the Petitioner for medical reimbursement as one made under the Tamil Nadu Medical Attendance Rules, and sanction and disburse eligible amount towards the same along with interest after making deductions in the manner indicated supra, and file a report of compliance in that regard before the Registrar (Judicial) of this Court by 31.05.2019.

10. In the result, the Writ Appeal is allowed in part and the order dated 13.11.2017 in W.P. No. 25822 of 2014 is modified on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Divisional Manager,
M/s. United India Insurance Co. Ltd.
5th Floor, PLA Rathina Towers,
212, Anna Salai,
Chennai - 600 006.

2. Secretary to the Government of Tamil Nadu,
Finance Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

Copy to

Registrar (Judicial)
Madras High Court,
Chennai - 600 104.

+1cc to Mr. R. Bharanidharan, Advocate SR.No. 24904
+1cc to Mr. A. Amalraj , Advocate SR.No. 24216

W.A. No. 1902 of 2018

A.SK(21/03/2019)