



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2019

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.P(MD)No.5775 of 2012

D.David John

... Petitioner

vs.

1)Secretary to Government,  
Health and Family Welfare Department,  
Chennai.

2)Star Health and Allied Insurance  
Company Limited,  
Project Office,  
The Tamilnadu Government Employees  
New Health Insurance Scheme,  
Old No.64-A, New No.2-A,  
Ganga Nagar Road,  
Opp to BSNL Office,  
Kodambakkam,  
Chennai-600024.

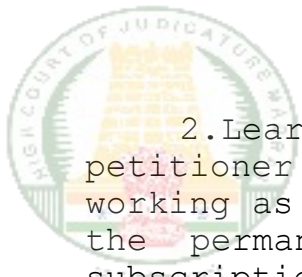
... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, by calling for the records pertaining in Ref.File No: R-3891 dated 09.01.2012 on the file of the 2<sup>nd</sup> respondent and quash the same as illegal, unjust and without jurisdiction and consequently direct the 2<sup>nd</sup> respondent to sanction and disburse the medical claim amount to the petitioner within a time to be fixed by this Honourable Court.

|                |                                      |
|----------------|--------------------------------------|
| For Petitioner | : Mr..S.A.Ajmal Khan                 |
| For R1         | : Mr.S.Dhayalan, Government Advocate |
| For R2         | : Mr.S.Anwar Sameem                  |

**ORDER**

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining in Ref.File No: R-3891 dated 09.01.2012 on the file of the 2<sup>nd</sup> respondent and quash the same as illegal, unjust and without jurisdiction and consequently direct the 2<sup>nd</sup> respondent to sanction and disburse the medical claim amount to the petitioner within a time to be fixed by this Court.



2.Learned counsel for the petitioner would state that the petitioner is working as a Motor Cycle Mechanic and his wife was working as a teacher in OCPM Girls Higher Secondary School. She was the permanent State Government employee regularly contributing subscription towards health insurance scheme. While so, she was suffering from abdominal pain and she was admitted in Vadamalayan Hospital, Madurai, on 17.10.2009 and as per the advice of the doctors, she underwent Small Bowel Gangrene surgery but unfortunately she died on 26.10.2009. According to the petitioner, he incurred a sum of Rs.2,17,172.95/- towards medical expenses for his wife. He made a claim for reimbursement of the said sum before the 2<sup>nd</sup> respondent insurance company with all medical records and the 2<sup>nd</sup> respondent by reply dated 09.01.2012 expressed its inability to process the claim stating that the treatment undergone by the petitioner's wife viz., Jejunal Resection & Tube Duodenostomy for Small Bowel Gangrene is not covered under the New Health Insurance Scheme. According to the petitioner, the said stand taken by the 2<sup>nd</sup> respondent is impermissible in view of the decision in W.P(MD) No.13429/2013 etc., batch dated 28.05.2019. Thus, he would pray for setting aside the impugned order.

3.No counter affidavit has been filed by the respondents.

4.Perusal of record shows that the 2<sup>nd</sup> respondent has rejected the claim of the petitioner on the only ground that the treatment taken by the petitioner's wife is not covered under the New Health Insurance Scheme which is contrary to the decision in W.P(MD) No.13429/2013 etc., batch dated 28.05.2019, wherein, this Court after considering various decisions held that assuming that the non network hospital and non listed disease are the major reasons for rejection of most of the claims, even that reasons cannot stand in the legal scrutiny in view of the catena of decisions as has been cited above of both this Court as well as the Apex Court.

5.In my considered opinion, the said decision is squarely applicable to the present case on hand. Accordingly, the order passed by the 2<sup>nd</sup> respondent in Ref.File No: R-3891 dated 09.01.2012 is quashed and the matter is remitted back with the following directions:-

(i)The matter is remitted to the District Level Empowered Committee which shall consider the petitioner's claim and while considering, the committee shall not reject the claim merely on the reason of non network hospital or non listed disease.

(ii)The committee shall give suitable direction to the insurance company to reimburse the claim made by the petitioner.



(iii) If the committee finds that the insurance company cannot be directed to reimburse, it shall pass suitable orders directing/recommending the State authorities to reimburse the claim under Medical Attendance Rules.

(iv) Once such order is passed, the insurance company shall immediately reimburse the medical claim with 6% interest from the date of due till the date of payment, within a period of thirty days from the date of receipt of such order to be passed by the District Level Empowered Committee.

(v) On receipt of such orders/recommendation from the Empowered Committee, the Sanctioning authority/State authority/High Power Committee in the State Level shall pass necessary orders allowing the medical reimbursement claimed by the petitioner under the Medical Attendance Rules.

(vi) While ordering medical reimbursement under the Medical Attendance Rules, the rate approved, accepted or quoted by the insurance company under the Medical Insurance Scheme shall be taken as the rate and by calculating the reimbursement on the said rate, the reimbursement claim shall be immediately sanctioned and the amount shall be reimbursed to the petitioner with 6% interest from the date of due till date of payment, within a period of thirty days from the receipt of the recommendation/order from the District Empowered Committee.''

With the above directions, the writ petition is ordered to the terms indicated above. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1) Secretary to Government,  
Health and Family Welfare Department,  
Chennai.



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ORDER MADE IN  
W.P(MD)No.5775 of 2012  
DATED : 16.12.2019

VB(08.01.2020) 4P 3C