



WEB COPY

WP(MD)No.1365 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE M. S. RAMESH

W. P. (MD) No. 1365 of 2020

M. Rajakumar

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government,
High Level Empowered Committee,
Finance Department,
Fort St. George, Secretariat,
Chennai - 9.

2. The Director,
Directorate of Medical and Rural Services,
Chennai - 600 006.

3. The United India Insurance Company Ltd.,,
Rep, by Divisional Manager, Pla Rathana Tower,
5th Floor, Anna Salai, Chennai 600 006.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to Call for the records of the impugned order passed by 2nd respondent in O.Mu.No.6361/Ka.Pi.1/3/2019, dated 26.08.2019, and quash the same and to direct the respondents to reimburse the medical expenses amount of Rs.70,628/- to the petitioner under the Government of Tamil Nadu New Health Insurance Scheme, 2014 for surgery of femur interlocking nailing within a period stipulated by this Court.

For Petitioner : M/S.M.Kamalini

For R-1 & R-2 : Mr.R.Sethuraman
Special Government Pleader

O R D E R

The petitioner's father viz., P.Mani, was serving as a stretcher bearer in Government Rajaji Hospital, Madurai. While in service, he had met with an accident and sustained severe injuries, owing to which, he was initially provided with first aid treatment in the Government Hospital, Ramanathapuram and thereafter admitted in Government Rajaji Hospital, Madurai.



2.It is the case of the petitioner that he was advised to be treated in a private specialized centre for Ortho care and therefore, he had got himself admitted in Jayam Hospital, No.3, Abdul Gafardhan street, Chinnachokkikulam, Madurai, on 23.04.2015 and later discharged on 15.05.2015. According to the petitioner, he had incurred a total expenditure towards medial expenses to the tune of Rs.70,628/-. The petitioner's father is a member of the New Health Insurance Scheme, 2014, introduced by the United India Insurance Company Limited and subsequently, he died on 18.12.2017. During his life time, the petitioner had sought for reimbursement of the medical expenses, which came to be rejected on 26.08.2019, on the ground that the treatment taken by the petitioner's father was not in a network hospital and that, it is not a case of an emergency. As against the said rejection order, the petitioner's father had filed an appeal before the High Level Empowered Committee on 13.09.2019, which is said to be pending.

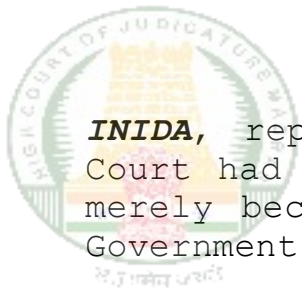
3.The learned counsel for the petitioner would submit that the reason for refusal that the treatment was in a non-network hospital cannot be sustained, in view of the various decisions of this Court as well as the Hon'ble Supreme Court and one such decision passed in W.P.No.35911 of 2019, dated 03.01.2020, in the case of **S.ANTHONY v. THE GOVERNMENT OF TAMIL NADU AND OTHERS**, has been produced before this Court.

4.The learned Special Government Pleader would submit that as against the rejection order, the petitioner's father had already preferred an appeal, which is pending and therefore, this Court may not interfere for a similar relief in a writ petition. Even otherwise, the learned Special Government Pleader would object the relief sought for on the ground that the petitioner's request has been rejected, not only on the ground of the treatment taken in a non-network hospital and also that the ailment is not an emergency.

5.The learned Special Government Pleader had also stated that an appeal has already been preferred before the High Level Empowered Committee as against the rejection order of the petitioner's father seeking for medical reimbursement.

6.I have given careful consideration to the submissions made by the respective counsel.

7.The issue as to whether the treatment taken in a non-network hospital can be cited as a reason for refusal of medical reimbursement, had already come up for consideration before the Hon'ble Apex Court in the case of **SHIVA KANT JHA v. UNION OF**

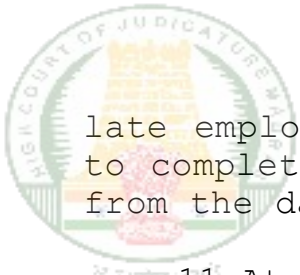


INIDA, reported in **(2018) 16 SCC 187**, wherein the Hon'ble Apex Court had held that the right to medical claim cannot be denied, merely because the name of the hospital was not included in the Government Order.

8. According to the Hon'ble Apex Court, the real test must be the factum of treatment and the authorities are bound to ensure as to whether the claimant had actually taken treatment and once the fact of treatment is established, the claim cannot be denied on technical ground. The decision in **SHIVA KANT JHA v. UNION OF INDIA**, came to be followed in various other decisions, including the decision in the case of **S. ANTHONY v. THE GOVERNMENT OF TAMIL NADU AND OTHERS (supra)**, cited by the learned counsel for the petitioner. By applying the ratio laid down in the aforesaid Judgment in the case of **SHIVA KANT JHA**, the legal position would be that the respondents cannot deny medical reimbursement, either on the ground that the employee had taken treatment in a non-network hospital or on the ground that the ailment itself is non listed among the list of ailments or that, the ailment is not an emergency. As such, the objection raised by the learned Special Government Pleader cannot be sustained.

9. It is no doubt true that whenever an appeal is pending before the concerned authority, this Court would not usually entertain the writ petition for a similar prayer. Nevertheless, in the instant case, the legal position has already been settled by the Hon'ble Apex Court, as well as this Court, in various orders and I am unable to see as to how the appellate authority, who is dealing with the same issue, can take any contrary view. When the legal position has already been settled and the appeal preferred by the petitioner's father way back on 01.07.2019 has been kept pending for more than seven months, it would not be appropriate to direct the appellate authority to pass final orders in the appeal. Hence, this Court is of the view that even when the appeal filed by the petitioner is pending against the original order passed by the second respondent, it would be appropriate to invoke the extraordinary powers of this Court under Article 226 of the Constitution of India and thereby grant the relief prayed for.

10. In the light of the foregoing reasonings, the impugned order dated 26.08.2019 passed in O.Mu.No.6361/Ka.Pi.1/3/2019, is quashed. Consequently, there shall be a direction to the second respondent herein to reimburse the medical expenses incurred by the petitioner's father viz., late P.Mani, in favour of his legal heirs. While passing orders for reimbursement, it is open to the second respondent to determine the claim amount based on the medical bills produced by the petitioner's father and the disbursement shall be made in favour of all the legal heirs of the



late employee viz., P.Mani. The second respondent shall endeavour to complete the disbursement process within a period of six weeks from the date of receipt of a copy of this order.

11. At this juncture, the learned counsel for the petitioner would submit that late P.Mani is survived by his two sons, viz., the petitioner and one Vijayakumar and the unmarried daughter (Rajakumari) of late P.Mani, had already died and the petitioner is taking care of his brother Vijayakumar. If that being so, the petitioner is at liberty to produce the legal heirship certificate of late P.Mani, as well as the daughter (Rajakumari) of late P.Mani and also the No Objection Certificate of his brother viz., Vijayakumar permitting the petitioner to receive the medical reimbursement of late P.Mani.

12. In the result, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rj2

To

1. The Additional Chief Secretary to Government,
High Level Empowered Committee,
Finance Department,
Fort St. George, Secretariat,
Chennai - 9.

2. The Director,
Directorate of Medical and Rural Services,
Chennai - 600 006.

+1 CC to M/s.M.KAMALINI, Advocate (SR-4951[F] dated 06/02/2020)

+1 CC to M/s.SPL GP (SR-5238[F] dated 07/02/2020)

W.P. (MD)No.1365 of 2020

06.02.2020

SGS (CO)

TR(20.02.2020) 4P 5C