BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD) No.3614 of 2020

Mary Thilagavathi ... Petitioner

Vs.

1.The District Collector,
Tuticorin District,
Tuticorin.

2.The Joint Director of Medical
and Rural Health Services (Welfare),
District Family Welfare Bureau,
Beach Road,
Tuticorin,
Tuticorin District.

3.The Project Head,
MD India Health Insurance TPA Pvt. Ltd.,
Guna Complex,
New Door Nos.443 & 445,
Old Door Nos.304 & 305,
Annasalai,
Teynampet,
Chennai – 600 018. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent in his proceedings GTM167/11/2019, dated 12.11.2019 and quash the same and consequently direct the respondents to reimburse the Medical Expenses incurred towards the surgery for the petitioner's son at Thiraviyam Orthopetic Hospital, Nagercoil, Kanyakumari District, within a time frame.

For petitioner : Mr.A.Srinivasan

For respondents 1 & 2 : Mr.K.Mu.Muthu,
Addl. Government Pleader

For 3rd respondent : Mr.A.Shajahan

ORDER

This petition has been filed by the petitioner challenging the order dated 12.11.2019 whereby the claim of the petitioner for reimbursement has been rejected on the ground that the treatment has been taken in a non-network hospital, and for a direction to the respondents to reimburse the medical expenses incurred towards the surgery for her son.

2. The learned counsel for the petitioner submitted that the petitioner has been serving as a Teacher and paying monthly subscription towards the Health Insurance Scheme. The son of the petitioner by name Raskit, while playing in his College, met with an accident, due to which his right shoulder dislocated and on 18.01.2019, he was admitted in Thiraviyam Orthopetic Hospital, Nagercoil and underwent a surgery, for which the petitioner had spent a sum of Rs.1,30,049/- towards medical expenses. The petitioner approached the respondents for reimbursement of the medical expenses. But, the 3rd respondent, by the impugned order dated 12.11.2019, rejected the claim of the petitioner stating that the treatment has been taken in a non-network hospital. However, the 2nd respondent, by order dated 18.12.2019, has instructed the petitioner to resubmit the application with certain documents for sanctioning of the medical expenses. Though the petitioner has resubmitted the application as per the said order dated 18.12.2019, till date her claim has not been considered by the respondents and hence, the petitioner has come up with this writ petition.

3. The learned counsel for the petitioner would further submit that in the decision in **N.Raja Vs. the Government of Tamil Nadu**, reported in **2016 (3) CTC 394**, this Court has held that the Insurance Company is not liable on account of the violation of the terms and conditions of the contract, however, it is the duty of the Government to reimburse the medical expenses incurred. The above decision was subsequently followed by a Division Bench of this Court in W.A.(MD).No.1579 of 2016, dated 16.12.2016 (M.D.India Health Card Services (TPA) Ltd. Vs. K.Pornachandran and others). Following the above decision, this Court may direct the respondents to reimburse the amount to the petitioner. Thus, he prayed to allow this writ petition.

4. The learned counsel appearing for the respondents submitted that the hospital in which the petitioner took treatment is a non-network hospital. However, she may be entitled to reimbursement under the Tamil Nadu Medical Attendance Rules, if she is able to convince the District Level Empowered Committee for getting treatment in a non-network hospital and spending the money, which she claimed as reimbursement.

5. Time and again, this Court has held that the claim of reimbursement cannot be rejected on the ground that the treatment was not taken in a listed hospital and the disease for which treatment was taken is not a listed disease.

6. In this context, it is relevant to refer to the decision of a Division Bench of this Court in the case of **State Level Empowered Committee Vs. S.Paramasivam and another**, reported in ***(2019) 2 MLJ 1,*** wherein, the Hon'ble Division Bench has held as follows:

> *"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:-*
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> *"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 http://www.judis.nic.in 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.

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".

7. In my considered opinion, the above Judgment is squarely applicable to the facts and circumstances of the present case. Under such circumstances, the impugned order dated 12.11.2019 is set aside and the petitioner shall submit an application to the first respondent / District Collector, who is the head of the District Level Empowered Committee within a period of two weeks from the date of receipt of a copy of this order and On receipt of such application, the District Level Empowered Committee shall examine the claim of the petitioner for medical reimbursement under the Tamil Nadu Medical Attendance Rules and forward a report to the 2nd respondent for sanction and disbursement of the eligible amount, within a period of four weeks from the date of receipt of a copy of this order and on receipt of such report from the District Level Empowered Committee, the 2nd respondent shall sanction and disburse the eligible amount of medical reimbursement to the petitioner, within a period of four weeks from the date of receipt of such report.

8. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The District Collector,
Tuticorin District,
Tuticorin.

2.The Joint Director of Medical
and Rural Health Services (Welfare),
District Family Welfare Bureau,
Beach Road,
Tuticorin,
Tuticorin District.

+1 CC to M/s.A.SHAJAHAN, Advocate (SR-12066[F] dated 17/03/2020)

+1 CC to M/s.V.KARTHIKEYAN, Advocate (SR-12201[F]
dated 18/03/2020)

+1 CC to M/s.SPL GP (SR-12260[F] dated 18/03/2020)

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