



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.26240 of 2019

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K.Pankajavalli

... Petitioner

vs.

1.The Director of Pension,
259, Anna Salai, DMS Campus,
Block-III, 2nd floor, Teynampet,
Chennai-6.

2.The Treasury Officer,
District Treasury,
Tirunelveli-9, Tirunelveli District.

3.The Sub Treasury Officer,
Sub Treasury,
Tenkasi, Tenkasi District.

4.United India Insurance Company Ltd.,
Represented by its Regional Manager,
B L A, Rathina Towers, 2nd Floor,
212, Annasalai, Chennai-6.

5.The Secretary to Government,
Finance (Pension) Department,
Secretariat, Chennai-9.

(R-5 is *suo motu* impleaded vide order dated 21.01.2020)

... 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 relating to proceedings impugned order in Na.Ka.No.2254/2018/No.1 dated 23.07.2018 of the second respondent herein and the Na.Ka.No.2254/2018/No.1 dated 27.09.2018 of the second respondent herein and quash the same and consequently direct the respondent to reimburse the medical expenses of Rs.1,75,717/- to the petitioner with adequate interest as deems fit by this Court.



For Petitioner : Mr.T.Pon Ramkumar
For R-1 to R-3 : Mr.M.Karuppasamy
Government Advocate
For R-4 : Mr.A.Shajahan

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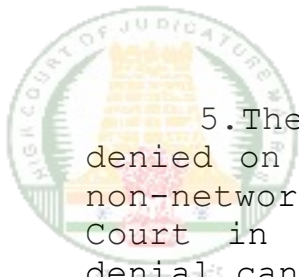
O R D E R

The petitioner herein who is a retired Higher Secondary School Headmaster had suffered with fracture in her right knee during the accident, which was held on 18.05.2017, for which purpose, she had underwent knee transplantation operation. The petitioner is the member of the Employee Insurance Scheme maintained by the third respondent Insurance Company. Towards the hospital charges, the petitioner had incurred a sum of Rs.1,75,717/- and accordingly, she had made a claim for medical treatment under the Insurance Scheme which came to be rejected through the impugned order dated 27.09.2018 by the second respondent herein stating that the petitioner had taken treatment in a non-network hospital and in view of G.O.Ms.No.171 dated 26.06.2014 the petitioner is not entitled for reimbursement.

2.The learned Government Advocate appearing for the respondents 1 to 3 would submit that as per G.O.Ms.No.171 dated 26.06.2014 and consequent letter of the Finance Secretary dated 05.06.2017, the retired employees who had taken treatment under the non-network hospital are not eligible for medical reimbursement and as such there is no infirmity in the impugned order.

3.The learned counsel for the fourth respondent would also reiterate the said submission and further submit that even assuming that the petitioner is entitled for medical reimbursement, the State Government would be the appropriate authority to reimburse the amount and that the liability should not be fastened on the fourth respondent Insurance Company.

4.The learned counsel for the petitioner would place reliance on the decision of the Hon'ble Division Bench of this Court in the case of **The Divisional Manager Vs. R.Premavathi** in W.P (MD) No.1057 of 2019 dated 22.10.2019 and submit that the reason assigned by the second respondent in the impugned order for denial of medical reimbursement cannot be sustained and that the State Government should be held liable for such reimbursement.



5.The issue as to whether the medical reimbursement can be denied on the basis of the treatment taken by the claimant in a non-network hospital has been time and again considered by this Court in various decisions and had held accordingly that such denial cannot be sustained. The Hon'ble Supreme Court in the case of **Shiva Kant Jha Vs. Union of India** reported in **(2018) 5 MLJ 317 (SC)** had held that the right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. Following the said decision, the Hon'ble Division Bench of this Court in the case of **R.Premavathi (Supra)** had also reiterated the same proposition and had fastened the liability on the State Government. The relevant portion of the said order reads as follows:-

5.It is the submission of the appellant / Insurance Company that direction should have been issued to the State Government, because, the reimbursement of medical expenses is pursuant to a Scheme formulated by the State Government, which is being serviced by the appellant / Insurance Company.

6. The learned counsel appearing for the first respondent has placed reliance upon the decision of the Honourable Supreme Court in the case of **Shiva Kant Jha vs. Union of India**, reported in **(2018) 5 MLJ 317 (SC)**, wherein it has been held that 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. Further, it has been held that once it is established that the treatment given was duly supported by records, the claim cannot be denied on technical grounds. Therefore, we find that the learned Single Bench was perfectly right in directing the medical reimbursement to be granted to the first respondent. However, a minor error <http://www.judis.nic.in> W.A.(MD) No.1057 of 2019 has crept in while passing the impugned order, as direction has been issued to the appellant / Insurance Company instead of the State Government. Therefore, to that extent, we are inclined to modify the order passed in the writ petition.

7. Accordingly, the writ appeal is partly allowed and the direction issued in Paragraph No.5 of the impugned order to the appellant / Insurance Company is modified and the second respondent herein, namely, the Secretary to Government, Finance (Pension) Department, Secretariat, Chennai-600 009, is directed to pass appropriate orders for payment of the medical reimbursement claim made by the first respondent and sanction the eligible amount, which shall be disbursed within a period of four weeks from the date of receipt of a copy of this Judgment. No costs.



6.The aforesaid finding is self explanatory. As such, the impugned order rejecting the petitioner's claim of medical reimbursement on the ground that the treatment was taken in a non-network hospital cannot be sustained. Likewise, the liability to reimburse the amount would be on the State Government in view of the decision of the Hon'ble Division Bench of this Court referred above.

7.The Secretary to Government, Finance (Pension) Department, Secretariat, Chennai-9, is *suo motu* impleaded as a party respondent.

8.In the light of the above observations, the impugned orders in Na.Ka.No.2254/2018/No.1 dated 23.07.2018 and Na.Ka.No.2254/2018/No.1 dated 27.09.2018 passed by the second respondent herein are set aside, insofar as the petitioner herein is concerned. Consequently, the petitioner herein is granted liberty to submit a copy of her application claiming medical reimbursement to the Secretary to Government, Finance (Pension) Department, Secretariat, Chennai-9 and on receipt of the same the Secretary to Government, Finance (Pension) Department, shall pass appropriate order for payment of medical reimbursement claim made by the petitioner herein and sanctioning the eligible amount atleast within a period of four weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cp

To:-

1.The Director of Pension,
259, Anna Salai, DMS Campus,
Block-III, 2nd floor, Teynampet,
Chennai-6.

2.The Treasury Officer,
District Treasury,
Tirunelveli-9, Tirunelveli District.



3.The Sub Treasury Officer,
Sub Treasury,
Tenkasi, Tenkasi District.

4.The Secretary to Government,
Finance (Pension) Department,
Secretariat, Chennai-9.

+1 CC to M/s.A.SHAJAHAN, Advocate (SR-2180[F] dated 21/01/2020)

+1 CC to M/s.T.PON RAMKUMAR, Advocate (SR-2247[F] dated
21/01/2020)

+1 CC to M/s.SPL.GP (SR-2340[F] dated 22/01/2020)

W.P. (MD) No.26240 of 2019
21.01.2020

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