IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2022

CORAM

THE HON'BLE MR. JUSTICE T. RAJA
AND
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 3744 of 2019
and
C.M.P. No. 23747 of 2019

M/s. United India Insurance Co. Ltd.,
Rep. by its Divisional Manager,
5th Floor, PLA Rathna Towers,
212, Anna Salai,
Chennai – 600 006. … Appellant

-vs-

1. Rama Subbiah (Died)

2. The Director of Pension,
   259, Anna Salai,
   3rd Block, 2nd Floor,
   DMS Campus,
   Teynampet,
   Chennai – 600 041.

3. The District Collector of Tuticorin,
   Office of the District Collector,
   Tuticorin.

4. The Treasury officer,
   Thoothukudi District Treasury,
   Thoothukudi.

5. R.Subbulakshmi

6. S.Jayanthi (Died)

7. R.Balasubramanian

8. Logambika
   (R5 to R8 impleaded vide order dated 05.08.2021
   in C.M.P. No. 11716 of 2021)

9. V.Sithannan

10. S.Vignesh Kumar

11. S.Vikram Kumar

12. S.Vinod Kumar
    (R9 to R12 impleaded vide order dated 06.09.2022
    in C.M.P. No. 12055 of 2022) ...
Respondents

Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order dated 17.12.2018 made in W.P. No. 32618 of 2018 on the file of this Court and allow the above Writ Appeal.

For Appellant : Mr. T.Shanmugam

For Respondents : R1 – Died

Mrs. M.Geetha Thamaraiselvan,
Special Government Pleader
(for R2 to R4)

Mrs. Sangeetha Rajkumar
(for R5 & R7 to R12)

R6 - Died

J U D G M E N T

(Judgment of the Court was made by **P.D.AUDIKESAVALU, J.**)

The intra-court appeal arises from the order dated 17.12.2018 in W.P. No. 25822 of 2014 passed by the Learned Judge of this Court.

2. The First Respondent had retired from Government Service and has availed the benefits of the New Health Insurance Scheme, 2014 (hereinafter referred to as 'NHIS' for short) of the Government of Tamil Nadu in G.O. Ms. No. 171, Finance (Pension) Department dated 26.06.2014 from the Appellant/Insurance Company by making periodical contributions towards insurance premia from his pension. According to the First Respondent, he had underwent treatment at St. Isabel Hospital, Chennai from 11.10.2017 to 03.11.2017 for which he had incurred medical expenses of Rs. 2,63,154/-, and when he made a claim for reimbursement of the said medical expenses under the New Health Insurance Scheme, 2014, the Appellant by letter dated 13.08.2018 addressed to the Third Respondent stated that as the treatment was taken in a non-network hospital, it could not be considered as per G.O. Ms. No. 171, Finance (Pension) Department dated 26.06.2014 issued by the Government of Tamil Nadu.

3. In that factual backdrop, the First Respondent had filed W.P. No. 32618 of 2018 before this Court challenging the letter dated 13.08.2018 sent by the Appellant to the Third Respondent rejecting his claim for medical reimbursement and had sought for consequential direction to the Appellant to make payment of the said sum of Rs. 2,63,154/- towards reimbursement of medical expenses with interest at the rate of 9% per annum from the date of making the claim till actual payment. The Writ Court by order dated 17.12.2018 disposed the Writ Petition by directing the Appellant to consider the claim of the Petitioner in the light of another G.O. Ms. No. 222, Finance (Pension) Department dated 30.06.2018 which was stated to cover the treatment in Non-Network Hospital and pass orders within a period of four weeks from the date of receipt of a copy of that order, aggrieved by which the Appellant has preferred this appeal.

4. Since the First Respondent died on 14.07.2020 after the filing of the Writ Appeal, his wife, son and daughters have been impleaded as the Fifth to Eight Respondents in the Writ Appeal in his place by order dated 05.08.2021 in C.M.P. No. 11716 of 2021 passed by the Court. After the death of the Sixth Respondent on 16.09.2021, her husband and sons have been impleaded as the

Ninth to Twelfth Respondents by order dated 06.09.2022 in C.M.P. No. 12055 of 2022 passed by the Court.

5. We have heard Mr. T.Shanmugam, Learned Counsel for the Appellant, Mrs. M.Geetha Thamaraiselvan, Learned Special Government Pleader appearing for the Second to Fourth Respondents and Mrs. Sangeetha Rajkumar, Learned Counsel for the Fifth and Seventh to Twelfth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

6. It is vehemently pleaded by Learned Counsel for the Appellant that the Writ Court ought not to have fastened any liability on the Appellant when it was not liable under the New Health Insurance Scheme for any treatment taken at Non-Network Hospitals 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*** (Order dated 16.12.2016 in W.A. (MD) No. 1579 of 2016) and ***Director of Pension -vs- B.Sarada*** (Order dated 09.11.2017 in W.A. (MD) No. 1382 of 2017).

7. In the decision of the Division Bench of this Court in ***Star Health and Allied Insurance Company Limited -vs- A.Chokkar*** [(2010) 2 LW 90], the legal position relating to reimbursement of the medical expenses by the Insurance Company has been explained 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.

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."

8. At this juncture, 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."

The aforesaid guidelines in that Governmental Order, which has been issued after the claim has been made in this case and based upon the instructions provided in the earlier Governmental Orders and the Tamil Nadu Medical Attendance Rules, are obviously clarificatory in nature and would apply to past cases as well. Though the Writ Court had granted relief to the First Respondent taking into account the said Governmental Order, directions have been mistakenly issued against the Appellant instead of the Second to Fourth Respondents and such error has to be rectified in order that complete justice is done between the parties.

9. 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, has held 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."

It is needless to observe here that the concerned authority of the Government of

Tamil Nadu would have to follow the aforesaid principles while examining a claim for reimbursement under the Tamil Nadu Medical Attendance Rules.

10. The result of the foregoing discussion is that the following order is passed:-

(i) since the First Respondent had taken treatment at a Non-Network Hospital, the Appellant cannot be held liable for medical reimbursement under the New Health Insurance Scheme and the conclusion of the Writ Court to that extent, which cannot be sustained, is set aside;

(ii) it shall be incumbent upon the concerned authority of the Government of Tamil Nadu to examine the claim made by the First Respondent for reimbursement of medical expenses incurred by him under the Tamil Nadu Medical Attendance Rules forthwith;

(iii) if it is found that any details or supporting documents satisfying the eligibility criteria for the actual amount claimed has not been produced, the deficiencies in that regard shall be informed in writing by the concerned authority to the Fifth and Seventh to Twelfth Respondents requiring the same to be furnished within a time frame of not less than 15 clear working days in that regard;

(iv) in the event of not being satisfied with the requirements thereafter, an enquiry shall be conducted by the concerned authority affording opportunity of personal hearing to the Fifth and Seventh to Twelfth Respondents to explain their position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law with details of any deductions made under various heads and the decision taken communicated under written acknowledgment;

(v) if the Fifth and Seventh to Twelfth Respondents are found entitled to the claim made, the eligible amount with interest at the rate prescribed under the Rules and if no such rate of interest has been prescribed, at the rate of 4% per annum from the date on which the claim for reimbursement was made by the First Respondent, shall be paid within a period of 30 days from the date of passing of that order;

(vi) if the Fifth and Seventh to Twelfth Respondents still have any grievance to be redressed in the matter, they are not precluded from working out their rights before the proper forum in the manner recognized by law; and

(vii) the report of completion of the aforesaid exercise shall be filed by 31.12.2022 before the Registrar (Judicial) of this Court

In fine, the Writ Appeal is allowed and the order dated 17.12.2018 in W.P. No. 32618 of 2018 passed by the Writ Court is modified on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

(T.R., J.) **(P.D.A., J.)**

20.09.2022

vjt

Index: Yes/No

To

1. The Director of Pension,
   259, Anna Salai,
   3rd Block, 2nd Floor,
   DMS Campus,
   Teynampet,
   Chennai – 600 041.

2. The District Collector of Tuticorin,
   Office of the District Collector,
   Tuticorin.

3. The Treasury officer,
   Thoothukudi District Treasury,
   Thoothukudi.

T.RAJA, J.
AND
P.D. AUDIKESAVALU, J.

vjt

W.A. No. 3744 of 2019

20.09.2022