IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.01.2022

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.31757 of 2018

C.Chellappan (Deceased)
1. Bright Gnana Singh
2. Bright Robinson
(petitioners 1 and 2 are substituted in the place of the deceased, vide order, dated 31.01.2022 in W.M.P.No.7130 of 2020 in this W.P.).

...Petitioners

..Vs..

1. The Principal Secretary/
Commissioner of Treasuries and Accounts,
Panagal Building,
Saidapet, Chennai-15.

2. The Joint Director of Health Service,
Kancheepuram.

3. The Joint Director,
District Treasury,
Kancheepuram.

4. The Additional Treasury Officer,
District Treasury,
Kancheepuram.

...Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, after calling for the records pertaining to the order dated 01.09.2017 in Ldis No.14152/2017/H1 passed by the 3rd/4th respondent rejecting the petitioner claim for reimbursement of medical expenses and returning the same on the ground that my treatment period is not covered by the scheme, quash the same and consequently direct the respondents to pay the petitioner forthwith a sum of Rs.39,160/-, towards medical expenses which he has incurred for undergoing hernia operation, with interest and within a specified time as may be fixed by this Court, Award costs.

For Petitioner : Ms.Nandhini
for Mr.R.Krishnaswamy

For Respondents : Mr.M.S.Prem Kumar,
Government Advocate

ORDER

This Writ Petition has been filed, challenging the order passed by the 3rd/4th respondent, dated 01.09.2017, and to quash the same and consequently, to direct the respondents to pay a sum of Rs.39,160/-, towards the medical expenses incurred by the petitioner.

2. The facts of the case in brief are as follows:-

i) The petitioner, C.Chellappan (since deceased) worked as an Office Assistant, in District Labour Office, Kaniyakumari and retired from service on his attaining the age of superannuation on 30.06.1980. The Government, vide G.O.Ms.No.171 of Finance (Pension) Department, dated 26.06.2014, introduced and implemented a new Scheme, called “New Health Insurance Scheme, 2014 for Pensioners'', for providing health care assistance to the pensioners, their spouses and also to the family pensioners, and replaced the earlier Scheme, called ''Health Fund Scheme, 1995''.

ii) The petitioner (since deceased) underwent a inguinal hernioplast surgery on 15.08.2016, and incurred medical expenses of Rs.39,109/-. Since the petitioner (since deceased) is a member to the aforesaid new Scheme and he was issued with an Identity Card and was paying the monthly subscription regularly, he made an application, dated 29.08.2016, to the first respondent along with all supportive documents and requested for reimbursement of the said sum. The respondents 3 and 4, vide impugned order, rejected the claim made by the petitioner. Hence, this Writ Petition for the aforesaid relief.

iii) During the pendency of this Writ Petition, the petitioner, Chellappan passed away, as he was a nonagenarian (99 years old), his legal heirs, viz., his two sons have filed W.M.P.No.7130 of 2020, seeking to substitute themselves in the place of their deceased father and the said Petition is ordered by this Court today and the legal heirs were substituted in the place of the deceased as petitioners 1 and 2.

3. Ms.Nandhini, the learned counsel appearing for the petitioners submitted that, the petitioners' father, deceased Chellappan was a member of "New Health Insurance Scheme, 2014

for pensioners", which was notified for a period of four years from 01.07.2014 to 30.06.2018 and for the said period, i.e.from 01.07.2014 to 30.06.2018, the respondents have deducted a sum of Rs.150/- per month as subscription towards the said Scheme regularly and from 01.07.2018, the respondents have been deducting a sum of Rs. 350/- per month towards subscription for the said Scheme. The learned counsel further submitted that the petitioners' father was suffering from severe abdominal pain from 14.08.2016, and after clinical exam and texts, the Doctors diagonized that he was suffering from inguinal hernia and suggested him to undergo surgery and hence, the petitioners' father took medical treatment from 14.08.2016 and 20.08.2016, and underwent right inguinal hernioplasty surgery on 15.08.2016 and spent a sum of Rs.39,109/-.

3.1 The learned counsel for the petitioner mainly contended that, at the time, when the petitioners' father underwent surgery, the New Health Insurance Scheme is in force and the petitioners' father after getting cured from the disease made a claim reimbursement of the amount. In fact, the third respondent forwarded the said application to the second respondent, requesting him to settle the claim made by the deceased Chellappan after taking decision through the Empowered Committee headed by the District Collector, Kancheepuram. However, the third/fourth respondents rejected the same, on the ground that the period during which, the petitioners' father underwent the medical treatment was not covered under the aforementioned Scheme.

3.2 The learned counsel for the petitioner contended that, the impugned order is nothing but an outcome of non application of mind, since, the petitioners' father underwent the treatment when the Scheme was in force. Therefore, the learned counsel prayed for setting aside the impugned.

4. Mr.M.S.Prem Kumar, the learned Government Advocate for the respondents submitted that the rejection has been made inadvertently on the ground that the treatment period is not covered, but, in factuality, the claim was rejected owing to the fact that the Hospital, where, the petitioners' father underwent treatment is a Non-network Hospital and the same is not in terms of policy issued by the Insurance Company. Therefore, the learned Government Advocate submitted that the petitioners are not entitled to seek for medical reimbursement and he has referred to the para remarks made by the third respondent in the counter affidavit, and sought for dismissal of the Writ Petition.

5. In reply, the learned counsel for the petitioner submitted that, if it is the case of the respondents that the reason for rejecting the claim of the deceased is not on the

ground that the treatment period is not covered under the Scheme, but, due to the reason that the Hospital, where, the petitioners' father underwent treatment is a Non network Hospital and is not covered by the policy of the Health Insurance Scheme, and reason assigned in the impugned order is only a typographical error, then, the petitioners have a good case, as this Court in catena of Judgements held that the claim made for medical reimbursement cannot be rejected merely on the ground of Non-network Hospital. Therefore, the learned counsel submitted that, in the present case, the claim made by the petitioners' father is genuine and hence, sought for a direction from this Court to direct the respondents to refer the claim before the District Level Empowered Committee for consideration.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate for the respondents and perused the materials available on record.

7. It is clear that the petitioners' father, namely, the deceased C.Chellappan worked in a recommended Organization and was a member of "New Health Insurance Scheme, 2014 and 2018 for Pensioners'' and he had also paid the subscription towards the Scheme every month without fail. As ill luck would have it, the petitioners' father had suffered inguinal hernia and underwent hernioplasty/surgery on 15.08.2016 and spent about Rs.39,160/-. Hence, the petitioners' father made a claim for reimbursement, however, the claim was rejected on the ground that the treatment was not taken in a Network hospital, covered under the Scheme, though the reason assigned in the impugned order for rejecting the claim is only a typographical error, viz., the treatment period is not covered under the Scheme.

8. As rightly pointed out by the learned counsel for the petitioner, this Court in catena of Judgments categorically held that the claim made towards medical reimbursement by the employees/pensioners under the New Health Insurance Scheme cannot be rejected on the ground that the treatment was not taken in the Network Hospital or such other reason, and in this connection, I am reminiscent of a judgment passed by me before the Madurai Bench of Madras High Court, in a batch of Writ Petitions, viz., W.P.(MD) No.18055, etc. (batch) of 2020, dated 16.12.2020, and the relevant paragraphs of the said judgement are extracted hereinbelow:-

> "28. Thus, I am of the opinion that the claim of the petitioners cannot be rejected by the DLEC/SLEC on the grounds that the treatment was taken in a non-network hospital or the disease is not covered under the package, but they have to consider the fact that the nature

of treatment taken, emergency of treatment at the relevant point of time, and the urgent requirement of medical professionals, to treat the patients. In the event, if the reimbursement of medical claim is not covered under the New Health Insurance Scheme, in such case, the DLEC/SLEC shall consider the entitlement of the claimant under Tamilnadu Medical Attendance Rules or otherwise by the State as it may deem fit.

29. In cases, where, the respondents are satisfied with regard to the treatment taken by the petitioners, they have no locus standi to reject the claim of the petitoners on the ground that the petitioners took treatment in a Non-network Hospital"

8.1 Thus, the issue involved in this Writ Petition is no longer res integra, and the same is covered by a decision rendered by me, in the case referred to supra. In the light of the ratio decidendi laid down therein, the order impugned herein is unsustainable and liable to be set aside.

9. Accordingly, the impugned order, dated 01.09.2017, is set aside and this Court, prima facie, is of the view that the petitioner is entitled to make claim for reimbursement of the medical expenses of Rs.39,160/-. Therefore, this Court directs the respondents 2 to 4 to consider the claim made by the deceased father of the petitioners by referring the claim for consideration before the District Level Empowered Committee within a period of four weeks from the date of receipt of a copy of this order, and thereafter, the District Level Empowered Committee is directed to dispose of the aforesaid claim made within a period of eight weeks from the date of receipt of intimation from the respondents 2 to 4.

10. In the result, this Writ Petition is allowed on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jd

To

1. The Principal Secretary/
   Commissioner of Treasuries and Accounts,
   Panagal Building,
   Saidapet, Chennai-15.

2. The Joint Director of Health Service,
   Kancheepuram.

3. The Joint Director,
   District Treasury,
   Kancheepuram.

4. The Additional Treasury Officer,
   District Treasury,
   Kancheepuram.

Copy to:
The District Collector,
The District Level Empowered Committee,
Chennai.

+1cc to Mr.Ajoy Khose, Advocate, S.R.No.5822

+1cc to the Government Pleader, S.R.No.6471

W.P.No.31757 of 2018

MT(CO)
SU(06/04/2022)