IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1119 of 2009 and
M.P.No.1 of 2009

R.Kuberan .. Petitioner

vs

1. ICICI Lombard General Insurance
Company Limited (Health Insurance)
Customer Support Team
3rd Floor, Zenith House
Keshavrao Khadge Mark
Mahalakshmi
Mumbai – 400 034.

2. T.T.K.Health Care Services Pvt. Ltd.
Rep. by its Authorized Signatory
Martial Chambers, 2nd Floor
N.M.Joshi Marg (Next to Bavla Masjid)
Lower Pearel (East)
Mumbai – 400 013. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings dated 1.11.2007 made in Claim No.BCL-10-07-CN-L08040 issued by the second respondent and quash the same and consequently direct the respondents to settle the entire payment to the petitioner with interest at the rate of 12% per annum.

For Petitioner : M/s.G.Ethirajulu

For Respondents : No appearance

ORDER

The order of rejection rejecting the medical reimbursement claim of the writ petitioner under the insurance policy is under challenge in the present writ petition.

2. The petitioner states that he suffered from Pulmonary Valvular Stenosis and under went treatment of Pulmonary Valvuloplasty at G.Kuppusamy Naidu Memorial Hospital, Coimbatore during the period from 05.02.1997 to 08.02.1997. Subsequently, after nine years, the petitioner has taken a policy for critical guard with the first respondent for a sum of Rs.5,00,000/- for three years with effect from 21.12.2006 to 20.12.2009, under the policy Number: 4065/CGSM/1013329/00/000. While taking the policy, the petitioner has also disclosed the treatment taken during the year 1997 to the agent who made arrangement for taking the medic claim policy. The petitioner paid a sum of Rs.8,550/- per year towards premium. The petitioner has also taken another policy for a sum of Rs.3,00,000/- with effect from 31.01.2007 for three years on payment of

Rs.7,070/- per year towards the premium under the policy Number : 4065/CGSM/1013329/00/000.

3. During the year 2007, the petitioner suffered from Acyanotic Congenital Heart disease. On 24.08.2007, he underwent RVOT Obstructive Muscle Bundle Resection at International Centre for Cardio-Thoracic and Vascular Diseases, Ambattur, namely Dr.K.M.Cherian, Heart Foundation (Frontier Life Line), Chennai. The petitioner was an inpatient in the said hospital from 22.08.2007 to 01.09.2007 and incurred a sum of Rs.1,32,874/- towards the medical treatment.

4. The petitioner submitted an application seeking medical reimbursement of medical expenses based on the policy. The second respondent rejected the claim of the petitioner through the impugned order dated 01.11.2007 stating that "under Exclusion Clause No.3.1, claims arising on account of or in connection with any pre-existing illness shall be excluded from the scope of cover under policy."

5. The learned counsel for the petitioner mainly contended that the pre-existing illness, which has been already disclosed to the agent by the petitioner during the relevant point of time was no way connected with the treatment underwent by the petitioner in the International Centre for Cardio-Thoracic and Vascular Diseases, Ambattur. It is contended that, previously, the petitioner suffered from Pulmonary Valvular Stenosis and under went the treatment of Pulmonary Valvuloplasty at G.Kuppusamy Naidu Memorial Hospital, Coimbatore in the year 1997. That treatment was related to lung problem and not connected with the heart problem. However, in the year 2007, the petitioner underwent RVOT Obstructive Muscle Bundle Resection at International Centre for Cardio-Thoracic and Vascular Diseases, Ambattur, Thus, the treatment underwent by the petitioner was not connected with the earlier ailment relating to lungs and the treatment taken in G.Kuppusamy Naidu Memorial Hospital, Coimbatore in the year 1997.

6. Clause 3.1 of the general exclusions applicable to the policy stipulates that, "arising or resulting from the insured committing any breach of the law with criminal intent". If at all the petitioner suppressed certain ailments and submitted the application seeking medical claim for

the said treatment or the treatment taken subsequently for the same disease, this policy exclusion claim will be attracted and not otherwise. Even otherwise, if the policy holder knows about his previous nature of treatment and the injury and issued a policy, then, the benefit of reimbursement cannot be denied at all. It is to be decided on case to case basis.

7. Whether there is a suppression or not is to be considered by the competent authorities. The very purpose of medical policy on no circumstances be defeated and the persons are taking medical claim policy in order to meet out their heavy medical expenses. Therefore, the respondent insurance companies are to be cautious while invoking the exclusion clause in medical claim policy.

8. In the present case, the treatment underwent by the petitioner for the RVOT Obstructive Muscle Bundle Resection at International Centre for Cardio-Thoracic and Vascular Diseases, Ambattur was not detected in the year 1997, nor the petitioner underwent any treatment for such disease. It was detected in the year 2007 and immediately, the petitioner was admitted and underwent treatment. That being the factum,

the exclusion clause invoked by the respondents are not in consonance with the spirit of the exclusion clause nor the respondents has considered the factual aspects in this regard.

9. In view of the fact that the treatment underwent by the petitioner in the year 1997 for Pulmonary Valvular Stenosis at G.Kuppusamy Naidu Memorial Hospital, Coimbatore is no way connected with the treatment underwent by him on 24.08.2007 for RVOT Obstructive Muscle Bundle Resection at International Centre for Cardio-Thoracic and Vascular Diseases, Ambattur.

10. In view of the facts and circumstances, the order impugned passed by the second respondent in proceedings No.BCL-10-07-CN-L08040 dated 01.11.2007 is quashed and the respondents are directed to pay the eligible medical claim along with the interest at the rate of 8% per annum from the date of the application till the date of the realization within a period of eight weeks from the date of receipt of a copy of this order.

11. With these directions, the writ petition is allowed. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No **20.04.2023**
Neutral Citation : Yes/No

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S.M. SUBRAMANIAM, J.

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