**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 13.06.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P(MD)No.7072 of 2023**
**and**
**W.M.P(MD)No.6702 of 2023**

Gopal ... Petitioner

Vs

1.The Joint Director of Medical and Rural Health Services
and Family Welfare,
Ramanthapuram – 623 501.

2.The District Collector,
Ramanthapuram District,
Ramanthapuram.

3.The District Treasury Officer,
Ramanthapuram District.

4.The Divisional Manager,
United India Insurance Company Limited,
Divisional Office – VI,
PLA Rathna Tower,
5th Floor, 212, Anna Salai,
Chennai – 600 006.

5.The Branch Manager,
United India Insurance Company Limited,
Ramanthapuram. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned letter of the fourth respondent dated 04.04.2022 and the consequential impugned proceedings of the first respondent in Mu.Mu.No. 3096/Pa2/2021 dated 19.05.2022 and to quash the same and further direct the respondents to pay the medical bill of Rs.2,37,897/- to the petitioner payable under New Health Insurance Scheme 2014 for reimbursing medical expenditure incurred by the petitioner's wife with the interest at the rate of 12%.

For Petitioner : Mr.R.Maheswaran

For Respondents : Mr.T.Villavan Kothai
Additional Government Pleader
for R.1 to R.3
Mr.A.Shajahan
Standing Counsel for R.4 & R.5

**ORDER**

Heard the learned counsel on either side.

2. The petitioner is a retired Government employee. He is aged about 69 years. His wife had cardiac issue. She was admitted in Kuppusamy Naidu Memorial Hospital (KNMH), Coimbatore and she underwent surgery. The petitioner wants the medical expenses to be reimbursed. The District Treasury Officer recommended the case of the petitioner. However, by the impugned proceedings, the fourth respondent negatived the claim. Challenging the same, the present writ petition came to be filed.

3. The learned counsel on either side reiterated the stand set out in the respective pleadings.

4. I carefully considered the rival contentions.

5. As rightly pointed out by the learned Standing Counsel for the Insurance Company, the petitioner is a resident of Ramanathapuram. The Hospital where the petitioner's wife was admitted is located in Coimbatore. It is at a distance of 400 kms. G.O(Ms)No.222 Finance [Pension] Department dated 30.06.2018 defines the expression 'emergency care' in the following terms:

> *" **"Emergency Care"** means management for an illness or injury which results in symptoms which occur suddenly and unexpectedly, and requires immediate care by a medical practitioner to prevent death or serious long term impairment of the insured person's health."*

The petitioner's case will obviously not fall under the aforesaid expression. The case on hand is covered by the decision of the Hon'ble Division Bench reported in ***2010-2-LW.90 (Star Health and Allied Insurance Co.Ltd., & Others Vs A.Chokkar & Others).*** Paragraphs 24,25 and 26 of the said order read 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 makes the network hospitals as intrinsic. However, the petitioners/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.*

*26.Before taking up the individual cases, we must record that there are certain situations which may arise and in fact which have arisen, for which the Government must issue clear guidelines. This the Government has to do, since it has made the Scheme obligatory for everyone and there is automatic deduction of premium to an extent of Rs.25/- per month. The directions are as follows:*

*(i)The State shall make it clear that if for some reason, which is satisfactory, the claimant is unable to take treatment in a network hospital but has been advised or had to go to a non-network hospital, then his claim would be considered under the Rules.*

*(ii)If the claimant has been advised some procedure which is not covered by the Scheme, there again, it must be made clear that he can apply under the Rules.*

*(iii)To safeguard duplication of payments, the Government can make sure and when they apply under the*

*Rules, that the claimant himself certifies that he has not made claim under the Scheme or vice-versa.*

*(iv)The State shall inform every network hospital that if it receives complaints from claimants that money was demanded for admission or for treatment, then that hospital will be removed from the network. This warning is necessary, since, at times of crisis, the claimants will not be in a position to argue with the hospital that this is a "cashless" Scheme. We are aware that there is an officer of the Star Health Insurance Company at every network hospital to ensure that hospitals adhere to the terms of the Scheme but, yet, it is better to make this position clear to the hospitals, since one of the questions that has arisen before us is that whether the claimants will be entitled to reimbursement if, by mistake, they pay cash."*

6. Kuppusamy Naidu Memorial Hospital (KNMH) is admittedly a non-network hospital. The Insurance Company cannot be called upon to honour the petitioner's claim because the treatment was not taken in a network hospital and it will not fall under the emergency care category. However, the petitioner's claim will be considered in terms of Tamil Nadu Medical Attendance Rules. The petitioner is permitted to resubmit his claim before the third respondent and appropriate order as per law shall be passed within a period of eight weeks after such submission and the amount eligible to the petitioner shall also be disbursed within a period of twelve weeks thereafter.

7. This writ petition is disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

**13.06.2023**

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

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and Family Welfare,
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**G.R.SWAMINATHAN, J.**

MGA

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