



W.P.No.8537 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

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THE HONOURABLE MRS.JUSTICE **N.MALA**

W.P.No.8537 of 2019

S.Rajathi

... Petitioner

Vs

1.The Assistant Director-Complaint Officer,
Employees' State Insurance Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai – 34.

2.The Deputy Director,
Employees' State Insurance Corporation,
Sub Regional Office, Coimbatore,
No.187, Trichy Road Panchdeep Complex,
Ramanathapuram,
Coimbatore – 641 045.

3.M/s.Smart Security Service,
Sri. Velavan Complex,
No.2, Kamaraj Road,
Udumalaipet – 642 126,
Coimbatore District.

... Respondents



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Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 1st and 2nd respondents to disperse the amount Rs.4,00,000/- towards the medical expense spent for the treatment given to the petitioner's deceased husband namely P.C.Subramanian, Son of Chinnapparaj.

For Petitioner : Mr.G.Pugazhenth

For Respondents : M/s.C.V.Ramachandra Murthy [R1 & R2]
No appearance [R3]

ORDER

This writ petition is filed for a Writ of Mandamus, to direct the respondents 1 and 2 to disburse the amount of Rs.4,00,000/- towards medical expenses spent for the treatment of the petitioner's husband.

2. The petitioner's husband was working as Security Guard under the third respondent and he was a member of Employees State Insurance Corporation having code No.56-00-11155-000-1018. During the course of employment of the petitioner's husband, on 16.05.2012, he fell unconscious in the third respondent office and therefore, he was admitted at K.G.Hospital,



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Coimbatore. Inspite of treatment, the petitioner's husband died 02.06.2012.

The petitioner incurred an expense of Rs.4,00,000/- for the treatment of her husband. As the petitioner's husband died due to the injuries sustained in the course of the employment, the second respondent passed an order on 06.05.2015 directing payment of dependants' benefit alone to the petitioner, as a legal heir of the deceased, without reimbursing the medical expenses incurred by the petitioner. Therefore, the petitioner sent representations to the second respondent, which were not replied and hence, the petitioner was constrained to file the above writ petition for the aforesaid relief.

3. The respondents 1 and 2 filed a counter stating that the writ petition was not maintainable as there was an alternative remedy available under Section 75(1)(g) of the ESI Act. The respondents 1 and 2 further contended that the petitioner's husband joined the services of the third respondent on 01.05.2012 and was registered under the ESI Scheme only on 17.05.2012, after his employment injuries, which occurred on 16.05.2012. According to the respondents 1 and 2, no claim was made by the petitioner for



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reimbursement of the medical expenses and no certificate letter from the dispensary or any ESI Hospital were submitted for the medical expenses. The respondents 1 and 2 stated that the claim was time barred and also that the petitioner was not entitled to medical reimbursement as the procedure provided under the Rules and Regulations in the ESI Act were not followed. The respondents 1 and 2, therefore submitted that the relief claimed in the writ petition deserved to be rejected.

4. The learned counsel for the petitioner submitted that the petitioner's husband died due to the employment injuries and the petitioner had incurred an exorbitant amount of Rs.4,00,000/- towards medical expenses. As her husband was a member of the ESI Corporation, the second respondent was bound to reimburse the medical expenses of Rs.4,00,000/- to the petitioner.

5. The learned counsel appearing on behalf of the respondents 1 and 2 by relying on the Regulation 96C of the ESI Act submitted that the procedure contemplated under Regulation 96C of the ESI Act was not followed and



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therefore, the petitioner was not entitled to any relief.

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6. Heard the learned counsel appearing for the parties and perused the materials available on record.

7. It is seen that under Regulation 96C of the ESI Act, for a person to be entitled for super speciality treatment, certain procedures have to be followed. For better appreciation, Regulation 96C of the ESI Act is extracted hereunder:-

[96-C. Referral for super speciality treatment to tie-up hospitals and expenditure to be incurred by Employees' State Insurance Corporation directly –

Subject to the provisions of the Act and the Regulations, the Corporation or State Government may refer a beneficiary to any tie-up arranged medical facilities, where cost of such facility is borne directly by the Corporation and where the fund permits; an Insured Person should have completed a minimum of six months of insurable employment from the date of registration and have contributed not less than seventy eight (78) days in the relevant contribution period including in which registration was made. However, where the facility has been extended to his family members, an Insured Person should have completed a minimum of one year of insurable employment and have contributed for not less than seventy eight (78) days in each of the two (2) contribution period and such benefit shall be available to an



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Insured Person or a beneficiary in the corresponding benefit period :

Provided further that an Insured Person with employment injury or Insured Woman with complications arising out of maternity or those in receipt of extended sickness benefit under the Act shall be eligible as per the relevant contributory conditions and in case of family of extended sickness beneficiaries, they shall also be eligible as long as the benefit period corresponding to contribution period covered in extended sickness by more than half of the contribution period.]

8. From a reading of the said regulation, it is clear that an insured person should have completed a minimum period of six months of insurer employment from the date of registration and should have contributed not less than 78 days in the relevant contribution period including in which registration was made for referral to super speciality treatment. On the facts of the case, it is seen that the petitioner's husband was registered only on 17.05.2012, (i.e.) the very next day of the accident, which occurred on 16.05.2012. Therefore, as per Regulation 96C, the petitioner's husband was not entitled to referral for super speciality treatment, hence, the question of reimbursement of medical expenses does not arise.



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9. In view of the factual situation and the legal position, I am of the view that this writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs.

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Index : Yes / No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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