IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.17058 of 2020

1. V.Rajamma (deceased)
2. Ashok Chandra R
3. R.Ajay Chandra
4. Anith Gnanaselvam ... Petitioners

[P1 to P3 impleaded vide order dated 12.07.2024 made in W.M.P.No.29130 of 2022]

Vs.

1. The District Collector,
   Kanyakumari District, Nagercoil.

2. The Treasury Officer, District Treasury Office,
   Kanyakumar District, Nagercoil.

3. The Senior Divisional Manager,
   United India Insurance Company Ltd.,
   Divisional Office VI,
   PLA Ratna Towers,
   V Floor, No.212, Anna Salai,
   Chennai – 600 006. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 24.04.2020 in Na.Ka.No.21977/2015/2019/L-2(39), passed by the 2nd respondent and quash the same and further direct the respondents to consider the petitioners representation dated 26.08.2019 and settle the medical

claim reimbursement as contained in the said representation

For Petitioner : Mr.P.K.Sabapathi

For R1 & R2 : M/s.E.Ranganayaki,
Additional Government Pleader

For R3 : No appearance

O R D E R

The original writ petitioner/ 1st petitioner is widow of Late.P.Rajaratnam, who worked as 'Head Master' at the Government Higher Secondary School, Vallan Kumaravelai, Kanyakumari District and retired from service on 23.06.1989 and passed away on 21.06.2017. During the pendancy of the Writ Petition, the sole petitioner died and hence, the petitioners 2 and 4 are brought on record, being the legal heirs of the deceased petitioner. The 1st petitioner being a family pensioner and spouse of a retired Government Servant was made eligible for the benefit of New Health Insurance Scheme, 2018 introduced by the Government of Tamil Nadu for the benefit of pensioners (including spouse/ family pensioners) under G.O (Ms) No.222, Finance (Pension) Department dated 30.06.2018. In terms of the said Scheme, an amount of Rs.3800+GST is being collected from the pensioner/ family pension i.e., at the rate of Rs.350/- per month. The said amount of Rs.350/-per month is being deducted from the monthly family pension payable to the 1st

petitioner from the month of July, 2018. While so, the 1st petitioner herein suffered a fracture on the left side of her hip bone on 02.08.2019 and immediately thereafter, she was admitted to Chennai Meenakshi Multi-Specality Hospital, Mylapore, Chennai and she was operated on 04.08.2019 and discharged from the said Hospital on 09.08.2019. The 1st petitioner claimed to have incurred an expenditure of Rs.1,99,574/- for her treatment in the abovesaid Hospital. It is thereafter, the 1st petitioner made a claim for reimbursement of such amount under the New Health Insurance Scheme, 2018. The coverage of the said Scheme commenced on 01.07.2018 and valid till 30.06.2022. The treatment that was availed by the 1st petitioner was during the period of currency of the said Health Insurance Scheme only. Further, the claim made by the 1st petitioner was negatived by the Insurance Company/ Respondent No.3 through the letter dated 18.02.2020 and the same was communicated to the 1st petitioner by the Respondent No.2 through the impugned proceedings dated 24.04.2020. The reasons assigned by the Respondent No.3 for rejecting the claim of the 1st petitioner reads as under:-

> *" The patient admitted with the diagnosis of left fracture neck of femur and underwnt left hip bipolar modular arthroplasty. The said hospital is non-network hospital and moreover the incident has happened 2 days back as per the discharge summary which is not an emergency one. Hence, the*

claim cannot be considered as per G.O.222, Finance (Pension) Department dated 30.06.2018."

2. From the perusal of the New Health Insurance Scheme, 2018 adopted under G.O (Ms) No.222, Finance (Pension) Department, dated 30.06.2018, the 1st petitioner is entitled to take treatment either in the network hospital or in a non-network hospital and in case if the treatment is taken in a non-network hospital, the 1st petitioner is entitled to claim for reimbursement of the expenditure incurred by her for the treatment. Inspite of such a specific clause provided under Sub-Paragraph No.2 of Paragraph No.11 of the Scheme, the Respondent No.3 rejected the claim, on the ground that the Hospital where the 1st petitioner took treatment is a non-network hospital and the incident that has happened two days back and therefore, there was no emergency to take treatment in a non-network hospital. The said reasons assigned by the Respondent No.3 are totally absurd and does not stand to legal scrutiny. The 1st petitioner suffered a fracture on 02.08.2019 and immediately she was admitted in Chennai Meenakshi Multi-Specality Hospital, Mylapore, Chennai, where she underwent treatment for two days and then she was operated on 04.08.2019. There is no dispute about the the illness suffered by the 1st petitioner and the treatment taken by the 1st petitioner in the said hospital. In the absence of the

same, it is not open for the Respondent Nos.2and 3 to conclude that the said treatment is not of an emergency nature. When the 1st petitioner suffered a fracture on her left hip bone is not disputed, it is not understandable on what ground the Respondent No.3 has chosen to conclude that the same is not of emergency nature, especially considering the age of the 1st petitioner, who was 84 years by the date, she suffered such illness. Further, there is no bar for taking treatment in a non-network hospital. On the other hand, the scheme specifically provides for taking treatment in case of an emergency. Having suffered fracture on her left hip bone, the 1st petitioner took treatment in the above said hospital, and as such under no stretch of imagination, the same can be termed as not of an emergency nature. Hence, the grounds on which the claim of the 1st petitioner was rejected by the Respondent No.3 cannot be sustained. Though notice was served on the Respondent No.3 as early as on 25.11.2021, neither any appearance entered on behalf of the Respondent No.3 nor any counter-affidavit is filed.

3. This Court having perused the acknowledgement received from the Respondent No.3 is convinced that service of notice on Respondent No.3 is proper and the same is sufficiently acknowledged by the Respondent No.3. In the absence of any counter-affidavit filed by the Respondent No.3 or

Respondent Nos. 1 and 2, the claim made by the 1st petitioner is remained uncontroverted.

4. In view of the same and also for the reasons already assigned above, the impugned order dated 24.04.2020 is liable to be set aside. Added to this, the very same issue has come-up for consideration in a number of cases and the learned Single Judge of this Court passed an order dated 24.09.2021 in W.P (MD) No.19578 of 2016, which reads as under:

> *" 10.The Honourable Supreme Court in the case of Shiva Kant Jha vs Union of India, reported in 2018 (5) MLJ 317, with reference to reimbursement of medical claim under Central Government Health Scheme, specifically observed that treatment availed in emergency circumstances to save life of Government employee can be considered and the Government employee should be reimbursed. This Court had also an occasion to deal with similar issue and the practical difficulty of Government employees, who have undergone treatment during service or after retirement. In most of the cases, the Insurance Company rejected the claim simply because the treatment is not in a network hospital or on the ground that the treatment undergone by the employee is not for the ailment found place in the agreement entered into between Government and private*

Insurance Company.

11.This Court in several cases has consistenly taken a view that irrespective of the rejection of claim by the Insurance Company, the first respondent should consider the claim for medical reimbursement under Tamil Nadu Medical Attendance Rules. This Court also noticed that the Insurance Company used to reject the claims on the ground that the policy is cashless and that the claimant, who has paid the medical bill, cannot approach the Insurance Company for reimbursement. It is stated in this case by the petitioner that the petitioner had shown his photo identity card issued by the third respondent for insurance coverage but the hospital, in which the petitioner was given treatment, insisted the petitioner to deposit cash and collected the entire amount before discharging the petitioner from the hospital.

12.In the case of Ali Akbar vs The Principal Secretary to the Government and antoher, reported in 2018 (1) WLR 767, this Court pointed out the need for the Government to issue clear guidelines including the direction to inform every network hospitals that if the Government receives complaints from claimants that money was demanded for admission or for giving treatment to the Government servants, who are covered by General Health Scheme, then that hospital should be removed from the network.

13.The learned Counsel for the petitioner relied upon the judgment rendered by a Honourable Division Bench of this Court in W.A.(MD)No.2749 of 2018 dated 04.02.2019 in the case of The Government of Tamil Nadu and two others vs K.Rajendran and two others. While dealing with a similar case, based on the judgment of Honourable Supreme Court and earlier judgments of this Court, the Division Bench has held that the Government employees are entitled to get a medical facility or medical reimbursement as a matter of a right and no fetters can be placed on such right being exercised in a fair manner. It is further observed that since ultimate decision as to how a patient should be treated vests only with the Doctor, who is an expert, and a very little scope is left to the patient or his relatives to decide to choose the hospitals, the Government should reimburse the medical expenses irrespective of the hospitals or the nature of ailments for treatments. The learned Government Advocate could not cite any other judgments to sustain the impugned order restricting the petitioner's claim abruptly."

5. In the light of the above, the action of the Respondent No.3 in rejecting the claim of the 1st petitioner by passing an order dated 18.02.2020 and consequential communication of the same by the Respondent No.2 through proceedings bearing Na.Ka.No.21977/2015/2019/L-2(39) dated 24.04.2020 are

liable to be declared as illegal and arbitrary and accordingly, both the orders are quashed and consequently, the respondents are directed to pay the entire amount of Rs.1,99,574/- being the expenditure incurred by the 1st petitioner with an interest of 6% per annum from 18.02.2020 till the date of payment within a period of six weeks from the date of receipt of a copy of this order.

6. Accordingly, the Writ Petition is allowed. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

12.07.2024

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

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MUMMINENI SUDHEER KUMAR, J.

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