BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.03.2024

PRONOUNCED ON : 15.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD).No.394 of 2024
and CMP(MD).No.3516 of 2024

1.The Director
Directorate of Medical & Rural Health Services
Teynampet
Chennai

2.The District Collector
Madurai District
Madurai ...Appellants/Respondents 1 & 2

Vs

1.J.Margaret German Leema ...Respondent/Writ Petitioner

2.The United India Insurance Company Limited
First Floor, Silingi Building
No.134, Greams Road
Chennai ....Respondent/3rd Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 28.05.2019 made in W.P(MD).No.12075 of 2017 etc., batch on the file of Madurai Bench of Madras High Court, Madurai and thereby allow the present writ appeal.

For Appellants : Mr.S.P.Maharajan
Special Government Pleader

For R1 : Mr.R.Maheswaran

J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The respondents 1 and 2 in the writ petition are the appellants herein.

2.The first respondent in the appeal had filed W.P(MD).No.12075 of 2017 challenging the order passed by the second appellant herein wherein the request of the petitioner for reimbursement of the medical expenses under the New Health Insurance Scheme has been rejected.

3.The writ Court after considering the case of the petitioner along with batch cases was pleased to quash the said order and has remitted the matter back to the District Level Empowered Committee for reconsideration of the same with certain observations. Challenging the same, the present writ appeal has been filed by the respondents 1 and 2 in the writ petition.

(A)Facts leading to the filing of the present writ appeal are as follows:

4.The writ petitioner is serving as a Secondary Grade Teacher in an Aided School covered under the New Health Insurance Scheme 2012. Her husband was admitted to Vellammal Medical College Hospital and Research Centre in Madurai on 24.06.2015 with complaints of inability to move left upper and lower limb and diarrhea with excessive sweating and continuous vomiting. The petitioner's husband took treatment in the said hospital as an inpatient from 24.06.2015 to 28.08.2015. During the course of treatment, the petitioner's husband underwent decompression craniotomy on 24.06.2015, dialysis on 24.07.2015 and tracheostomy on 28.07.2015. He was discharged from the hospital on 28.08.2015. The petitioner had incurred a sum of Rs.6,15,134/- towards the medical treatment.

5.The petitioner being a member of New Health Insurance Scheme -2012, had approached the authorities for reimbursement of the said medical expenses through an application dated 26.04.2016 enclosing all the medical records and the bills.

6.As per the New Health Insurance Scheme-2012, the District Level Empowered Committee has to consider the said request. On 18.04.2017, the

Committee had rejected the request of the petitioner on the ground that the hospital was a Non-network hospital and the treatment undergone was not eligible for reimbursement. The said fact was communicated to the writ petitioner under the impugned order dated 15.05.2017. Challenging the same, the petitioner had filed the above writ petition.

7.Before the writ Court, the petitioner had contended that she is entitled to receive reimbursement as per G.O.Ms.No.243, Finance(Salaries) Department dated 29.06.2012. Merely because the treatment was taken in a Non-network hospital, reimbursement cannot be rejected, especially in the light of the fact that the petitioner's husband was admitted in a Non-network hospital due to emergency.

8.The first appellant herein had filed a counter mainly contending that the hospital in which the petitioner's husband has taking treatment is not a network hospital and therefore, the petitioner is not eligible to receive the benefits under the said scheme.

9.The writ Court after considering the judgment of the Hon'ble Supreme Court and various Division Bench judgements, had arrived at a finding that the authorities cannot reject the request for reimbursement of the medical expenses merely on the ground that they have taken treatment in a Non-network hospital or the treatment has been taken for non-listed disease. The writ Court in a batch of cases had quashed the order of the District Level Empowered Committee and remitted the matter back to the said Committee with a direction that they should not reject the claim merely on the ground that they have taken treatment in a non-network hospital or non-listed disease. The Court has also given a direction to the Committee to give suitable directions to the Insurance Company to reimburse the claim made by the respective claimants. In case where the Committee finds that the Insurance Company cannot be directed to reimburse, the writ Court had directed the State authority to reimburse the claim under Medical Attendance Rules as per the rate approved by the Insurance Company under the New Health Insurance Scheme along with 6% interest within a period of 30 days from the receipt of recommendation from the District Empowered Committee. This order is put to challenge in the present writ appeal.

(B).Contentions of the learned counsel appearing for the appellants are as follows:

10.When the petitioner's husband has taken treatment in a Non-network hospital, for a non-listed treatment, the Insurance Company cannot be directed to reimburse the amount. First of all, as per the New Health

Insurance Scheme -2012, only a cashless treatment is available in the network hospitals. There is no agreement between the Insurance Company and the Government for providing treatment in the Non-network hospital and thereafter, reimbursing the amount to the concerned employee/pensioners.

11.He had further contended that the being a contract between the Government and the Insurance Company, the Insurance Company cannot be directed to pay or reimburse the medical expenses for any treatment taken in a Non-network hospital especially for a non-listed treatment.

12.The case of the petitioner does not fall within the emergency treatment and therefore, even assuming that the treatment has been taken in a Non-network hospital, the same is not eligible for reimbursement. He had further contended that the Tamil Nadu Medical Attendance Rules are applicable only for treatment undertaken in emergent situation and therefore, the present treatment being undergone by the petitioner's husband is not an emergent treatment, the question of reimbursement under Tamil Nadu Medical Attendance Rules also does not arise.

13.He had relied upon the Division Bench judgement of our High Court reported in ***(2010) 2 L.W 90 (Star Health and Allied Insurance***

Company Limited Vs. A.Chokkar) and contended that when the rules have been laid down for medical concessions, the Insurance Company cannot be asked to cover the expenses for taking treatment in a non-network hospital.

14.The learned counsel for the appellant had further relied upon a judgment of the Hon'ble Supreme Court in ***Civil Appeal No.2278 of 2011 (State of Rajasthan Vs. Mahesh Kumar Sharma)*** and contended that the Government would be justified in limiting the medical facilities to the extent it is permitted by the Financial Resources. Relying upon the judgement, he contended that when the Attendance Rules prescribe a mode and extent of payment, a learned Single Judge would not be right in directing the Government to reimburse the amount as per the rates approved in the New Health Insurance Scheme. Hence, he prayed for allowing the writ appeal and to dismiss the writ petition.

(C).Contentions of the learned counsel appearing for the respondents are as follows:

15.The petitioner's husband was constrained to be admitted in a non-network hospital due to emergent medical conditions. The petitioner's husband was not able to move his limbs and he was suffering from excessive sweating and continuos vomiting. Only due to emergent situation, he was admitted in a non-network hospital. G.O.Ms.No.243 dated 29.06.2012 provides for getting treatment in a non-network hospital during emergent situation. There is no dispute that the petitioner's husband has undergone treatment and has incurred expenses to an extent of Rs.6,15,134/-. When the genuineness of the treatment and the quantum of expenses has not been disputed, the Insurance Company or the Government cannot contend that they are not liable to reimburse the said amount. The writ Court had rightly rejected the contentions of the Insurance Company and the Government and has set aside the order and remitted the matter back to the authorities and hence, he prayed for sustaining the order passed by the writ Court.

16.We have carefully considered the submissions made on either side and perused the material records.

(D).Discussion:

17.The petitioner's husband has taken treatment in a non-network hospital between 24.06.2015 and 28.08.2015. In the affidavit, the petitioner has just spelt the symptoms of the disease and has not mentioned the name of the disease. Therefore, it is not clear whether the particular treatment is covered under the New Health Insurance Scheme or not. The petitioner had incurred a sum of Rs.6,15,134/- for his treatment.

18.When the petitioner had made an application to the District Level Empowerment Committee, the said Committee had rejected the request on the sole ground that they have taken treatment in a non-network hospital and the treatment is not covered under the Insurance Company. Therefore, the only issue that arises for consideration before this Court is whether a claim for reimbursement of the medical expenses under the New Health Insurance Scheme -2012 can be rejected on the above said grounds or not.

19.The Hon'ble Supreme Court while considering the same issue arising out of Central Government Health Services Scheme, in a judgment reported in ***(2018) 16 SCC 187 (Shiva Kant Jha Vs. Union of India)*** in paragraph No.17 has held as follows:

> *"17.It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure*

proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. ***The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds****. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.*

20.A Division Bench of our High Court while considering the New Health Insurance Scheme-2012 (S.Kulasekarapandian Vs. Special Secretary to Government Finance (Salaries) Department, Government of Tamil Nadu, Chennai, dated 11.04.2017, the Division Bench had quashed the order and has directed the Insurance Company to pay the amount as per the scheme for the treatment in a Non-network hospital and for a non-listed disease.

21.In a recent decision, a Division Bench of this Court in WP(MD).No. 25304 of 2018 dated 05.12.2023 while considering the New Health Insurance

Scheme-2012, had set aside the order passed by the Director of Health and Rural Services, Chennai and had proceeded to direct the Insurance Company to settle the amount as per the scheme for taking treatment in a Non-network hospital.

22.In the present case, there is no dispute that the petitioner's husband was admitted to a non-network hospital due to emergent medical condition and they have incurred expenses to a tune of Rs.6,15,134/-. The only ground on which the District Level Empowerment Committee had rejected the application of the petitioner is that the treatment is undertaken in a non-network hospital and the nature of treatment is not covered under the Scheme.

23.A perusal of the affidavit indicates that due to serious medical condition, the petitioner's husband has been admitted and he was in hospital for nearly 66 days. As per the judgment of the Division Bench of this Court cited supra *(Kulasekarapandian's case)*, merely because the Government has not incorporated a particular disease in the Government Order, the same cannot be considered to be a treatment for which the reimbursement is not available.

24.The writ Court after considering the entire factual and legal aspects, had set aside the order passed by the District Level Empowerment Committee and has directed the said Committee to reconsider the same in the light of the observations. We do not find any illegality or infirmity in the said order.

25.In the light of the above said deliberations, there are no merits in the writ appeal and the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.,) **(R.V.J.,)**

15.04.2024

Index :yes
Internet :yes
NCC : Yes/No
msa

D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR,J.

msa

Pre-delivery Judgment made in
W.A(MD).No.394 of 2024
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