BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.25253 of 2023
and W.M.P(MD) No.21442 of 2023

D.Srinivasan

... Petitioner

Vs

1. The Secretary to Government,
   Finance (Pension) Department,
   Secretariat, Chennai 600 009.

2. The Divisional Manager,
   United India Insurance and Co Ltd,
   Pla Rathina Towers, 5th Floor,
   212, Anna Salai, Chennai-600 006.

3. The District Collector,
   Madurai District,
   Madurai.

4. The Branch Manager,
   Tamil Nadu State Transport Corporation,
   Melur Branch,
   Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling records of the 2nd respondent i.e the Divisional Manager, United India Insurance

Company Limited, Chennai relating to Ref.010600/CRS 32/379/MDI/2023, dated 23.08.2023 and quash the same and consequently direct the 1st respondent i.e Secretary to Government, Finance (Pension) Department, Chennai to make payment of the eligible medical reimbursement amount to the petitioner, within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.S.Shaji Bino (R1)
Special Government Pleader

Mr.I.Suthakaran (R2)
Mr.S.C.Herold Singh (R3)
Standing Counsels

ORDER

The present writ petition has been filed challenging the impugned order of the second respondent in Ref.010600/CRS 32/379/MDI/2023, dated 23.08.2023 and consequently to direct the 1st respondent i.e Secretary to Government, Finance (Pension) Department, Chennai to make payment of the eligible medical reimbursement amount to the petitioner, within a specified time frame fixed by this Court.

2.Heard, the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the first respondent and the

learned Standing Counsels appearing for the second and third respondents. Perused the materials on record.

3.The petitioner is presently serving as Driver in Tamil Nadu State Transport Corporation, Melur branch, Madurai District for the past 23 years. He is a regular member of new Health Insurance Scheme. He underwent treatment in Dr. Rao Service Hospital, Melur, Madurai from 01.04.2020 and discharged on 06.04.2020. The medical diagnosis is bleeding per rectum and found to have external haemorrhoids and also suffering from giddiness and he had incurred medical expenditure to the tune of Rs.51,350/-. He applied for medical reimbursement to the District Committee headed by District Collector, Madurai. On 06.01.2021 his case was recommended to the United India Insurance Company. However, vide report, dated 10.06.2021 his case was rejected by the District Committee on the ground that he underwent treatment in a non-network Hospital and not a case of emergency. The petitioner preferred an appeal to the State Level Committee on 25.11.2021. The State-level Committee recommended the medical claim to the second respondent/United India Insurance Company and directed the petitioner to approach the second respondent. However, the second respondent vide

proceedings, dated 23.08.2023 rejected the petitioner's claim that he undertook treatment in a non- network Hospital or non-emergency condition, which is not payable under the scheme.

5.The Hon'ble Apex Court in the case in ***2018(5) MLJ 317*** has dealt with similar case and the relevant portion of the said judgment is extracted hereunder:

> *"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."*

6.In view of the same, the petitioner has filed this writ petition challenging the order passed by the second respondent, dated 23.08.2023.

7.The second respondent had filed a counter and submitted that in view of the fact that the petitioner's case does not involve any emergency

condition and he took treatment in a non-network Hospital prayed for dismissal of the writ petition.

8.However, in ***2018(5)MLJ 317***, this Court in the case of ***United India insurance Co Vs A.N.Natharsha*** reported in ***Manu/TN/1247/2019,*** with a similar case and has passed favourable orders to the petitioner therein and the relevant portion is extracted as follows:

> *"7. The Hon'ble Supreme Court of India in Shiva Kant Jha -vs- Union of India [2018 (5) MLJ 317], dealing with unfair treatment meted out to several retired Government servants in their old age for medical reimbursement under similar provisions of the Central Government Health Scheme, held in para nos. 13, 14 and 15 as follows:-*
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> > *"13. With a view to provide the medical facility to the retired/serving CGHS beneficiaries, the Government has empanelled a large number of hospitals on CGHS panel, however, the rates charged for such facility shall be only at the CGHS rates and, hence, the same are paid as per the procedure. Though the Respondent-State has pleaded that the CGHS has to deal with large number of such retired beneficiaries and if the Petitioner is compensated beyond the policy, it would have large ramification as none would follow the procedure to approach the empanelled hospitals and would rather choose private hospital as per their own free will. It cannot be ignored that such private hospitals raise exorbitant bills subjecting the patient to various tests,*

procedures and treatment which may not be necessary at all times.

14. 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.

15. This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the Central Government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the Writ Petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implemented CRT-D device and have done so as one essential and timely. Though it is the claim of the Respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the Petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals."

8. In this context, it would also be useful to refer to clause 14(4) of the Guidelines for Implementation of New Health Insurance Scheme, 2018, for Pensioners (including Spouse)/Family Pensioners

in the Appendix to G.O. Ms. No. 222, Finance (Pension) Department, dated 30.06.2018 issued by the Government of Tamil Nadu, which is extracted below:-

> *"14.(4) In case, a Pensioner/Family Pensioner undergoes emergency treatments/surgeries not covered under this Scheme in either Network Hospital or Non-Network Hospital, no claim can be filed under the Health Insurance Scheme. However, they shall be eligible for claim to the extent permissible under the Tamil Nadu Medical Attendance Rules and the G.O. Ms. No. 1023, Health and Family Welfare Department, dated 17.06.1980. It may be noted that the Tamil Nadu Medical Attendance Rules requires that treatment in private hospitals should not be resorted to except in case of emergencies. Clause 2(3) of the aforesaid Government Order states that in genuine cases of emergency, the claims will be restricted to the expenditure that would have been incurred had the patient taken treatment in a Government hospital excepting diet charges. For claims under Tamil Nadu Medical Attendance Rules, the Beneficiaries may apply to the authority in the department in which the Government employee last served who is competent to process and forward pension proposal to the Accountant General, Tamil Nadu. The Head of Office shall process the claims and pay the eligible claims under the Tamil Nadu Medical Attendance Rules."*

Though that Governmental Order has been issued after the claim has been made in this case, the aforesaid guidelines, which are based upon the instructions provided in the earlier Government

orders and the Tamil Nadu Medical Attendance Rules, are obviously clarificatory in nature and would apply to past cases as well.

9. In the light of this incontrovertible legal position coupled with the facts of this case, since the Petitioner had taken treatment at a Non-Listed Hospital, the Fourth Respondent cannot be held liable for medical reimbursement under the New Health Insurance Scheme and the conclusion of the Writ Court to that extent cannot be sustained. However, the First to Third Respondents as the employer of the Petitioner are liable to settle the claim of the Petitioner under the Tamil Nadu Medical Attendance Rules, with interest at the rate prescribed under those Rules, and if no such rate of interest has been prescribed, at the rate of 7.5% per annum till payment. Accordingly, it is directed that the competent authority of the Government of Tamil Nadu shall examine the claim made by the Petitioner for medical reimbursement as one made under the Tamil Nadu Medical Attendance Rules, and sanction and disburse eligible amount towards the same along with interest in the manner indicated supra, and file a report of compliance in that regard before the Registrar (Judicial) of this Court by 30.06.2019."

9.In the case in hand, the State Level Committee had already recommended the case of the petitioner on 25.11.2021 to the second respondent. The second respondent ought to have complied with the recommendation of the State Level Committee or should have go for an appeal before the High-level Empowered Committee in this regard. Having not done

both the exercise, the second respondent/Insurance Company passed the impugned order by rejecting the claim of the petitioner. The said exercise is an *non-est* in law. Hence, this Court is inclined to quash the impugned order and consequently direct the second respondent to make payment of medical reimbursement to the petitioner within a period of eight weeks from the date of receipt of copy of this order.

10.With the above directions, the writ petition stands allowed. No costs. Consequently connected miscellaneous petition is closed.

02.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM

To

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   United India Insurance and Co Ltd,
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   212, Anna Salai, Chennai-600 006.

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L.VICTORIA GOWRI, J.

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