BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

WP(MD). No.25030 of 2018 and
WMP(MD) No.22685 of 2018

T.Jeyarani ... Petitioner

Vs

1.The Principal Secretary /Commissioner of Treasuries
and Accounts,
New Health Insurance Scheme 2014,
Integrated Office Complex For Financial
Department , Nandanam, Chennai.

2.The District Collector,
Tuticorin District.

3.The District Treasury Officer,
District Treasury (Accounts),
Tuticorin District.

4.M/s.The United India Insurance Company Ltd.,
PLA Rathna Towers,
5th Floor, 212, Anna Salai,
Chennai-6. ...Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to impugned order passed by the 3rd respondent in Na.Ka.No.525 / 2017 / Ra3 dated 23/08/2018 and to quash the same insofar as petitioner is concerned and consequently direct the respondents to reimburse the medical expenses of Rs.2,42,385/- with interest to the petitioner under the Health Insurance Scheme within the time framed by this Court.

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| For Petitioner | : Mr.R.J.Karthick |
| For R1 to R3 | : Mr.K.Balasubramani<br>Special Government Pleader |
| For R4 | : Mr.C.Karthick<br>M/s.Ajmal Associates |

**ORDER**

The petitioner is the wife of one Mariya Pakthan, who is a retired Craft Instructor from Subbiah Vidyalayam Middle School, Devarpuram Road, Tuticorin. He has retired from service on 01.07.2020. He was a member of the New Health Insurance Scheme 2018, for pensioners. On 08.01.2018 at 12.20 a.m, the petitioner's husband was suffering with severe abdominal pain. Therefore, the petitioner has taken him to the nearest hospital, namely, Sacred

Heart Hospital, Tuticorin, wherein, he was diagnosed with "Appendicular perforation with terminal ileal". In order to avoid further complications, he underwent appendicectomy surgery through Laparoscopy. While he was in IMCU, he died due to cardiac arrest on 25.01.2018. A sum of Rs.2,42,385/- has been incurred by the petitioner towards her husband's medical treatment. Therefore, the petitioner has submitted an application on 28.02.2018 to the third respondent along with the medical records, for reimbursement of the amount spent by her for her husband's medical treatment. The third respondent has rejected the claim of the petitioner that the treatment has been taken in a non-network hospital and therefore, she is not entitled for medical reimbursement under the New Health Insurance Scheme 2018, by his proceedings in Na.Ka.No.525/ 2017/ Ra3, dated 23.08.2018.

2.The learned counsel appearing for the petitioner submits that due to medical emergency, this petitioner has taken her husband to the nearby hospital and at that relevant point of time, she could not verify the list of hospitals, in which, treatment has to be taken for claiming medical expenses. Despite giving best treatment, her husband died on 25.01.2018. In order to safeguard her husband and to avoid further complications, she has admitted her husband in a nearby hospital. On the stand of the respondents that the petitioner's husband has been treated in a non network hospital, the learned counsel has relied on the order the learned counsel has relied on the order of this Court in ***N.Raja Vs.the Government of Tamil Nadu, rep by its Secretary, Adi Dravidar Welfare Department and two others***, reported in ***2016 (3) CTC 394*** and the order passed by the Honourable Supreme Court in ***Shiva Kant Jha Vs. Union of India,*** reported in ***(2018) 16 SCC 187*** and submits that the Honourrable Supreme Court has held that 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.

3.The learned Additional Government Pleader appearing for the respondents 1 to 3 submits that as per the terms and conditions of the contract alone, the medical expenses can be reimbursed. In this case, the petitioner has taken treatment for her husband in a non-network hospital and therefore, she is not eligible to maintain this writ petition.

4.The learned counsel appearing for the fourth respondent Insurance Company submits that they are bound by the contract. The Government has entered into a contract with United India Insurance Company and they can disburse the amount of medical claim only as per the terms of the contract. He further submits that this petitioner has taken treatment for her husband in a non-network hospital and that too for non-emergency case, when there is a specific condition that the medical expenses can be reimbursed only when treatment is taken in a network hospital. According to the learned counsel, there are more number of speciality hospitals, however, the petitioner has opted for Sacred Heart Hospital, Tuticorin. Therefore, according to the learned counsel, the petitioner is not entitled to maintain this writ petition.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.Admittedly, this petitioner's husband was a pensioner and also a member of the New Health Insurance Scheme 2018. He was paying premium under the Insurance Scheme. On 08.01.2018, on medical emergency, the petitioner has taken her husband to Sacred Heart Hospital, Tuticorin, wherein, he was diagnosed with "Appendicular perforation with terminal ileal" and in order to avoid further complications, he underwent appendicectomy surgery through Laparoscopy. After surgery, he was observed in IMCU, while so, he died due to cardiac arrest on 25.01.2018. The petitioner has submitted an application for reimbursement of Rs.2,42,385/- , which was incurred by her towards medical expenses of her husband. However, it was rejected on the ground that they have taken treatment in a non-network hospital.

7. This Court in a similar writ petition filed in W.P. No. 40892 of 2015, dated 11.01.2022, has taken a stand that the insurance Company cannot deny the claim merely the treatment was taken in a non-network hospital. This order has been passed by this Court, following the order of the Honourable Supreme Supreme Court in ***Shiva Kant Jha Vs. Union of India, 2018 (5) MLH 317*** and the relevant paragraph of the above order is extracted as under:

> *8. The Hon'ble Supreme Court of India in Shiva Kant Jha vs. Union of India [MANU/SC/0369/2018: 2018 (5) MLJ 317], dealing with unfair treatment meted out to Government servants for medical reimbursement under similar provisions of the Central Government Health Scheme, held in paragraphs 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 implanted 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. Considering the above cited judgment of this Court, following the order of the Honourable Supreme Court in ***Shiva Kant Jha Vs. Union of India,*** reported in ***(2018) 16 SCC 187,*** this writ petition is allowed and the impugned order is set aside. The first

respondent is directed to pay the eligible amount to the petitioner towards medical reimbursement, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

**09.01.2025**

NCC:Yes/No
Index:Yes
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To

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**B.PUGALENDHI, J.**

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(2/2)