

(2024) 12 KL CK 0114

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21799 Of 2024

Mrs. Suma Sunilkumar

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 19-12-2024

Acts Referred:

Citation : (2024) 12 KL CK 0114

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : K.S.Bharathan, Aadithyan S.Mannali, Aleena Sony, Vishal L., T.V.Ajayakumar, P.Jayabal Menon, Rimju P.H., Jothis Chacko, Rekha Agarwal, Deepa Narayanan

Final Decision : Allowed

Judgement

C.S.Dias, J

1. The petitioner is an insured employee. The petitioner had taken her husband to the ESI hospital for treatment of his liver disease. After undergoing treatment for a few days at the said Hospital, the patient was referred to the Medical College Hospital, Thrissur. By Ext.P2 slip, the Superintendent of the ESI Hospital advised the patient for liver transplantation and he was referred for approval to the Technical Committee of the 4th respondent hospital. By Ext.P4 certificate, the first respondent had informed the Superintendent of the ESI Hospital that the Technical Committee had approved and recommended the patient for liver transplantation. In the meantime, by Ext.P5 letter, the Authorisation Committee for Transplantation of Organs granted permission to the patient for transplantation as per the provisions of the Transplantation of Human Organs and Tissues Act. By this time, the patient's health deteriorated. He was shifted to the 4th respondent hospital. He was advised of an emergency liver transplantation. Consequently, the patient underwent the transplantation on 4.10.2023. The petitioner had paid the medical expenses for the transplantation. After the surgery, the petitioner submitted her claim for reimbursement to the third

respondent. Despite sending several representations to the respondents, including a lawyer notice claiming reimbursement, the respondents did not send any favourable reply. By Ext.P15 letter, the third respondent informed the petitioner that her claim could not be processed because she had not submitted the emergency certificate for undergoing the transplantation. Immediately, the petitioner submitted Ext.P18 emergency certificate. Even then, the respondents have not paid the reimbursement. The inaction of the respondents is arbitrary, illegal and unconscionable. Hence, the writ petition.

2. The respondents 1 to 3 have filed a counter affidavit. They have admitted that the petitioner is an insured employee. In response to Ext.P12 representation, the third respondent has sent Ext.P13 reply directing the petitioner to submit the medical reimbursement claim, cash-paid bills in original and additional documents in the dispensary. If it is not an elective procedure, an emergency certificate is required. The third respondent had also issued Ext.P15 reply to Ext.P14 lawyer notice stating that the petitioner had not submitted the emergency certificate and only sent a surgery certificate. The petitioner was also intimated to rectify the defects in the claim form, and was granted one year to submit the bills. The petitioner submitted the medical reimbursement claim form only on 27.12.2023. As per Ext.R1(a) letter, the expenditure incurred on private treatment from a non-ESIC or private hospitals could be reimbursed only after ascertaining the emergency and the entitlement as per the CGHS rates. The first respondent has returned the petitioner's claim due to the non-submission of the emergency certificate and the internal ethical committee report. Therefore, the writ petition may be dismissed.

3. When the writ petition came up for consideration on 11.11.2024, the Standing Counsel for respondents stated that there was no prescribed form for the emergency certificate, but it should be submitted on the letterhead of the hospital with all the essential details, including the signature of the Doctor and the seal of the institution.

4. Accordingly, this Court directed the 4th respondent hospital to produce the emergency certificate. Consequently, the petitioner has submitted Ext.P22 certificate issued by the 4th respondent certifying that the patient had undergone live donor liver transplantation since he was in stage C cirrhosis, which carries a one-year mortality of 50 % to 60%.

5. Heard: the learned counsel for the petitioner, the learned Standing Counsel appearing for the respondents 1 to 3 and the learned counsel for the 4th respondent hospital.

6. The petitioner is an insured employee. She and her family are covered by Ext.P1 e-Pehchan insurance card. By Exts.P2 and P3 letters, the Superintendent of the ESI Hospital had advised the patient for liver transplantation and the patient was referred to the Technical Committee of the 4th respondent hospital for undergoing liver transplantation. By Ext.P4 certificate, the first respondent

had informed the Superintendent of the ESI Hospital, after getting the approval of the second respondent, that the Technical Committee had approved and recommended the patient for liver transplantation. It is undisputed that the ESI hospital does not have the facility for liver transplantation. On medical advice from the 4th respondent, the patient underwent emergency liver transplantation at their hospital.

7. The respondents' principal objection for not processing the petitioner's claim is that she has not submitted the emergency certificate. On a reading of Ext.P4 certificate issued by the first respondent, it is evident that the Technical Committee of the first respondent had approved and recommended the patient's case for transplantation surgery. It was after receiving the approval, the 4th respondent conducted the surgery. Pursuant to the orders passed by this Court, the 4th respondent has submitted Ext.P22 certificate before this Court, which shows that the patient had undergone live donor liver transplantation since he was suffering from stage C cirrhosis, which carried mortality up to 50% to 60%. Therefore, there is no room for any doubt that the patient had to undergo emergency surgery for his survival.

8. The learned counsel appearing for respondents 1 to 3 had conceded that ESI hospital does not have the facility to conduct liver transplantation.

9. In Shiv Kant Jha Vs. Union of India [(2018) 16 SCC 187], the Honourable Supreme Court has observed as under:-

"17. 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".

10. It is well settled that medical reimbursement cannot be denied because the insured underwent treatment in a hospital not approved by the Insurer. In the instant case, the ESI hospitals do not have the facility for liver transplantation.

Based on the respondents' recommendation and concurrence, the patient was taken to the 4th respondent for treatment. Therefore, the respondents cannot turn around and say that they were ignorant of the patient's medical condition. The respondents' insistence on an emergency certificate to process the petitioner's claim is untenable and hyper-technical. Now, the said objection is also set to rest with the production of Ext.P22.

11. In the light of Ext.P22 certificate, the materials placed on record, the findings rendered above, and the law on the point, I am satisfied that respondents are to be directed to forthwith process the petitioner's claim and reimburse her the medical expenses for her husband's medical treatment.

Consequently, the writ petition is allowed. The respondents 1 to 3 are directed to process the petitioner's claim and reimburse the medical expenses for her husband's treatment in accordance with law and as expeditiously as possible, at any rate, within a period of 60 days from the date of receipt of a certified copy of this judgment, after affording the petitioner an opportunity of being heard, if felt necessary.