

(2017) 08 KL CK 0010
In the High Court Of Kerala
Case No : 5 of 2015

SECRETARY, STATE GOVERNMENT LABOUR DEPARTMENT

APPELLANT

Vs

S.GOPAKUMAR

RESPONDENT

Date of Decision : 10-08-2017

Acts Referred:

[Employees State Insurance Act, 1948](#), [Section 57](#), [Section 58](#), [Section 75](#), [Section 56](#) - Scale of medical benefit - Provision of medical treatment by 65[Stat

Citation : (2017) 08 KL CK 0010

Hon'ble Judges : K.Harilal, P.Somarajan

Bench : DIVISION BENCH

Advocate : P.SANKARANKUTTY NAIR, B.MOHANLAL, K.ANAND, LATHA KRISHNAN

Judgement

1. Aggrieved by the judgment dated 28.3.2014, of the Employee's Insurance Court, Kollam, in Insurance Case No.2 of 2011, the State of Kerala, the additional third Opposite Party, came up with this appeal. An application was submitted under Section 75 of the Employees' State Insurance Act, 1948 (for short "the Act") for getting reimbursement of the amount incurred on account of treatment of the wife of the applicant.

2. The specific case advanced by the applicant is that he is an insured person registered at ESI dispensary, Chathannur, Kollam under the Act and is working at Steel Industries Kerala Ltd., Kowdiar, Thiruvananthapuram. The applicant's wife sustained right hip joint problem out of a fall and she was initially taken to the ESI Hospital, Peroorkkada, from where she was referred to the Medical College Hospital, Thiruvananthapuram. Later, she was taken to Lakeshore Hospital, Kochi and had undergone treatment there and incurred an amount of Rs.3,19,324.69 by way of medical bills. A claim was lodged before the Insurance Corporation for getting reimbursement of the said amount. The Insurance Corporation allowed only an amount of Rupees one lakh alleging that the applicant is eligible only for reimbursement of medical expenses calculated as per Central Government Health

Scheme (for short "CGHS") and rejected the claim for the balance amount, which has necessitated the filing of the Insurance Case before the Employees' Insurance Court, Kollam.

3. The Employee's Insurance Court, Kollam, on consideration of the pleadings and evidence and after hearing both the parties, found that the applicant is entitled to the balance amount of Rs.2,19,324/-, after deducting the amount of Rupees one lakh already given under CGHS, by its judgment dated 28.3.2014, against which this appeal is preferred.

4. The first contention raised by the appellant/additional third opposite party is that, even by admitting the claim made by the applicant, an amount of Rs.90,000/- alone is entitled to by the applicant as it is the maximum amount that can be granted under CGHS, but an amount of Rupees one lakh was granted. The second contention raised is that the applicant's wife had undergone treatment in a hospital without having reference from the ESI Hospital or from the Medical College Hospital. But it was admitted that she was referred by the ESI Hospital, on an earlier occasion, to the Medical College Hospital, Thiruvananthapuram. It was also submitted that the Lakeshore Hospital, wherein she had undergone treatment, is not an empaneled hospital and there was no tie up with the said hospital either by the Corporation or by the State Government at that time.

5. On coming into the first contention, Section 57 of the Act is relevant, which is extracted below for reference: "57. Scale of medical benefit. -- (1) An insured person and (where such medical benefit is extended to his family) his family shall be entitled to receive medical benefit only of such kind and on such scale as may be provided by the State Government or by the Corporation, and an insured person or, such medical benefit is extended to his family, his family shall not have a right to claim any medical treatment except such as is provided by the dispensary, hospital, clinic or other institution to which he or his family is allotted, or as may be provided by the regulations. (2) Nothing in this Act shall entitle an insured person and (where such medical benefit is extended to his family) his family to claim re-imbursement from the Corporation of any expenses incurred in respect of any medical treatment, except as may be provided by the regulations."

6. A mere reading of Section 57 would show that it is to the State Government or the Corporation to fix a scale for reimbursement of any medical benefit that can be extended to a person insured or his family members in connection with any medical treatment undergone. It is fairly admitted by the learned counsel for the appellant that neither the State Government nor the Corporation had fixed any scale for reimbursement of medical treatment expenditure on any head and nothing was brought to our notice by the learned counsel in that behalf. Needless to say that there is no provision anywhere in the Act or under Section 57 to adopt the amount fixed under CGHS or to bring the same within the purview of Section 57 of the Act. The mandate under Section 57 is really lies on the State

Government or the Corporation, as the case may be. Of course, it may be permissible, either for the State Government or for the Corporation, to adopt any formula or Scheme of the Central Government as basis for Section 57 of the Act. But unfortunately, no such decision taken by the State Government or the Corporation, either adopting CGHS or any other Scheme for the purpose of Section 57, was brought to our notice. An attempt was also made by the learned counsel for the appellant, based on Ext.A2, that the Corporation had adopted CGHS for the purpose of fixation/computation of the scale for reimbursement of medical treatment expenditure. Going by Ext.A2, we cannot agree with the submission made by the learned counsel as it is only a letter issued circulating the content among the officers of the Insurance Corporation and does not satisfy the requirement either under Section 96 or Section 97 of the Act, which mandate previous publication. Admittedly, no such previous publication was either made by the State Government or by the Corporation. So, we could not find any merit in the first contention that their liability is limited to an amount of Rs.90,000/-.

7. On coming into the second contention, Sections 56 and 58 of the Act are relevant, which are extracted below for reference: "56. Medical benefit.-- (1) An insured person or (where such medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit.

(2) Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.

(3) A person shall be entitled to medical benefit during any period for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations; Provided that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations:

Provided further that an insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement:

Provided also that an insured person who has attained the age of superannuation, a person who retires under a Voluntary Retirement Scheme or takes premature retirement, and his spouse shall be eligible to receive medical benefits subject to payment of contribution and such other conditions as may be prescribed by the Central Government. Explanation.-- In this section,

"superannuation", in relation to an insured person, means the attainment by that person of such age as is fixed in the contract or conditions of service as the age on the attainment of which he shall vacate the insurable employment or the age of sixty years where no such age is fixed and the person is no more in the insurable employment."

"58. Provision of medical treatment by State Government.-- (1) The State Government shall provide for insured persons and (where such benefit is extended to their families) their families in the State, reasonable medical, surgical and obstetric treatment: Provided that the State Government may, with the approval of the Corporation, arrange for medical treatment at clinics of medical practitioners on such scale and subject to such terms and conditions as may be agreed upon.

(2) Where the incidence of sickness benefit payment to insured persons in any State is found to exceed the all-India average, the amount of such excess shall be shared between the Corporation and the State Government in such proportion as may be fixed by agreement between them: Provided that the Corporation may in any case waive the recovery of the whole or any part of the share which is to be borne by the State Government.

(3) The Corporation may enter into an agreement with a State Government in regard to the nature and scale of the medical treatment that should be provided to insured persons and (where such medical benefit is extended to the families) their families (including provision of buildings, equipment, medicines and staff) and for the sharing of the cost thereof and of any excess in the incidence of sickness benefit to insured persons between the Corporation and the State Government.

(4) In default of agreement between the Corporation and any State Government as aforesaid the nature and extent of the medical treatment to be provided by the State Government and the proportion in which the cost thereof and of the excess in the incidence of sickness benefit shall be shared between the Corporation and that Government, shall be determined by an arbitrator who shall be or shall have been a Judge of the High Court of a State appointed by the Chief Justice of India and the award of the arbitrator shall be binding on the Corporation and the State Government.

(5) The State Government may, in addition to the Corporation under this Act, with the previous approval of the Central Government, establish such organisation (by whatever name called) to provide for certain benefits to employees in case of sickness, maternity and employment injury: Provided that any reference to the State Government in the Act shall also include reference to the organisation as and when such organisation is established by the State Government.

(6) The organisation referred to in subsection (5) shall have such structure and discharge functions, exercise powers and undertake such activities as may be

prescribed."

8. On a mere reading of the abovesaid Sections, it is well clear that there is a liability cast on the Corporation as well as the State Government for meeting the expenditure in connection with the medical treatment. Section 56 deals with the liability of the Corporation and Section 58 deals with the liability of the State Government. Going by Sections 56 and 58, it is clear that no such requirement is seen incorporated anywhere in the said Sections mandating that the treatment should be taken by the party concerned from a hospital empaneled by either the Corporation or the State Government. But the language employed in Sections 56 and 58 would show that it is their liability to provide medical facility to the insured and his/her family members. When there is a tie up with some other hospitals, either by the State Government or by the Corporation, it really amounts to extending the medical facility by the Corporation or the State Government, as the case may be, to the party concerned, the insured or the family members of the insured. It is also fairly submitted that the party need not pay any amount to the tie up hospital, either by way of medical bill or otherwise, in connection with the treatment undergone. It is equally good as providing medical treatment by hospitals run by the ESI Corporation or the State Government, as the case may be. What has to be noted is the extension of medical facility to the injured or the ailing person, as the case may be, through a tie up by the Government or the Corporation with other hospitals. In that case, it would definitely come either under Section 56 or under Section 58 of the Act as the State Government/Corporation has extended the facility to the required person.

9. Ext.A2 is the discharge certificate issued by the Medical College Hospital, wherein it is stated that the patient needs Revision Arthritis and there is no such facility available in the Medical College Hospital, Thiruvananthapuram, wherein she was referred by the ESI Hospital, Peroorkkada. It is true that there is no further reference of the applicant's wife either from the ESI Hospital, Peroorkkada or from the Medical College Hospital, Thiruvananthapuram to any particular hospital empaneled or tied up with the Government or the ESI Corporation. But, Ext.A2 certificate itself would show that the first referred hospital did not have such facility to meet the medical requirement of the applicant's wife. When there is no medical facility required by the patient in an empaneled hospital or in any hospital run by the Corporation or the Government, as the case may be, the treatment taken by the patient from a hospital having such facility cannot be rejected. Only when there is evidence to show that the required medical facility was available either in the hospital run by the Corporation or the Government or in the empaneled hospital and non-user of the said facility by the insured or his/her family members, they are not entitled to claim reimbursement of the medical treatment expenditure. Certainly, the burden lies on the Corporation/Government to show and prove that the required medical facility was available either in the hospital run by the Corporation/Government or in the empaneled hospital. No materials were placed before us to discharge the

said burden either by the Corporation or by the Government. Needless to say that if there is no such facility available in any of the tied up hospitals or ESI Hospitals/Government Hospitals, it cannot be said that they have extended the medical facility to the wife of the applicant in consonance with Sections 56 and 58 of the Act. In fact, there is no extension of such medical facility to the applicant's wife. If that be so, they are liable to reimburse the entire medical expenses. Hence, we could not find any reason for interference with the impugned judgment rendered by the Employee's Insurance Court. The appeal lacks in merits, deserves only a dismissal and we do so, but without costs.