

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

THURSDAY, THE 22<sup>ND</sup> DAY OF JUNE 2023 / 1ST ASHADHA, 1945

INS.APP NO.60 OF 2014

AGAINST THE JUDGMENT DATED 12.06.2014 IN IC 137/2012 OF  
EMPLOYEES INSURANCE COURT, ALAPPUZHA (INDUSTRIAL TRIBUNAL,  
ALAPPUZHA)

APPELLANT/1ST OPPOSITE PARTY IN THE INSU. CASE:

THE DIRECTOR OF MEDICAL INSURANCE SERVICES  
DIRECTORATE OF INSURANCE MEDICAL SERVICES,  
THIRUVANANTHAPURAM.

BY ADV SRI. K.M FAISAL - GP

RESPONDENTS/APPLICANT & 2ND OPPOSITE PARTY IN THE INSU.CASE:

- 1 MANI NAIR  
S/O. RAMAN NAIR, KIZHAKKEKALAM,  
KASTHURBA NAGER, KOCHU KADAVANTHRA,  
COCHIN - 682 020.
- 2 THE DEPUTY DIRECTOR (BENEFITS)  
ESI CORPORATION, SUB-REGIONAL OFFICE,  
ERNAKULAM, KALOOR,  
COCHIN - 682 017.

BY ADVS.  
SRI. A.V.XAVIER  
SRI. T.V.AJAYAKUMAR

THIS INSURANCE APPEAL HAVING COME UP FOR ADMISSION ON  
22.06.2023, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

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**JUDGMENT**

This Insurance Appeal is filed under Section 82(2) of the Employees State Insurance Act, 1948 (for short, 'the Act') by the Director of Medical Insurance Services, challenging the judgment dated 12.06.2014 in Insurance Case No.137 of 2012 of the Employees Insurance Court, Alappuzha ('EI Court' for short) allowing the application under Section 75 of the Act filed by 1<sup>st</sup> respondent employee for full reimbursement of the medical bills for the treatment of his employment injury. The parties are referred to as per their status in the Insurance Case.

2. The applicant was a general worker in Cochin Shipyard. He was insured under the provisions of the Act and the Scheme framed thereunder. On 24.06.2007, at about 1.30 p.m, while the applicant was

removing waste from the working skid of the work place, he slipped and hit his chest on the working skid and fell unconscious. As the injury sustained was very serious, he was immediately rushed to the nearest private hospital viz., Medical Trust Hospital, Ernakulam, in the employer's vehicle. The accident happened on Sunday afternoon. The applicant was treated in ICU for seven days. After discharge from the hospital, the applicant claimed an amount of Rs.48,227.35/- towards reimbursement of medical bill with essentiality certificate before the 1<sup>st</sup> opposite party, the Director of Medical Insurance Services. However, the 1<sup>st</sup> opposite party allowed only Rs.6,079/-. Though the applicant submitted repeated representations, the balance amount claimed by him was not reimbursed. Accordingly, he filed I.C No.13 of 2011 before the EI Court to reimburse the balance amount with interest. The applicant was relegated to the 1<sup>st</sup> opposite party,

the Director of Medical Insurance Services to consider his claim for reimbursement of the entire amount. The 1<sup>st</sup> opposite party rejected the claim of the applicant stating that he is not entitled to get any further amount other than Rs.6,079/-. Accordingly, the applicant preferred I.C. No.137/2012 under Section 75 of the Act to realise the amount of Rs.42,148.35/- with 12% interest per annum from July, 2007 till realisation.

3. Before the EI Court, the opposite parties contended that, as per Section 57 of the Act, the applicant is entitled to receive medical benefit only of such kind and on such scale as may be provided by the State Government or by the Employees State Insurance Corporation (for short, 'the ESI Corporation'). It was further contended that, since the applicant approached the private hospital on his own will and satisfaction without any prior reference or sanction during the treatment period, he can be

granted only the benefits as per the rates fixed in Ext. D1 G.O (MS) No.92/95 LBR dated 21.09.1995. The 2<sup>nd</sup> opposite party, the ESI Corporation filed written statement contending that the expenses incurred for treatment at private hospitals are on higher side and medical expenses are restricted at government rates. It was further contended that their role is limited to reimburse the medical expenses passed by the 1<sup>st</sup> opposite party.

4. The EI Court noted that the accident happened on a Sunday afternoon and applicant became unconscious after the accident and since injuries were serious, to save his life, he was rushed to the nearest private hospital, without reference from the concerned ESI dispensary. The EI Court observed that the law does not require that prior sanction or reference letter has to be taken where the survival of the person is the prime consideration. Since

immediate medical attention was required to save his life, he was rushed to nearest private hospital and it is not fair and proper to cut short the medical bills for reimbursement on flimsy and technical ground of prior sanction and reference letter. The EI Court also observed that in like situation, it was the duty of the Government to grant *ex-post facto* sanction to the claim of the applicant and not to deny the claim on technical grounds. The EI Court referred to the ESI Medical Manual, published by the ESI Corporation, wherein it is provided that reimbursement is permitted if the treatment required is of emergent and complicated nature and not available in government hospitals and for treatment during off hours of ESI dispensary/emergency center due to unavoidable circumstances. Meeting the contentions of the 1<sup>st</sup> opposite party relying on Ext. D1 G.O dated 21.09.1995, the EI Court, after referring to Sections

38, 39, 57 and 58 of the Act and Regulation 96 A of the Employees State Insurance (General) Regulations 1950, observed that the charges fixed as per the Government Order applicable to government employees as *ex-gratia* benefits cannot be made applicable to persons insured under Section 38 and who had paid contribution to the ESI Corporation under Section 39, of the Act. Accordingly, the EI Court found that the applicant is entitled to get the reimbursement of medical bills in respect of the treatment for employment injury sustained by him and allowed the applicant to realise the balance amount of Rs.42,148.35/- with 12% interest per annum from July, 2007 till realisation. The EI Court relied on Section 39(5) (a) of the Act for the purpose of levy of interest on the amount claimed by the applicant on the reasoning that the same is the rate of interest mulcted on the employer for non payment of contribution. The

EI Court also awarded an amount of Rs.10,000/- towards cost of the legal proceedings to the applicant. Hence this appeal by the 1<sup>st</sup> opposite party.

5. The following are the questions of law formulated in the memorandum of appeal:-

"1. Whether an employee under the ESI Act 1968 is entitled to claim the amount incurred for treatment in a private Hospital of his own choice for the injury sustained in the course of employment without the incident being reported to the ESI Hospital nearby and without his being referred to the Private hospital from the ESI Hospital.

2. Whether an employee under ESI Act is justifiable in getting treatment in Private Hospital when the same facility is available in the ESI Hospital free of cost.

3. Whether an employee under ESI Act is entitled to be reimbursement for the treatment in the Private Hospital of his own choice without availing the same facility in the ESI Hospital free of cost and also without the incident being reported to the ESI Hospital and without his being referred to the Private Hospital."

6. Heard Sri.K.M Faisal, the learned Government Pleader on behalf of the appellant, Sri.A.V Xavier, the



learned counsel for the 1<sup>st</sup> respondent and Sri.T.V. Ajaykumar, the learned Standing Counsel for the 2<sup>nd</sup> respondent Corporation.

7. Sri. Faisal, the learned Government Pleader submits that the judgment of the EI Court is erroneous and contrary to the provisions of the Act and Rules. It is contended that since the applicant has no case that he has been referred to private hospital for better treatment from an ESI hospital, he is not entitled for reimbursement of the entire claim amount. Referring to Section 57 of the Act, it is contended that the applicant can claim the reimbursement only as per existing government rates. It is also contended that the rate of interest awarded is excessive and the award of cost is improper.

8. The applicant sustained serious injuries while on duty. He fell unconscious and was taken to the nearest hospital in the employer's vehicle. In life-

threatening emergencies, the highest priority before the co-workers closest to the scene of the accident will be to take the victim to the nearest hospital, whether private or in Government sector and to save the life. He was in the Intensive Care unit for 7 days. The accident happened on a Sunday afternoon and, reporting to and reference from ESI dispensary after a longer journey would not be possible and feasible. The admission to the nearest private hospital was not the choice of the applicant who was unconscious and fighting for life. The life of a person is more important than legal formalities. The refusal to reimburse the full medical bill on the ground that the applicant took treatment in a private hospital of his own choice without the incident being reported to the ESI Hospital is illegal and arbitrary. Employees State Insurance Act, 1948 is a social security legislation that provides for certain benefits including medical benefits to

employees. The object of the Act cannot be defeated by citing technicalities. The expenses incurred at the private hospital are for the treatment of the applicant to bring him back to life. There is enough justification in the applicant taking treatment in private hospital even if the same facility was available in the ESI Hospital free of cost.

9. Section 57 of the Act deals with scale of medical benefits and reads as follows.

“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, where 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 reimbursement from the Corporation of any expenses incurred in respect of any medical treatment, except as may be provided by the regulations.

As per Section 57 of the Act, an insured person 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 ESI Corporation. It further provides that the insured person 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 is allotted, or as may be provided by the regulations. Nothing has been placed on record to show that the emergency medical treatment provided to the applicant at the private hospital was available at the dispensary, hospital and clinic established and maintained by the ESI Corporation to which the applicant is allotted to. Further, there is nothing on record to show that the

State Government or the ESI Corporation had fixed any scale for reimbursement of expenses incurred in respect of any medical treatment. The only document that has been relied upon by the learned Government Pleader is Ext. D1 Government Order which relates to rates of hospital charges as applicable to government employees. The said rates have been made applicable to the employees insured under the Act by the Government on the request of the Director of Medical Insurance Services. That does not amount to fixing of any scale for reimbursement of expenses to insured under the Act as contemplated in Section 57. There is no provision under the Act by which the reimbursement of medical benefits can be limited to rates of hospital charges as applicable to government employees. Section 2 (14) of the Act defines 'insured person' to mean a person who is or was an employee in respect of whom contributions are or were payable under the Act

and who is, by reason thereof, entitled to any of the benefits provided by the Act. The applicant is an insured person in respect of whom contributions were paid under the Act and who by reason thereof is entitled to the medical benefits provided by the Act. The State Government, under Section 96 (e) of the Act, have powers to make Rules regarding scale of medical benefit which shall be provided at any hospital, clinic, dispensary or institution after consultation with the Corporation and subject to the condition of previous publication. No such Rules as regards scale of medical benefit have been placed on record. A Division Bench of this Court in **Secretary, State Government Labour Department v. S.Gopakumar and others [2017(4) KHC 556]** has taken the view that there is no provision anywhere in the Act or under Section 57 to adopt the amount fixed under the Central Government Health Scheme to limit the amount of

reimbursement of medical bills to insured employees. Subsequent thereto, Regulation 96-B has been inserted to Employees State Insurance (General) Regulations 1950 w.e.f 30.10.2018 which provides that an Insured Person and his family (where such medial benefit is extended to his family) shall be entitled to receive reimbursement of medical treatment in emergent condition to the extent rates prescribed and published by State Government or the Corporation or for the Central Government Health (CGHS). Such scale of medical benefit for reimbursement can have operation only w.e.f 30.10.2018 and I am not expected to go into the legality of the said regulation in this appeal. The applicant is an insured person in respect of whom contributions were paid under the Act and who by reason thereof is entitled to the benefits provided by the Act. The same cannot be curtailed by any scale of reimbursement not contemplated under the Act and

any scale not in vogue at the time of the claim. Accordingly, limiting the reimbursement of medical bills to Rs.6,079/- as against the full bill of Rs.48,227.35/ cannot be justified.

10. I do not find any reason to interfere with the findings of the EI Court which is well supported by reasons. The questions of law formulated in the memorandum of appeal are merely questions of facts which have been rightly adjudicated by the EI Court. Absolutely no question of law, much less any substantial question of law, has been raised by the appellant to sustain an appeal under Section 82 of the Act. While I sustain the judgment of the EI Court, I find that the interest awarded on the balance bill amount of Rs.42,148.35/- placing reliance on Section 39(5) (a) of the Act is excessive. Since the balance bill amount is due to the applicant from July, 2007, he is necessarily entitled for interest for the belated payment of the said



amount, for which an interest at 6% can be levied. It is ordered so. I also find that the imposition of cost of Rs.10,000/- is justified since the petitioner was unnecessarily drawn to legal proceedings twice. Though this appeal also deserves to be dismissed with costs, I refrain from imposing costs.

With the above modification to the rate of interest, the judgment of the Insurance Court is sustained and the appeal is dismissed. The amount shall be paid to the applicant within a period of two months from the date of receipt of the copy of the judgment.

sd/-

**MURALI PURUSHOTHAMAN  
JUDGE**

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