

*C.R.P.(MD)No.974 of 2017*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 11.07.2023

Delivered on : 11.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.974 of 2017

and

C.M.P.(MD)No.4302 of 2017

National Insurance Company Limited,

Rep. by its Divisional Manager,

V.Ganesan

... Revision Petitioner/ Petitioner/

second respondent

Vs.

1.A.Savariammal

2.Minor John Britto

3.Minor Jansimary

(Minor 2&3 respondents are represented

by their mother and guardian A.Savariammal,

the first respondent herein)

4.Sermani

5.Visuvasam

... Respondents / Respondents 1 to 5/

Petitioners

6.M.Chokkalingam

... 6<sup>th</sup> Respondents / 6<sup>th</sup> Respondent/

2<sup>nd</sup> Respondent



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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order in I.A.No.210 of 2010, in M.C.O.P.No.79 of 2005, dated 21.09.2016, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Devakottai.

For Petitioner : Mr.J.S.Murali

For Respondents : Mr.T.Selvakumaran for R1 to R3

: No appearance for R4 & R6

: R5 died

### **ORDER**

The revision petitioner herein is the petitioner before the Court below. The instant revision petition has been filed against the fair and decretal order in I.A.No.210 of 2010, in M.C.O.P.No.79 of 2005, dated 21.09.2016, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Devakottai.

2. The revision petitioner is the second respondent before the trial Court, and the respondents 1 to 5 herein are the petitioners, and the sixth respondent herein is the first respondent before the trial Court.



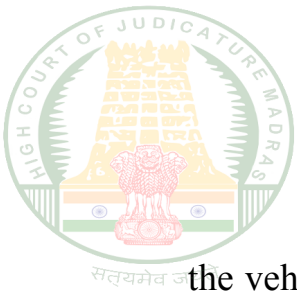
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3. For the sake of convenience, the parties are referred to according to their litigative status before the trial Court.

4. Short facts which give rise to the instant Revision Petition, are as under:

The claimants / petitioners have filed M.C.O.P in respect of death of one Mr.Aurlanandhu. The petitioners are the wife, children and mother of the said Aurlanandhu. The vehicle involved in the accident is Mahindra Van, bearing Registration No.TN-45-C-4500. The second respondent / insurance company has filed a counter statement put the petitioners to prove the nature of accident and coverage.

5. Based upon the evidence on either side, the Motor Accident Claims Tribunal passed an award directing the second respondent / insurance company to pay a sum of Rs.3,17,0000/- with interest. It is pertinent to mention here that while awarding the said amount, the Tribunal has categorically found that the second respondent / insurance company has admitted the ownership of the first respondent, in respect of



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the vehicle bearing Registration No.TN-45-C-4500, and also the insurance coverage to the said vehicle, for the relevant period. It appears that the award was passed on 24.04.2006.

6. After the lapse of almost four years, the second respondent / Insurance Company has filed an application to recall the award on the ground of alleged fraud committed by the claimants in respect of insurance policy No.34767 of the vehicle bearing Registration No.TN-45-C-4500. It is their submission that, the policy number 34747 belong to two wheeler bearing Registration No.TN-72-E-4996, and that they could not fix such a fraud at the first instance, due to the software problem and that when they came to know about the fraud, they have filed a petition, for seeking prayer to recall the award passed by the Tribunal under Section 151 C.P.C.

7. The learned counsel for the second respondent / Insurance Company / revision petitioner would submit that since the petitioners / claimants / respondents 1 to 5 obtained award by playing fraud, the same is liable to be recalled. He would further contend that the Claims Tribunal are empower to recall the award, if the same was obtained by playing fraud.

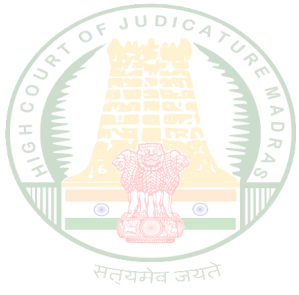


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8. Per contra, the learned counsel for the petitioners / claimants / respondents 1 to 5 would submit that in the instant case, there was no fraud at all, and that the second respondent / Insurance Company / revision petitioner has admitted the insurance coverage of the vehicle and also admitted the ownership of the insured vehicle. Therefore, the very contention that the award was obtained by playing fraud is baseless and after thought, which is liable to be rejected.

9. I have given my anxious consideration to the either side submissions.

10. From the perusal of the records, it is apparent that the claimants have not committed any fraud. Let us consider the reason for the above view. On perusal of the award, the claimants have marked 10 documents and examined 3 witnesses. It is also pertinent to mention here that, on behalf of the respondents, no witness was examined and no document was marked.



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11. Here, the reason assigned by the second respondent / insurance company / revision petitioner is that there were some reference in the M.V.I. report in respect of the policy number, which was initially believed by the petitioner herein on the *bonafide* reasons. However, they came to know about the so-called fraud subsequent to the passing of the award. It is pertinent to mention here that even according to the affidavit of the petitioner they were not sure that the vehicle involved in the accident did not have policy at the relevant point of time. As a result of which they requested the petitioner, to produce the insurance certificate, if the policy was subsisting at that relevant point of time.

12. More curiously, the second respondent / insurance company/ revision petitioner did not take any steps to get the copy of policy from the owner of the vehicle. In paragraph No.6 of their affidavit that they have pleaded as follows:-

“6. இன்கூரன்ஸ் பாலிசிகளை ஜெனரேட் செய்யக்கூடிய 2003-2004 ஆம் ஆண்டில் பயன்பாட்டில் இருந்த கம்ப்யூட்டர் சாப்ட்வேர் (GENISYS) ஜெனசிஸ்யை இத்துடன் சமர்ப்பித்துள்ளேன். அதற்கு முன்பு NIOS (நியோஸ்) என்ற கம்ப்யூட்டர் சாப்ட்வேர் பயன்பாட்டால் இன்கூரன்ஸ் பாலிசி ஆவணத்தை ஒரே ஒரு பக்கத்தில்



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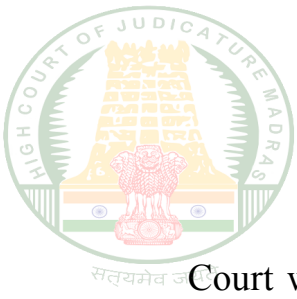


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அடங்கிய முழு நீளத்தாளில் வலதுபக்கத்தில் இன்சூர் செய்யப்பட்ட சாடிபிகேட்டும் அதன் இடது பக்கத்தில் இன்சூர் செய்யப்பட்டதற்கான தொகையும் அடுத்து அடுத்து கட்டவேண்டிய தொகையினை பற்றி விபரமும் அடங்கியிருக்கும் (GENISYS) ஜெனசிஸ் கம்ப்யூட்டர் சாப்ட்வேர் உதவியுடன் வழங்கும் இன்சூர் பாலிசி ஆவணங்கள் பொதுவாக 3 பக்கங்கள் கொண்டதாக இருக்கும். அதில் ஒரு பக்கத்தில் இன்சூர் செய்யப்பட்ட சாடிபிகேட்டும் மற்ற இரண்டு பக்கங்களில் பாலிசி செலுத்த வேண்டிய விவரங்களும், இன்சூர் செய்யப்பட்ட வண்டியின் விவரங்களும் அடுத்தடுத்து எவ்வளவு தொகை கட்டப்பட்டிருக்கிறது என்ற விவரங்களும் அச்சிடப்பட்டிருக்கும்

13. From the harmonious reading of the above affidavit it would only probablise that they came to the conclusion of fraud, based upon an assumption, and that they themselves were not very much sure that there was no policy to the vehicle at all at that relevant point of time.

14. As per the Insurance Act, 1938, under Section 64 VB, unless the premium is received no coverage would exist. Therefore, there exist robust system to find out the correctness of the policy. Therefore, the contention of the insurance company about the fraud has no basis and rest in obscurity. For which they blame their software. At this juncture, this



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Court would like to mention here that, the concept of insurance coverage exist for long time even before the advent of computer. And there exist well defined procedure to verifying the coverage of a vehicle. Therefore, their elusive defence of fraud would in no way helpful to any one, except to cause despair and consternation to the claimants.

15. This Court would like to rely upon the judgment of the **High Court of Delhi at New Delhi reported in 2010-ACJ-2540 (Oriental Insurance Co. Ltd V. Satpal)**. The relevant portion of the judgment is as follows-

*“ The claimants are not litigants by choice, but are constrained to approach the Tribunal, because of death of the bread-winner or injury to self, and because the owner and Insurer of the vehicle involved, fail to pay the compensation. The Insurer should bear in mind that the claimants are also handicapped in obtaining particulars of the Insurance Policy held by owner or Driving Licence held by the driver of the vehicle, and they solely depend upon the Police for these particulars. The Insurer should, therefore, verify whether there was any Insurance Policy or not, whether the insured was covered by Insurance Policy in regard to the claim or not, and whether the*





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*driver had a licence or not before filing its statement of objections and narrow down the area of controversy. If the Insurers were to file 'play it safe' written statements, without verifying these aspects and mechanically denying all petition averments, the trial gets delayed and the claimants are put to misery and unjustly kept away from the direly needed compensation. **It is time that Insurers get rid of 'deny everything and await the award syndrome' and become responsible and responsive opponents in motor accident claims.** “*

(Emphasis supplied by this Court)

16. Another judgment of this Court reported in **2009-2-TNMAC-458 (Oriental Insurance Company Ltd. V. Poongavanam)**, is also worth referring, the relevant portion of the judgment is as follows-

*“in absence of specific denial, same would constitute deemed admission on the part of Insurer ”*

Based upon the above two judgments, and having considered the filing of the counter statement in the main M.C.O.P. after through investigation by a private investigator, the Court below disbelieved the case of fraud projected by the petitioner.



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17. At this juncture, the learned counsel for the insurance company relied upon the judgment of this Court reported in **2000-ACJ-247 (Oriental Insurance Co. Ltd. V. R.Mani)**. The relevant portion of the judgment is as follows-

*“5. The second contention that there is no jurisdiction to reopen the case also cannot stand in view of the decision reported in **Indian Bank v. Satyam Fibres (India) Pvt. Ltd. A.I.R 1996 S.C. 2592**. In that case, their Lordships held that fraud invalidates every act of the court and if any order is obtained on the basis of fraud, it is the duty on the part of the tribunal to have the same set aside. Their Lordships also said that every court/tribunal has got inherent jurisdiction to set aside orders obtained on fraud. In page 2597 in paragraphs 20 to 23, their Lordships held thus:*

*20. . . .This plea could not have been legally ignored by the Commission which needs to be reminded that the Authorities, be they Constitutional, Statutory or Administrative, (and particularly those who have to decide a Us) possess the power to recall their judgments or orders if they are obtained by fraud as Fraud and Justice never dwell together (Fraus et jus nanquam cohabitant). **It has been repeatedly said that fraud and***



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*deceit defend of excuse no man (Fraus et dolus nemini patrocinari debent).*

21. *In Smith v. East Elloe Rural District Council, 1956 A.C. 736, the House of Lords held that the effect of fraud would normally be to vitiate any act or order. In another case, Lazarus Estate Ltd. v. Beasley (1956)1 Q.B. 702 at 712, Denning, L.J. Said:*

***No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.***

22. *The judiciary in India also possesses inherent power, specially under Section 151, C.P.C. to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent power are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the construction of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court's business.*

23. *Since fraud affects the solemnity,*



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*regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. **Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order.** (See: *Benoy Krishna Mukherjee v. Mohanlal Goenka* A.I.R 1950 Cal. 287; *Gajanand Sha v. Dayanand Thakur* A.I.R. 1943 Pat. 127; *Krishna Kumar v. Jawand Singh* A.I.R 1947 Nagpur 236; *Devendranath Sarkar v. Ram Rachpal Singh*, I.L.R. (1926)1 Lucknow 341 : A.I.R. 1926 Oudh 315; *Saiyed Muhammed Raza v. Ram Saroop*, I.L.R. (1929)4 Lucknow 562 : A.I.R. 1929 Oudh 385 (F.B.); *Bankey Behari Lai v. Abdul Rahman*, I.L.R. (1932) 7 Lucknow 350: AIR. 1932 Oudh 63; *Lekshmi Amma Chacki Amma v. Mammen Mammen*, 1955 K.L.T. 459. The court has also the inherent power to set aside a sale brought about by fraud practised upon the court (*Ishwar Mahton v. Sitaram Kumar* A.I.R. 1954 Pat. 450 or to set aside the order recording compromise obtained by fraud; (*Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh* ; *Smt. Tara Bai v. V.S. Krishnaswamy Rao* A.I.R. 1985 Karn. 270.”*

(Emphasis supplied by this Court)



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18. Another judgment of the Hon'ble Supreme Court reported in **2000-ACJ-1032 (United India Insurance Co. Ltd., V. Rajendra Singh)**, has also been relied by the insurance company. The relevant portion of the judgment is as follows-

*“12. In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jaggnath (dead) by Lrs. & ors. {1994 (1) SCC 1} the two Judges Bench of this Court held:*

*Fraud avoids all judicial acts, ecclesiastical or temporal- observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree- by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.*

*13. In Indian Bank Vs. Satyam fibres (India) Pvt. Ltd. {1996 (5) SCC 550} another two Judges bench, after making reference to a number of earlier decisions rendered by different High Courts in India, stated the legal position thus:*

*Since fraud affects the solemnity, regularity and*



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*orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.*

14. *It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the **fraud allegedly played by the claimants**. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.*

15. *Therefore, we have no doubt that **the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was***



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*wangled through fraud or misrepresentation of such a*

*dimension as would affect the very basis of the claim.*

((Emphasis supplied by this Court))

19. According to the facts of the ***Oriental Insurance Co. Ltd.***, (cited supra), it was the petitioner/claimant who produced an insurance policy which later on came to knowledge that such policy is a bogus one. Only in such background, the Court invoked the jurisdiction under Section 151 C.P.C and recalled the award. In the case of ***United India Insurance Co. Ltd.*** (cited supra), the facts referred there was, when they came to know about the revelation of new fact about the conduct of the party, through the registration of the F.I.R, the Hon'ble Supreme Court ordered for the recall of the award. However, this Court has no quarrel with the settled legal position of the above judgments. But, the facts of the above referred case is altogether different from the instant case. Here, even according to the insurance company's averments, they probablised the fraud, based upon the alleged insurance policy number which said is to have been referred in the M.V.I. report. But, they came up with the theory of fraud, after the period



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of 4 years. As a matter of fact, there is no nexus between the claimants and for reference of policy number in M.V.I. report. Furthermore, as rightly observed by the learned trial Judge, when the petitioner themselves have filed a counter statement after investigating the accident, and confirmed the existence of policy, withdrawing such stand subsequently will not augur well to the insurance company except to put the claimants in trepediation.

20. Thus, this Court is of the view that the petitioner herein instead of safeguarding the voice of voiceless, and instead of helping the helpless claimants, has put them under great torment and quandary. Their conduct would only remain the saying of every finishing line is the starting line. By the conduct of the insurance company, the claimants were compelled to wait almost for more than 17 years to get the fruits of the award.

21. Therefore, this Court is of the indubitable opinion that the Court below has given justifiable reasons and there is no ground for this Court to interfere in the well considered order. Hence, the instant Civil Revision Petition is **dismissed**. The petitioner is directed to deposit the





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entire award amount with in a period of four weeks from the date of receipt of copy of this order, if not deposited sofar. On such deposit being made, the respondents 1 to 5 / claimants are permitted to withdraw their share amount at once on filing proper petition as apporioned by the Tribunal.

There is no order as to costs.

NCC : Yes/No  
Index : Yes/No  
Ls

**11.08.2023**

To

1.The Principal District Judge,  
Tiruchirapalli.

2.The Section Officer,  
VR Section, Madurai Bench of Madras High Court,  
Madurai.



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**C.KUMARAPPAN.,J.**

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Pre-delivery Order made in  
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