

**National Insurance Company Ltd.**  
v.  
**Maya Devi & Ors.**

(Civil Appeal No(s). 15016-15017 of 2024)

02 September 2024

**[Sudhanshu Dhulia and Ahsanuddin Amanullah,\* JJ.]**

**Issue for Consideration**

Whether the insured vehicle was involved in the accident; whether the insurance policy granted by the insurance company covers the incident; whether the insurance policy was fraudulently obtained.

**Headnotes<sup>†</sup>**

**Accident resulting in the death of R1 and R2 – Insured Vehicle involved in the accident – Witnesses’ accounts confirmed involvement – Confirmed by Final Report under S. 173, CrPC – Insurance Company could not disprove:**

**Held:** Per the MACT award, various witnesses had stated that it was the vehicle described in the complaint that was involved in the accident – Final Report under Section 173 of CrPC also stated that the vehicle, as claimed by the complainants, was the one involved in the accident – The onus was on the Insurance Company to get the same disproved by either calling the Investigating Officer as a witness or by any other means, such as appropriate line of cross-examination, etc. to establish a factual position to the contrary – Admittedly, this was not done. [Paras 7, 8, 9]

**Liability of the Insurance Company – Insurance certificate/ policy – Incident occurred on 11.04.2017 at 14:15 hrs – Insurance obtained at 15:54 hrs on 11.04.2017 – Coverage begins from the day of receipt of the Premium:**

**Held:** The MACT found that the premium was paid prior to the accident and it was because of the internal procedure that the policy was issued the next day – Court held that coverage under the policy began from the day the premium was received by the Insurance Company in light of the express terms of ‘Certificate of Insurance cum policy Schedule’ that provided ‘Date of commencement of risk: 11/04/2017’ – Since the incident occurred on 11.04.2017, the

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Court held that the vehicle was insured when the accident took place. [Paras 11, 12]

### **Insurance Company – Insurance was fraudulently obtained – Alleged fraud not proved by the Insurance Company:**

**Held:** Even though fraud vitiates everything, merely alleging fraud does not amount to proving it – The Insurance Company has not discharged its onus to prove the alleged fraud. [Paras 13, 16]

#### **Case Law Cited**

*National Insurance Co. Ltd. v. Swaran Singh [2004] 1 SCR 180 : (2004) 3 SCC 297; Oriental Insurance Co. Ltd. v. Dharam Chand (2010) 15 SCC 141; National Insurance Co. Ltd. v. Sobina Iakai [2007] 8 SCR 108 : (2007) 7 SCC 786; Bishnudeo Narain v. Seogeni Rai [1951] SCR 548; Bhauraao Paralkar v. State of Maharashtra [2005] Supp. 2 SCR 774 : (2005) 7 SCC 605 – relied on.*

#### **List of Acts**

Code of Criminal Procedure, 1973; Motor Vehicles Act, 1988.

#### **List of Keywords**

MACT award; Insured vehicle; Accident; Final Report; Insurance certificate; Cross examination; Section 173 of CrPC; Certificate of Insurance cum policy Schedule; Date of commencement; Fraud; Onus to prove.

#### **Case Arising From**

CIVIL APPELLATE JURISDICTION: Civil Appeal No(s). 15016-15017 of 2024

From the Judgment and Order dated 05.10.2018 of the High Court of Punjab & Haryana at Chandigarh in FAO Nos. 2921 and 2922 of 2018 (O&M)

#### **Appearances for Parties**

Amit Kumar Singh, Ms. K Enatoli Sema, Ms. Chubalemia Chang, Prang Newmai, Advs. for the Appellant.

Sahil Tagotra, Chritarth Palli, Vishal Mahajan, Bipin Bihary Singh, Anil Kumar, Vinod Sharma, Advs. for the Respondents.

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Leave granted.

**FACTS:**

2. These appeals arise from the common Final Judgment and Order dated 05.10.2018 rendered by a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh in F.A.O. Nos.2921/2018 (O&M) and 2922/2018 (O&M) whereby, while dismissing the appeals preferred by the Petitioner-Insurance Company, the High Court upheld the compensation awarded to the claimants i.e., Respondents No.1 and 2 herein *vide* Award dated 01.02.2018 passed by the Motor Accidents Claim Tribunal at Gurdaspur, Punjab (hereinafter referred to as the 'MACT') in the claim petitions<sup>1</sup> filed by the Respondents No.1 and 2. The MACT had awarded compensation to the tune of Rs.67,50,000/- and Rs.8,70,000/- with interest @9% per annum to the Respondent No.1, being the mother of Sh. Om Prakash and mother-in-law of Smt. Asha Rani, and Respondent No.2, being the daughter of Sh. Om Prakash and Smt. Asha Rani, who expired in an unfortunate road accident on 11.04.2017. The MACT assessed and quantified the compensation as under:

<b>MACT Case</b>	<b>No.09/2017</b> (On account of Sh. Om Prakash's death)	<b>No.10/2017</b> (On account of Smt. Asha Rani's death)
<b>Age of Deceased</b>	>45 y/o	41-45 y/o
<b>Occupation of Deceased</b>	Havaldar in the Indian Army and was doing agriculture work.	Homemaker & used to do stitching and tailoring.

<sup>1</sup> MACT Cases No.09/2017 and 10/2017.

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<b>Income of Deceased</b>	Rs.46,129/- p.m. <sup>2</sup>	Rs. 5,000/- p.m.
<b>Future Prospects</b>	30%	<i>Nil</i>
<b>Deductions towards Personal Expenses</b>	1/3 <sup>rd</sup>	<i>Nil</i>
<b>Multiplier</b>	14	14
<b>Loss of Dependency</b>	Rs.67,20,000/-	Rs.8,40,000/-
<b>Loss of Love and Affection</b>	Rs.15,000/-	Rs.15,000/-
<b>Funeral Expenses</b>	Rs.15,000/-	Rs.15,000/-
<b>Total Compensation Awarded</b>	<b>Rs.67,50,000/-</b> <i>R1/Mother- Rs.17,50,000/-</i> <i>R2/Daughter- Rs.50,00,000/-</i>	<b>Rs.8,70,000/-</b> <i>R1/Mother- Rs.70,000/-</i> <i>R2/Daughter- Rs.8,00,000/-</i>

3. The MACT held Respondent No.3, Respondent No.4 and the Petitioner, being driver, owner and insurer, respectively, as jointly and severally liable to pay the awarded compensation to the claimants. The MACT specifically observed that the Petitioner-Insurance Company could not avoid its liability to indemnify Respondent No.4, owner of tractor bearing registration No.PB-06-Q-6846 and thus, held it liable to pay compensation to the claimants.
4. The High Court, while considering the appeals preferred by the Petitioner-Insurance Company and in view of the position on record, particularly the evidence of the claimants and Ex. R-5, the proposal form and Ex. R-6, the insurance policy, having gone unrebuted, concluded that there was no reason to disbelieve the findings

<sup>2</sup> Abbreviation for *per mensem*/per month.

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recorded by the MACT after appreciation of evidence. It upheld the MACT's Award.

5. Aggrieved by the concurrent findings of the High Court and the MACT, the Appellant (hereinafter referred to as the 'Insurance Company') is before us.

**SUBMISSIONS, ANALYSIS, REASONING AND CONCLUSION:**

6. Having heard and considered the submissions advanced by learned counsel for the parties and the facts and circumstances of the case, we find that the present petitions are misconceived.
7. First and foremost, the basic contention put forth by the Insurance Company is that the vehicle which was insured with it, was not involved in the accident and some other vehicle was mentioned in the initial Written Statement filed before the MACT. On this point, there is a detailed discussion in the Award of the MACT itself which explains that various witnesses have stated that it was the vehicle as described in the complaint which was involved in the accident and further, that one witness produced by the Insurance Company had only raised some doubt with regard to the vehicle as claimed by the complainants, but not with the make of the vehicle involved in the accident as the difference in number was that instead of the vehicle that the complainants claimed bore Registration No.PB-06-Q-6846, it was actually a vehicle bearing Registration No.PB-06-Q-6847. But even this witness has stated that both vehicles were there and he was not sure as to which vehicle was actually involved in the incident. On scrutiny, we are of the view that this would not help the Insurance Company's case or go against the respondents-claimants.
8. Moreover, the MACT has rightly observed that eventually in cross-examination, no suggestion was given to any of the witnesses produced by the complainants that the vehicle as claimed by the complainants was not the vehicle, which was involved in the accident and that it was some other vehicle.
9. One further aspect which this Court cannot shut its eyes to is the fact that post-investigation, the Final Report under Section 173 of the Code of Criminal Procedure, 1973 also stated that the vehicle as claimed by the complainants was the vehicle involved in the accident. Therefore, the onus was on the Insurance Company or Respondents No.3 and 4 to get the same disproved by either calling the Investigating

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Officer as a witness or by any other means to establish a factual position to the contrary. Admittedly, this was not done.

10. The Court, through 3 learned Judges, categorically held in **National Insurance Co. Ltd. v Swaran Singh**, (2004) 3 SCC 297, that '*Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.*'<sup>3</sup> It was also stated that '*The Court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend on the facts and circumstances of each case.*'<sup>4</sup> In the above analysis, the Insurance Company cannot be said to have established its defence.
11. Another aspect in need of consideration is as to whether the liability of the Insurance Company under the insurance certificate/policy granted by it would cover the incident. This is in reference to the question as to the date and time from when the concerned vehicle would be deemed to be covered by the policy. In the present case, the incident occurred on 11.04.2017 at 14:15 hrs, whereas the insurance policy discloses that insurance was obtained at 15:54 hrs on 11.04.2017. In this regard, on facts, the MACT has found that the premium was paid/given prior to the accident and it was the internal procedure, due to which the policy was issued the next day and, thus, coverage under the policy would begin from the day the money (i.e. premium) was received by the Insurance Company.
12. In **Oriental Insurance Co. Ltd. v Dharam Chand**, (2010) 15 SCC 141, the Court noted '*When this appeal was taken up, the counsel for the Insurance Company very fairly stated that since the cheque for the premium amount was received by the Company at 4.00 p.m. on 7-5-1998, the insurance must be deemed to have commenced from that time and four hours later when the vehicle met with the accident, the owner must be deemed to have been covered by the insurance policy. We appreciate the fairness shown by the counsel for the Insurance Company.*'<sup>5</sup> Clearly, **Dharam Chand** (*supra*) did not

3 Para 110(iv) of **Swaran Singh** (*supra*).

4 Para 110(v) of **Swaran Singh** (*supra*).

5 Para 3 of **Dharam Chand** (*supra*).

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entail any examination of the law due to the fair stand taken by the insurer therein. However, herein we have examined the '*Certificate of Insurance cum Policy Schedule*' which states '*PERIOD OF INSURANCE From: 11/04/2017 To: midnight of 10/04/2018*'. It also records '*Date of commencement of risk : 11/04/2017*'. In this factual backdrop, we have no hesitation to hold that the vehicle was insured when the accident took place. As such, currently, we need not dwell on the law, except to reiterate the view in ***National Insurance Co. Ltd. v Sobina lakai (Smt), (2007) SCC 786*** [considering the position, and change, in law enunciated in ***New India Assurance Co. Ltd. v Ram Dayal, (1990) 2 SCC 680***; ***National Insurance Co. Ltd. v Jikubhai Nathuji Dabhi, (1997) 1 SCC 66***; ***Oriental Insurance Co. Ltd. v Sunita Rathi, (1998) 1 SCC 365***; ***New India Assurance Co. v Bhagwati Devi, (1998) 6 SCC 354***; ***New India Assurance Co. Ltd. v Sita Bai, (1999) 7 SCC 575***; ***National Insurance Co. Ltd. v Chinto Devi, (2000) 7 SCC 50*** and ***J Kalaivani v K Sivashankar, JT (2001) 10 SC 396***] that '*...the effectiveness of the insurance policy would start from the time and date specifically incorporated in the policy and not from an earlier point of time.*'<sup>16</sup>

13. The Insurance Company has not been able to prove that it had not received the money/premium prior to the accident and the only stand taken was that the insurance was fraudulently obtained. The law is very clear – fraud vitiates everything, but merely alleging fraud does not amount to proving it. For, it has to be proven in accordance with law by adducing evidence *etcetera*, the onus of which would also lie on the person alleging fraud. Long ago, 5 learned Judges in ***Bishnudeo Narain v Seogeni Rai, 1951 SCR 458***, had laid down:

*'... Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched*

6 Para 19 of ***Sobina lakai (Smt)*** (*supra*).

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*may be, and the same applies to undue influence and coercion. See Order 6 Rule 4, Civil Procedure Code.'*

(emphasis supplied)

14. Of much more recent vintage, is the decision in ***Bhauraao Dagdu Paralkar v State of Maharashtra***, (2005) 7 SCC 605, wherein it was explained as under:

*'9. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See Vimla (Dr.) v. Delhi Admn. [1963 Supp (2) SCR 585: AIR 1963 SC 1572] and Indian Bank v. Satyam Fibres (India) (P) Ltd. [(1996) 5 SCC 550] ]*

*10. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Chengalvaraya Naidu v. Jagannath [(1994) 1 SCC 1].)*

*11. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letters or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letters. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading*

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*a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi [(2003) 8 SCC 319] .)*

12. In *Shrisht Dhawan v. Shaw Bros.* [(1992) 1 SCC 534], it was observed as follows: (SCC p. 553, para 20)

*"Fraud" and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Camus, who exulted in his ability to, "wing me into the easy-hearted man and trap him into snares". It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Law Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According*

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*to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act, 1872 defines "fraud" as an act committed by a party to a contract with intent to deceive another. From the dictionary meaning or even otherwise fraud arises out of the deliberate active role of the representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case i.e. Derry v. Peek [(1886-90) All ER Rep 1: (1889) 14 AC 337: 61 Lt 265 (HL)] what constitutes "fraud" was described thus : (All ER p. 22 B-C)*

*"Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false."*

*But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in administrative law. It has been aptly observed by Lord Bridge in Khawaja v. Secy. of State for Home Deptt. [(1983) 1 All ER 765: 1984 AC 74 : (1982) 1 WLR 948 (HL)] that it is dangerous to introduce maxims of common law as to the effect of fraud while determining fraud in relation of statutory law. "Fraud" in relation to the statute must be a colourable transaction to evade the provisions of a statute.*

*"If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous*

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*or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. 'In a contract every person must look for himself and ensure that he acquires the information necessary to avoid bad bargain.' In public law the duty is not to deceive." (See Shrisht Dhawan v. Shaw Bros. [(1992) 1 SCC 534], SCC p. 554, para 20.)*

13. This aspect of the matter has been considered recently by this Court in *Roshan Deen v. Preeti Lal* [(2002) 1 SCC 100 : 2002 SCC (L&S) 97] , *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* [(2003) 8 SCC 311] , *Ram Chandra Singh case* [(2003) 8 SCC 319] and *Ashok Leyland Ltd. v. State of T.N.* [(2004) 3 SCC 1]

14. Suppression of a material document would also amount to a fraud on the court. (See *Gowrishankar v. Joshi Amba Shankar Family Trust* [(1996) 3 SCC 310] and *S.P. Chengalvaraya Naidu case* [(1994) 1 SCC 1].)

15. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in *Ram Preeti Yadav case* [(2003) 8 SCC 311].

16. In *Lazarus Estates Ltd. v. Beasley* [(1956) 1 QB 702: (1956) 1 All ER 341: (1956) 2 WLR 502 (CA)] Lord Denning observed at QB pp. 712 and 713 : (All ER p. 345 C)

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*"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."*

*In the same judgment Lord Parker, L.J. observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (p. 722) These aspects were recently highlighted in State of A.P. v. T. Suryachandra Rao [(2005) 6 SCC 149: (2005) 5 SCALE 621].'*

15. An interesting passage on fraud can be found in **Reddaway (Frank) & Co. Ltd. v George Banham & Co. Ltd.**, 1896 AC 199, where the House of Lords stated:

*'But fraud is infinite in variety; sometimes it is audacious and unblushing; sometimes it pays a sort of homage to virtue, and then it is modest and retiring; it would be honesty itself if it could only afford it. But fraud is fraud all the same; and it is the fraud, not the manner of it, which calls for the interposition of the Court.'*<sup>7</sup>

16. From the record, we do not find that the Insurance Company has discharged its onus to prove the alleged fraud. Therefore, the Insurance Company's liability under the issued insurance certificate/policy to cover the incident, cannot be escaped by alleging fraud.
17. Thus, on an overall circumspection, the Court does not find any merit in the present appeals, which, accordingly, stand dismissed. No order as to cost.
18. The Insurance Company shall deposit the monies as per the Award passed by the MACT, if not already done, latest by 15.01.2025. The same shall be distributed forthwith to the claimants by the MACT.

*Result of the case:* Appeals dismissed.

<sup>7</sup>Headnotes prepared by: Harshit Anand, Hony. Associate Editor  
(Verified by: Shadan Farasat, Sr. Adv.)

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7 Quoted approvingly in **Venture Global Engineering v Satyam Computer Services Limited** (2010) 8 SCC 660.